

LAND GOVERNANCE ASSESSMENT FRAMEWORK

STATE LEVEL REPORT

ODISHA

LGAF STATE COORDINATION TEAM

AUGUST 2014



KIIT School of Rural Management
KIIT UNIVERSITY
(Declared U/53 of UGC Act, 1956)
Bhubaneswar, Odisha, India

Acknowledgement

In 2012, the State Governments of Andhra Pradesh, Jharkhand, Karnataka Odisha and West Bengal by way of the Department of Land Resources, Ministry of Rural Development, Government of India, have requested the World Bank to support the undertaking of an independent land governance assessment using the LGAF approach. Bihar joined in 2013. In each of the participating states, a well-reputed local institution was selected to undertake the State-level Coordination of the LGAF. This institution selected a State coordinator and a team of State experts to undertake the assessment in consultation with a nodal officer assigned by the State government. LGAF implementation is in a number of discrete steps that are overseen by the State coordinator.

The six State institutions and LGAF teams are supported by the Technical Advisory Group (TAG), a highly qualified and capable team of nationally recognized experts each covering one of the LGAF thematic areas. The TAG provides backstopping and quality assurance for the entire LGAF exercise, from manual adaptation to the Indian context, State level implementation to national level consolidation of the State reports. The LGAF process and TAG are coordinated by the TAG secretariat, hosted by CSD, the Center for Sustainable Development in Delhi. CSD coordinated also the work with DoLR and The World bank that has provided financial support and methodological guidance on the use of the LGAF instrument, which is applied in over 30 countries globally.

This State Report is an output of a deliberate inclusive effort in this context. The information presented here draws immensely from the secondary sources, published, unpublished as well as experiences and perceptions of hundreds of individuals with experience and knowledge of land governance or land-revenue matters. This yearlong exercise has been benefitted from participation and contribution of numerous professionals, experts, bureaucrats, journalists, academicians, civil society leaders, judiciary and legal experts, consultants and many more. Without naming them all, we acknowledge our heartfelt thanks to their inputs and are proud to dedicate this volume to them.

On behalf of the State Team of LGAF, we are privileged to acknowledge

- The very useful and enabling involvement of the State Government, especially the encouraging welcome remarks of the then Chief Secretary Mr J K Mahapatra, IAS, constant patronage and informative support of Dr Taradatt, Additional Chief Secretary in charge of Revenue and Disaster Management and the constant friendly encouragements of Dr Arabinda Padhee, the then RDC and present Commissioner-cum-Secretary, Department of Culture
- The personalized and sincere involvement of Mr Biswa Ranjan Rath, OSD, NLRMP and Nodal Officer, LGAF
- The advises, critiques, meaningful contribution of about sixty knowledgeable panel members (names in the Annexure) drawn from different sectors of society including from different Government Departments, who enriched this report with their rich experiences and wisdom of diverse aspects of land governance
- The editing support by Prof R M Mallick and Advocate Chitta Behera and the rapporteuring and technical assistance by Manoj Behera
- The logistic support by KSRM team especially Ms Snigdha Mohanty and Mr Anant Samant
- The encouragement, patronage and critical reviews and feedbacks of Technical Advisory Group (TAG) lead by Dr T Haque, CSD, New Delhi
- The ever smiling and knowledgeable support of state anchor Mr Meenakshis Sunderam, IAS (Retd) and TAG Member
- The inspiring support of Mr Shankar Narayan and team from the World Bank, India
- The guidance, hand holding support, persistence follow up and patience of Dr Klaus Deininger and Thea Hilhorst from the World Bank, Washington.

We are responsible for omissions and errors if any,

Pranab Ranjan Choudhury, State Coordinator

Acronyms & Abbreviations

ARD	<i>Animal Resources Development (Department, of Govt. of Odisha)</i>
ASI	<i>Archeological Survey of India</i>
BDA	<i>Bhubaneswar Development Authority</i>
BE	<i>Budget Estimates</i>
BMC	<i>Bhubaneswar Municipal Corporation</i>
BoR	<i>Board of Revenue</i>
CA	<i>Compensatory Afforestation</i>
CAG	<i>Comptroller and Auditor General</i>
CBO	<i>Community Based Organizations</i>
CDA	<i>Cuttack Development Authority</i>
CEIA	<i>Cumulative Environmental Impact Assessment</i>
CFR	<i>Community Forest Resources</i>
CRP	<i>Community Resource Persons</i>
CTE & CTO	<i>Consent to Establish and Consent to Operate</i>
DGPS	<i>Differential Global Positioning System</i>
DIC	<i>District Industries Centre</i>
DIGs	<i>Deputy Inspectors General</i>
DPR	<i>Detail Project Report</i>
DRDA	<i>District Rural Development Agency</i>
DSR	<i>District Sub Registrars</i>
EC	<i>Encumbrance Certificate</i>
EI	<i>Expert Investigator</i>
EIA	<i>Environment Impact Assessment</i>
ERM	<i>Environmental Resources Management (A multinational company on EIA)</i>
ERRP	<i>Economic Rehabilitation of Rural Poor</i>
ETS	<i>Electronic Total Station (for high tech survey)</i>
EWS	<i>Economically Weaker Section</i>
F & E	<i>Forest & Environment</i>
FAO	<i>Food and Agriculture Organization</i>
FCA	<i>Forest Conservation Act</i>
FPIC	<i>Free Prior Informed Consent</i>
FRA	<i>Forests Rights Act</i>
FSI	<i>Forest Survey of India</i>
GA	<i>General Administration</i>
GIS	<i>Geographical Information System</i>
GoI	<i>Government of India</i>
GOO	<i>Government of Odisha</i>
GSDP	<i>Gross State Domestic Product</i>
H & UD	<i>Housing & Urban Development</i>
HRD	<i>Human Resource Development</i>
HRSI	<i>High Resolution Satellite Imagery</i>
IDCO	<i>Industrial Development Corporation of Odisha</i>
IFA	<i>Indian Forest Act</i>
IFAD	<i>International Fund for Agriculture Development</i>
IFPRI	<i>International Food policy Research Institute</i>
IGR	<i>Inspector General of Registration</i>
IHSDP	<i>Integrated Housing and Slum Development Programmes</i>
IPICOL	<i>Industrial Promotion and Investment Corporation of Odisha Limited</i>
IPR	<i>Industrial Policy Resolution</i>

IRDP	<i>Integrated Rural Development Programme</i>
IRMA	<i>Institute of Rural Management, Anand</i>
IT	<i>Information Technology</i>
ITDA	<i>Integrated Tribal Development Agency</i>
JFM	<i>Joint Forest Management</i>
JFMC	<i>Joint Forest Management Committee</i>
JICA	<i>Japan International Cooperation Agency</i>
JIG	<i>Joint Inspector General</i>
JNNURM	<i>Jawaharlal Nehru National Urban Renewal Mission</i>
KLAC	<i>Kendu Leaf Advisory Committee</i>
KLCC	<i>Kendu Leaf Coordination Committee</i>
LA	<i>Land Acquisition</i>
LARR	<i>The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013</i>
LGAF	<i>Land Governance Assessment Framework</i>
LIG	<i>Low Income Group</i>
LR	<i>Land Revenue</i>
M.E.L	<i>Madras Estates Land</i>
MAC	<i>Mines and Communities (a Network)</i>
MADA	<i>Modified Area Development Agency (for Tribal Development)</i>
MFP	<i>Minor Forest Prodcses</i>
MGNREGS	<i>Mahatma Gandhi National Rural Employment Guarantee Scheme</i>
MMDR	<i>Mines And Minerals (Development And Regulation) Act, 1957</i>
MoEF	<i>Ministry of Environment and Forests</i>
MoU	<i>Memorandum of Understandings</i>
MPP	<i>Minimum Procurement Price</i>
NAC	<i>Notified Area Concil</i>
NCDS	<i>National Child Development Scheme</i>
NIC	<i>National Information Centre</i>
NLRMP	<i>National Land Records Modernization Programme</i>
NSSO	<i>National Sample Survey Organization</i>
NTFP	<i>Non Timber Forest Prodcets</i>
OCH & PFL	<i>Orissa Consolidation of Holdings and Prevention of Fragmentation of Land</i>
ODA	<i>Orissa Development Authority</i>
OEA	<i>Orissa Estate Abolition Act</i>
OFA	<i>Orissa Forest Act</i>
OFSDP	<i>Odisha Forestry Sector Development Project</i>
OGLS	<i>Orissa Government Land Settlement</i>
OGP	<i>Orissa Gram Panchayat</i>
OIF	<i>Orissa Industries Facilitation</i>
OIFA	<i>Orissa Industries (Facilitation) Act, 2004.</i>
OIIDCA	<i>Orissa Industrial Infrastructure Development Corporation Act, 1980</i>
OLR	<i>Orissa Land Reforms Act, 1960</i>
OMCA	<i>Orissa Municipal Corporation Act</i>
OPLE	<i>Orissa Prevention of Land Encroachment Act, 1972</i>
ORHDC	<i>Odisha Rural Housing Development Corporation</i>
ORPS	<i>The Odisha Right to Public Services Act 2012</i>
OSATIP	<i>Orissa Shedule Area Transfer of Immovable Property Regulation, 1956</i>
OSPCB	<i>Orissa State Pollution Control Board</i>
OTDP	<i>Orissa Tribal Development Project</i>
OTELP	<i>Orissa Tribal Empowerment and Livelihood Programme</i>
OTP	<i>Orissa Tenants Potection Act 1948</i>
OTP & IT	<i>Odisha Town Planning and Improvement Trusts</i>

OTR	<i>Orissa Tenants Relief Act 1955</i>
OWS & SB	<i>Odisha Water Supply and Sewerage Board</i>
PESA	<i>Panchayat Extension to Scheduled Areas Act</i>
PoA	<i>Power of Attorney</i>
PPSS	<i>Posco Pratirodh Samgram Samiti</i>
PRF	<i>Proposed Reserve Forests</i>
PRI	<i>Panchayat Raj Institutions</i>
PSUs	<i>Public Sector Undertakings</i>
PVTGs	<i>Particularly Vulnerable Tribal Groups</i>
R & DM	<i>Revenue & Disaster Management</i>
R & R	<i>Rehabilitation & Resettlement</i>
RAY	<i>Rajiv Awas Yojana</i>
RDC	<i>Revenue Development Commissioner</i>
RF	<i>Reserved Forests</i>
RO	<i>Revenue Officer</i>
RoR	<i>Record of Rights</i>
RTI	<i>Right to Information</i>
S & S	<i>Survey and Settlement</i>
SC	<i>Scheduled Castes</i>
SD	<i>Stamp Duty</i>
SFM	<i>Sustainable Forest Management</i>
SHG	<i>Self Help Groups</i>
SIA	<i>Social Impact Assessment</i>
SLIIC	<i>State Level Inter Institutional Committee</i>
SR	<i>Sub Registrars</i>
SRDP	<i>Slum Rehabilitation & Development Policy</i>
ST	<i>Scheduled Tribes</i>
SUDA	<i>State Urban Development Agency</i>
SWAN	<i>State Wide Area Network</i>
SWCS	<i>Single Window Clearance System</i>
TAG	<i>Technical Advisory Group</i>
TDCC	<i>Tribal Development Cooperative Corporation</i>
TDCC	<i>Tribal Development Cooperative Corporation</i>
TII-CMS	<i>Transparency International, India (TII) and Centre For Media Studies (CMS)</i>
TPS	<i>Town Planning Scheme</i>
UDPFI	<i>Urban Development Plan Formulation and Implementation</i>
UDPFI	<i>Urban Development Planning Formulation and Implementation</i>
UFPL	<i>Utkal Forest Products Limited</i>
ULB	<i>Urban Local Bodies</i>
UN	<i>United Nations</i>
USAID	<i>United States Agencies for International Development</i>
VPN	<i>Virtual Private Network</i>
VSS	<i>Van Suraksha Samities</i>
WRD	<i>Water Resources Department</i>
WSC	<i>Women Support Centres</i>
ZDP	<i>Zonal Development Plans</i>

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ODISHA TEAM MEMBERS

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3	Expert Investigator	Mr Arun K Bansal, IFS (Retd), Former PCCF And ADG (FC), Govt of India	Panel 2: Forest and Common Lands, Rural Land Use
4	Expert Investigator	Er Ajay Dutta Retd Director, Directorate of Town Planning, Odisha	Panel 3 : Urban Land Use, Planning and Development
5	Expert Investigator	Ms Sumita Sindhi, Asst Prof, KSRM	Panel 5 : Transfer of Large Tracts of Land to Private Investors
6	Expert Investigator	Mr Aurobindo Behera, IAS(Retd) Member, Board Of Revenue	Panel 6 : Public Provision of Land Information Panel 7 : Land Valuation and Taxation
7	Expert Investigator	Mr Subhendra Mohanty, Addl District Judge (Retd) And Faculty, KIIT Law School	Panel 8 : Conflict Resolution
8	Expert Investigator	Dr L K Vaswani, Director, KSRM	Panel 9: Review of Institutional Arrangement and Policy
9	Research Associates	Dr Sricharan Behera, Mr Priyabrata Satapathy Ms Kalpana Mahapatra	
10	State Anchor	Mr Meenakshi Sunderam, IAS (Retd)	Technical Advisory Group Member

Summary LGAF findings and Policy recommendations

1. Introduction

Land, traditionally in Odisha, is a valued resource and symbol of power. It being a predominant agriculture state¹ with strong tribal communities, land also forms the stratum of culture and livelihoods. Land use and ownership in the state can be broadly put under three heads, each having almost equal area: Private agriculture and homestead lands with households, institutions and endowment (temples), Revenue (culturable, unculturable, communal and reserved) wastelands under the control of Revenue Department and Forest land under control of Forest Department. In the hilly and uplands which constitutes about 60% of the state area, more land is with the State (revenue and forest department)² and therefore lesser access by the dominant tribal communities. Land governance in Odisha, having inherited multiple colonial and feudal legacies³, was quite complex. Post-independence, state has brought in waves of changes in land governance with focus on equity⁴, ecology⁵, participatory democracy⁶, economic development⁷ and information technology⁸. Existing systems and processes of survey, registration, mutation and land record management are managed by different institutions, through a mix of traditional and IT-based processes. While working towards that, the present land record management system is not complete and updated spatially and textually, in sync with fast changing land use and ownership. While land revenue collection has been done away with, the old institutional structures continue to deal with land administration with judiciary responsibilities on land matters along with multiple other non-land related works.

¹ Odisha remains predominantly an agrarian economy despite rapid growth of industrial infrastructure. Almost three fourth of the total workforce (65 percent) depend on land resources for their food and livelihoods, while contribution of agriculture and allied subsectors to the Gross State Domestic Product (GSDP) was about 15.0 percent in 2012-13 (Economic Survey, Govt. of Odisha, 2012-13).

² Inherited land governance legacies, state policy towards shifting cultivation, limitations of survey and settlements as well as a sub-optimal process of forest reservation have lead to accumulation of almost two thirds of land under the state ownership. A majority of these lands, which are under revenue or forest departments, are treated as common resources either de-facto and de-jure and their share go above 80% of total land in the Schedule V areas. This higher percentage of common lands has of late, become triggers for inviting easy investment.

³ Odisha was constituted through the amalgamation of parts of British ruled Madras Presidency, Central Provinces and Bengal as well as 24 princely states (GOO, Report of the Administration Enquiry Committee, 1958)

⁴ In sixties to eighties, establishment of legal framework of land reform process aiming more equitable land distribution and to promote agriculture and consolidate and protect government land, through number of laws have been enacted in Odisha in order (e.g. Estate Abolition Act 1952, Survey and Settlement Act 1958, Orissa Land Reforms Act 1960, the Orissa Government Land Settlement Act, 1962, the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land (OCH&PFL) Act 1972, the Orissa Prevention of Land Encroachment (OPLE) Act 1972). Odisha, like many other states has enacted legislations to abolish tenancy (Land leasing), except in the case of the persons of disability (the definition of which includes widows, divorcee, unmarried women etc.).

⁵ Reservation of land as Gochar and Village Forest through OGLS, reservation of forest (OFA, 1972) and declaration of protected areas starting in seventies

⁶ Ninties saw more focus on democratization with 73rd and 74th amendment, provisions under PESA, JFM and FRA

⁷ In early ninties, Odisha adopted economic reforms and liberalization process to attract investments leveraging on its natural resources. (GOO, 2006a) The legal instruments facilitating the process are IDCO Act, Single window policy, Industrial Policy Resolution, Land Acquisition, R & R Policy,

⁸ NLRMP, Bhulekh, Bhu-naxa, Odisha Special Survey and Settlement Act and Rules, 2012

2. Land Governance Assessment framework

The Land Governance Assessment Framework is a participatory, evidence driven instrument to assess the current status of land governance in state, to identify areas and issues which require urgent policy intervention was assessed across nine distinct focus areas: (i) Land Rights Recognition (ii) Rights to Forest and Common Lands & Rural Land Use Regulations (iii) Urban Land Use Planning and Development (iv) Public Land Management (v) Transfer of Public Land to Private Use (vi) Public Provision of Land Information: Registry and Cadaster (vii) Land Valuation and Taxation (viii) Dispute Resolution and (ix) Review of Institutional Arrangements and Policies. Each of these focus areas has been assessed using a set of land governance indicators, which have been further divided into various dimensions. The LGAF framework consists of 27 land governance indicators (LGI), each broken down into “dimensions” with pre-coded statements (on a scale from A to D – total of 116 dimensions). Dimensions were ranked based on actual conditions prevailing in the state.

In Odisha, KIIT School of Rural Management, KIIT University hosted the implementation of LGAF in coordination with Revenue and Disaster Management Department of the State who appointed a nodal officer. The team consisted of a State Coordinator, seven Expert Investigators and three Research Associates and 60 people participated in two rounds of panel deliberations (retired Government officers (22%), serving Government officers (18%), retired judges (4%), legal experts (16%), NGO representatives (12%), Academicians (12%), corporate (8%), media (4%) and independent consultants (4%).

3. Findings

Odisha is home to 62 different tribal communities constituting 22% of its total population while 45% of the territory is classified as tribal lands. Urban population in Odisha constitutes only 17%, which is one of the lowest among the major states of India.

Building on the national economic reforms and liberalization of the nineties, Odisha State development policy is emphasizing industrialization and urbanization and introduced policies to attract investments leveraging on its natural resources⁹. Cumulative investment commitments received by the state is over 2.3 trillion USD since 2000 for often land-intensive industries and urban expansion, but which resulted in a sharp reduction of productive public lands (under tree crops and groves, pastures and cultivable wasteland) and agricultural lands. Although Odisha experiences rapid industrial growth, agriculture remains the main source of employment for 65 percent of the workforce in the State and contributing 15% to the Gross State Domestic Product (GSDP) in 2012-13¹⁰. Around a quarter of all rural households in Odisha are engaged in agriculture without owning land¹¹. Most, who own land, have smallholdings (83.4 percent of total land holdings are <2 ha). Land ownership has the highest level of land skewedness in scheduled V area¹².

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⁹ (GOO, Opportunity Orissa Investor Guide , 2006)

¹⁰ Economic Survey, Govt. of Odisha, 2012-13

¹¹ Village wise data of landless and homestead less people, is not separately maintained.

¹² Schedule V area in Odisha are declared by Indian Constitution are areas with higher tribal population. Scheduled areas of the state contain almost 70 % of the forest areas of Odisha even though they form only 44 % of the State area.

3.1 Land Tenure Recognition

Odisha State is the amalgamation of parts of British ruled Madras Presidency, Central Provinces, Bengal and 24 princely states (GOO, Report of the Administration Enquiry Committee, 1958). It inherited a diverse range of land governance systems.

After independence, the Government of Odisha brought in number of legislations to establish a comprehensive legal framework for land reforms. The aim was to address historical injustice and the colonial exploitative system of land revenue assessment and provide 'land to the tiller' by abolishing of intermediaries, to de-concentrate land holdings by putting in a ceiling¹³, protect land rights of SC and ST, and address issues of occupation and encroachment on government land. Examples are the Estate Abolition Act 1952, Survey and Settlement Act 1958, Orissa Land Reforms (OLR) Act 1960, the Orissa Government Land Settlement (OGLS) Act, 1962, the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land (OCH&PFL) Act 1972, the Orissa Prevention of Land Encroachment (OPLE) Act 1972, Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006). Subsequently, some of these laws have been repealed while others were amended in response to emerging requirements. However, there is need to address contradictions between different legal instruments, and one option for consolidating of the legal-institutional frameworks could be a common revenue code.

Modernization of land record management has begun in the state through NLRMP. Almost all record of rights (RoR) has been computerized and are accessible at <http://ori.bhulekh.in>. Registration process has also been computerized through e-Dharni portal. Digitization of cadastral maps has been completed and are planned to be uploaded for online access soon.

Legal provisions for the recognition and protection of rights of individual rural landholders are in place, including for rights of tenants and sharecroppers, tribal peoples and women¹⁴. However their remains landlessness, widely prevalent concealed tenancy and a poor status of protection and recognition of tribal/customary land rights.

The state has implemented strong laws to check different type of illegal land transactions e.g. transfer of land of STs to Non STs was banned under the 2001 amendment of OSATIP Regulation, 1956. However, some ambiguities have been identified which makes it difficult to comply with the existing laws on the part of landowners. The Orissa Land Reform Act clearly earmarks the formal procedure to restore a piece of land occupied by a non-scheduled caste person from a scheduled caste person. The state has yet to make substantial progress in terms protecting and recognizing the rights particularly of tribals. The erosion of tribal communal land rights owing to faulty survey and settlement operations, land alienation as a result of displacement of tribal and the encroachment of tribal land by outsiders, loopholes in the laws and lack of awareness among the STs with regard to the protective laws in their favor have affected tribal land rights in schedule areas.

In urban areas, the volume of formal recording and mapping of individual land is much lower than for rural areas, which may be due to the inability of the institutions to keep pace with faster land subdivisions and transfers taking place in urban areas. Rights to private urban land, the transfer of ownership and the allotment of government land are carried out as per the revenue laws and existing revenue master plan respectively. There is no provision for separate management of land records in

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¹³ Odisha has implemented also a land consolidation program to reduce the high rate of land fragmentation, as this may affect agricultural productivity, but its coverage is not very high.

¹⁴ Under OLR Act (1960), OGLS Act (1962), OPLE Act (1972) and Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006.

urban area. About one fourth of the Urban population of Odisha live in slums, however, in spite of existence of a State Policy and schematic provisions for affordable/low cost housing, rights of the slum dwellers have not been adequately recognized. This was also highlighted by CAG in the 2012 Audit report.

There is a practice of issuing joint pattas in name of wife and husband since late eighties¹⁵, particularly in case of land distribution schemes; a robust legal framework is absent in the context of women rights to land. An analysis of RORs in bhulekh for Jagatsinghpur (coastal) district 2014, indicate 8% of pattas in the name of women alone and another 22% under joint names. Existing policy framework also lacks specific targeting of women, especially, single woman. The recently announced Odisha State Policy for Girls and Women 2014 plans to make proper legislation and administrative measures to ensure asset ownership right. As per the provisions, the Government would provide free land and homestead land to the landless women and widows above the age of 45 years and disabled women. On all other dimensions of this indicator the state of Odisha has either no stated policy or policy is implemented poorly.

The Government allotment of leasehold house sites does not ensure civic services. Urban poverty alleviation programs that are providing basic civic services within slum do not address sufficiently the issue of securing tenure to slum dwellers.

Absence of mechanism for recording and regularizing tenancy, the slow process of recognition of rights of tribal communities over revenue and forest land (see 2.2) along with lack of legal initiatives towards recognition of women rights result in an incomplete realization of rights of individuals in rural areas. The State needs to address the long-pending tenancy reforms, bring in legislations to regulate and facilitate land lease market, to recognize customary rights and tenures of tribal communities, enhance access to land records and maps, and act on mainstreaming women land rights.

3.2 Rights to forests, common lands and rural land use regulation

The Indian Forest Act 1927 and Madras Forest Act 1882 were applicable in Odisha till enactment of Orissa Forest Act in 1972 and these acts provide elaborate procedure for declaration of reserve and protected forests. However, at the time of merger of “princely states” and “abolition of Estates (Zamindari)” sizable forest lands have been notified as “reserve forest” without proper survey and settlement of rights.

There has been gradual changes in the national forest policies with regard to claims of forests vis-à-vis other land uses¹⁶. Under the federal system of Governance “Land” is included in the “State” list and “Forests” which was originally in the State List was brought on to the concurrent list by a constitutional Amendment in 1976. Thus, whereas land and land reforms are under the legislative and administrative jurisdiction of the States, both the Union and the state governments have jurisdiction over “forests”.

While customary rights like Community Forest Resources (CFR) rights, habitat rights of PVTG’s are now recognized and protected in law (viz. through FRA, 2006), most of the other customary rights of tribal

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¹⁵ The Government of Odisha has directed to issue joint patta in the name of both husband and wife, while settling the govt wasteland, house sites and ceiling surplus lands with landless persons (through a series of administrative circulars commencing with letter no 48425 dated 19th Aug 1987).

¹⁶ The first-ever national forest policy enunciated in 1894, during British period, provided for release of forest area for cultivation. Recognizing the intrinsic claims of forest over land, the first national forest policy of the Independent India, 1952, prescribed a national goal of 1/3rd of total land area to be maintained as forest. However, diversion of forest lands for extension of cultivation, and also for various developmental projects continued. In Odisha, about one lakh ha of forest area was diverted till 1980.

communities have not been codified and recognized by formal legal system. Indigenous rights like rights of shifting cultivators have not been recognized and protected.

Though, the processes of recording of rights over common land and mapping has been clearly earmarked under Odisha S&S Act, 1958 & Rules 1962, procedures are not clear leading to discretion in their application. Most of the area under communal land has boundaries demarcated and surveyed and associated claims recorded in plain and coastal districts, but, in hilly and schedule V areas, the situation is bad, as most of the common lands are located in the areas beyond 10° slopes where survey has not been done.

In Odisha, group rights are neither clearly defined nor legally recognized except in case of JFM, CFR rights, habitat of PTGs, nomadic tribes, artisans under recent law FRA 2006. The User rights on key natural resources (land, water bodies, forest resources, fishing, etc.) are recognised under IFA 1927, OFA 1972, JFM resolution, FRA 2006, OGLS Act 1962, etc. However, the mechanism of protection is not enforced regularly as part of the legal process. Moreover, conflicting situations are arising on the ground between users, managers and regulators due to weak or no regulatory mechanisms to resolve these conflicts.

The state was a pioneer in bringing Joint Forest Management Resolution in 1988, before GoI and so far it brought in many governance refinements to allow inclusion of better forest area, making villager the secretary etc. More than 12,000 JFMC are in the state now. Besides, 3,25,449 individual claimants have been granted heritable but inalienable titles covering 208,455.9 hectares of forest land under FRA 2006.

In order to make governance of forest and common lands to synchronise with the changes taken place in the national legal framework, the State Government is required to bring in legal reforms in certain areas like devolving power to GP to manage common land as per PESA, recognizing customary rights of tribal communities on non-forest common land as group or community rights. There is scope also for a common framework law for common lands and rationalization of kisams of common lands.

Though, forestlands are clearly identified and responsibility for land use is clearly defined legally, their implementation remains dubious. There is no comprehensive definition of forests in central or state laws. In particular, there is ambiguity over management responsibility for revenue forests. Out of recorded Forest Area of 58,148.52 km² in 2014, 54% is with the forest department, and 46% continues to be managed by the Revenue Department. About 40% of the total forest area is not covered by working plans despite the Supreme Court order of 19.12.1996. Similarly there are 1369 forest blocks involving an area of 8847.42 km², which remains as proposed reserved forest (PRF) pending final notification as RF under OFA 1972. These PRF are often treated as deemed Reserve Forest though the rights of the people remain undecided. Post Forest Conservation Act 1980, 41,891.25 ha of forest area have been diverted for other uses till March 6, 2013 in the state.

It is important to note that conversions/diversions under Forest Conservation Act and issue of titles under FRA do not decrease the area that is *recorded* as forest since the legal status of such remains “forest” despite actual change in land use. Spatial records on land use are never updated through mutation, but only through Survey and Settlement which tends to be irregular or not happening at all.

It is recommended that the Proposed Reserved Forests are to be settled as RF or PF at the soonest and that the rights allocation around CFR under FRA is expedited. Use of GIS for mapping and land use planning of forest and common lands and integration with revenue database in order to have a single data base and window for users, will make the governance of forest lands more effective, transparent and user-responsive.

There is no well-defined system for preparing rural land use plans, except for the earmarking of future settlements area at the time of survey & settlement. There is also no clear policy or comprehensive guidelines for zoning/rezoning of rural land use, except for provisions to set aside *Gochar* or common land area. Regarding restrictions on rural land transferability, these serve public purpose but are not enforced. Rural land use regulations often do not serve public purpose in, which cause resentments and at times, result in litigations. IT-GIS tool can be used to develop Land use map with provision of Zoning for different use to avoid conflict and optimize resource utilization.

‘Commons’ or “common property land resources (CPR)” are within the boundary of the village¹⁷ and commonly used resources like village pastures and grazing grounds, government forests, waste land, common threshing grounds, watershed drainage, ponds and tanks, rivers, rivulets, water reservoirs, canals and irrigation channels. Any loss or decline of village common lands severely affects social and economic systems in rural Odisha. Identification and legal categorization of common lands are not clear and there is ambiguity in the allocation of management responsibility and procedures, which may even encourage encroachments.

CPRs available to the villagers declined substantially over the years, following the expansion of state control over these resources but resulting in open access situations,¹⁸ as well as due to individualisation/privatisation, industrialisation, urbanisation, unauthorised encroachments and illegal regularisation, etc. Besides, the over-use and over exploitation of existing common resources has led to deterioration in its quality.

The average size of the common village lands per households in Odisha is 0.28 ha¹⁹ in 2014, while the percentage of land under *Gochar* is 3% and under village forest also 3%²⁰. However, *Gochar* land as per OGLS Rules²¹ should have been around 5% and village forest²² around 10%.

3.3 Urban land use planning and development

Fast expanding urban population coupled with unplanned urbanization in the state is a serious concern, and ascertains the need of strong urban land governance in Odisha. The urban population in Odisha constitutes 17% of the population and will double by 2030. Though 30 % of Odisha’s urban people are in slums, only 15 out of 103 Urban Local Bodies (ULB) has reported slums in Odisha (Census 2001). State government is prioritizing the synchronization of urban planning and institutional framework, while ensuring growth of urban centers within the framework of regional development plan or the program

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¹⁷ Report No. 452: Common Property Resources in India, Jan - June 1998, NSS 54th Round, NSSO, Govt of India, December 1999, p.5

¹⁸ *ibid*

¹⁹ *ibid*, p.A-3

²⁰ Based on analysis of Bhulekh (<http://bhulekh.ori.nic.in>) data maintained under NLRMP of Revenue and Disaster Management Department of 30 districts (317 Tehsils as per entries in Feb 2014. The data are as per entry in the bhulekh site and may include some errors in entry and not be complete

²¹ As per OGLS Rules 4 (2) (i) in every surveyed village which is not included within the limits of an urban area, five per cent of the effective area of the village shall be set apart for pasturage (*Gochar*) subject to availability of suitable Government land

²² Gramya Jungle (Village Forest) is owned by the Revenue Department. According to a State Government Order in 1966 (Government of Orissa Instructions for Reservation of Government Land for Specific Purposes in Rural Areas dated 28 Jan, 1966) for reservation of land for various purposes, 10% of the effective village area is reserved as village forest (Gramya Jungle) for the exercise of the rights and privileges of the villagers and other development works. (Mallick (2004) Social Ecology of Forest Resources: A Study of a Tribal Region of Oriss, 375 pages, Gyan Books, Orissa)

for a delineated region. Key policy priority areas are affordable dwellings; property rights to slum dwellers, and development of GIS based master/development plans/Town Planning Schemes of cities/towns etc.

The state has been trying to address these issues by bringing in proactive legislations like Orissa Development Authority Act, 1982, Odisha Town Planning and Improvement Trusts Act, other Municipal Acts and Rules, and the Odisha Housing & Habitat Policy-2013 for low cost housing and services. The Orissa Apartment Ownership Act, 1982 provides for common area and services, handed over by the developer to the association/ society of the apartment owners, although the common open spaces are not always registered in the name of local body/ local authorities.

Odisha Municipal Act and Rules and Odisha Municipal Corporation Act and Rules govern urban local bodies in charge of town planning, sewerage, housing etc. Housing and Urban Development Department administers all urban planning and development activities of the State through Directorate of Municipal Administration, Directorate of Town Planning and Public Health Engineering wing of the department. There are other Agencies like SUDA (State Urban Development Agency), OWS & SB (Odisha Water Supply and Sewerage Board) and ORHDC (Odisha Rural Housing Development Corporation). More space could be given to urban local bodies as per 74th Constitution Amendment, while public participation should be mainstreamed and visible.

The state Government has started preparing GIS based Master Plan/Development plan in 106 Towns and also implemented Town Planning Scheme (TPS) as per ODA Act, 1982 and Odisha Town Planning and Improvement Trusts Act and Rules. The Master Plan/Development plans are not reviewed periodically and not updated time to time. The coordination among different functionaries is lacking along with absence of Zonal (regional) Development Plans (ZDP). In both cases, the enforcement of the existing regulations is not sound. Planning exercise for preparation of spatial development plan must adopt also UDPFI (Urban Development Plan Formulation and Implementation) guidelines of Government of India. Spatial planning at local level, sub-regional level and regional level has to be emphasized for both urban and rural areas.

In major cities like Bhubaneswar, Cuttack and Berhampur, while law specifies a hierarchy of regional/detailed land use plans; in practice urban spatial expansion occurs in an ad hoc manner with infrastructure provided mostly after urbanization. In the largest city of Bhubaneswar, the urban planning process/authority is struggling to cope with the increasing demand for serviced units/land as evidenced by the fact that most of the new dwellings are informal. The construction of houses and provision of infrastructure are not synchronized in the state and there are deficiencies in institutional mechanism.

There is clear provision for information on urban expansion (but not for infrastructure development) and seeking public inputs for finalizing, and this information is not always publicly available in the state. Statutorily, any modification made in the land use proposals are to be incorporated immediately, which is effective only when according approval for development/construction. For other modifications, it takes time for incorporation in the notified plan and may only be materialized before full revision of the plan.

The requirements to obtain a building permit, prescribed by state, are technically justified. The charges for granting permission scrutiny fee and sanction fee are also justified and affordable. However for construction of smaller dwelling units with low level of investment and technical requirement, compliances become difficult and not affordable. As per the provisions of ODA Act 1982, decisions in respect of approval for development/ construction may have to be made within 3 months, however it differs in practice. There is a need of amendment of Revenue law incorporating provisions of planning

regulations of sub-divisional layouts and framing and implementing TPS under the jurisdiction of planning/development authorities.

There is inadequate supply of houses in a formal way by the organized sector and informal real estate developers, who are filling the gaps, focus less on providing civic services. So, the process is complicated, and many applicants follow informal means to satisfy the requirements. As indicated above. The State formulated a housing policy in 2013, which has improved the rate of construction of affordable housing for urban poor, but more attention is needed to ensure equitable allotment of houses to the poor/slum dwellers with provision of tenurial security. IT and GIS can be used to enhance effectiveness and transparency.

3.4 Public Land Management

Two thirds of all land in the State, and even 80% in the Schedule V areas, is recorded as government land and under the ownership of either Revenue or Forest Department. As per Bhulekh data in Feb 2014, almost 30% of total rural area in the state was public land under revenue department, varying from 35% in Scheduled districts to 18% in non-Scheduled districts. The government has become the main landholder as a result of historical land governance legacies, nature of state's topography, policy towards shifting cultivation, forest reservation strategy and errors during survey and settlements operations. In practice, most government lands are used as common resources either de-facto or de-jure.

Government land has been defined through different state legislations like OGLS Act and Rules, and OPLE in the state. Public lands are not easy to identify on the ground as updated maps are not available, and no survey of land above 10-degree slope has been conducted. The information on the public land inventory is only available in text form and the linking with the digitized maps is under process. Public land is mapped only during Survey and Settlement process, which takes place either once or repeated it 20-30 years. In between maps are not upgraded, while there has been a lot of privatization and encroachment.

Most of the public lands on the maps or records do no longer exist as public lands on the ground. There is much encroachment of Common lands, Gochars and water bodies etc. particularly in tribal areas. In recent years, huge tracks of *paramboke* land have been settled under individual tenure under newly amended OGLS Rule 2010. Odisha also provided a significant number of land *pattas* to the households occupying forestlands under FRA.

While the criteria for public land ownership are clearly defined in the existing rules or acts, the allocation of management responsibility is often ambiguous, which affects equity and efficiency. Multiple government agencies like GA, BDA and IDCO are involved in management and in the allocation of public lands for different purposes, but with limited coordination. Involvement of Panchayat as prescribed by the Constitution (73rd and 74th Amendment Acts) and PESA Act, 1996 is not there. Human and financial resources for public land management are not adequate.

As a part of land reform measures for agricultural development and social equity, ceiling surplus land up to 0.7 acre has been allotted free of Salami to SC/ST and other caste landless agricultural families. In addition, the State Government also allotted government wasteland up to one standard acre to landless SC/ST and other poor families for agricultural purposes. However, landlessness and homesteadless households continue to exist in spite of availability of plenty of public land.

Legal provisions exist for acquisition of private lands for public interest and private purpose as well, which are largely followed. Forest land allocation after 1980 is available in MoEF website while the information revenue land allocation to Industries is available in IDCO website. However, there is lack of

maintenance of information for public land allocation by GA Department in Bhubaneswar, as reported by CAG. Revenue department is the key player in the decision, execution and arbitration on land acquisition matters.

While, the LA, Act provides no compensation for unrecorded rights, Orissa R & R policy provides compensation to landless and homesteadless, but only when they are “recognized encroacher” on Government land. However, people losing rights as a result of land use change outside the acquisition process, hardly compensated. The compensation is also not always paid in time.

The land acquisition process is hardly transparent or, participatory, in addition to instances of exercising of official discretion. All information related to land acquisition is not publicly available. Transfer of acquired land to the destined use is delayed in many cases. There are no independent and accessible avenues for appeal against acquisition except for the provision of writ provided in the constitution. Aggrieved parties can file complaints with the High Court contesting the actions of land acquiring authorities.

Since, every acquisition of land under LA Act is for public purposes, there is legally no transfer of land for private purposes. However, the CAG audit report 2012 and 2013 pointed about wrong application of the Act, as most lands were acquired by the state for transfer to industry, which is a private cause. They also observed irregularities in terms of utilization of allotted lands for destined used in time. There has been number of protests against land acquisition in Odisha

The State mostly acquires private land for public purposes, though the nature and rationale of public purpose is not always consistent and mostly contested. Besides, there are also a lot of instances of preemptive actions by private parties having vested interests. To avoid pre-emptive land transfer, a recent circular of revenue department has stipulated no compensation to any middleman if he has purchased the land prior to declaration for land acquisition.

Making public land management more transparent and participatory requires reforms such as addressing encroachment and restoration of Government lands fraudulently settled with private person through State Litigation Management Mechanisms. A forum like an independent ombudsman that is accessible to the general public can play a role in redressing of grievances according to procedures laid in LARR, 2013. There is also need for synchronizing all the existing legal frameworks by instituting a single nodal agency for coordination of public land management in the state in sync with the units of Local Self Governance.

3.5 Transfer of large tracts of land to private investors

Odisha government is proclaiming industrialization as harbor of socio-economic development and initiated investor friendly policies and processes, such as the creation of ‘Team Odisha’, for industrial facilitation and investment promotion in all key areas of economic growth. Public bodies as IPICOL and IDCO are the nodal agencies for promoting investment and for land acquisition and allotment. The extent of land allotted by IDCO to private investors amounts to 16,761 acres till January 2014. Of this, 6,900 acres is government land and 9,861 acres is private land.

In the Industrial Policy Resolution (IPR) 2001 the State Government had committed itself to launching a ‘Land Bank’ scheme through IDCO by earmarking Government land and acquiring private land for setting up industries. However, the ‘Land Bank’ scheme was not implemented and the Government had not prepared a land-use plan for planned development of the State accommodating both industrial and agricultural development of the State.

Overall, policies and processes are in place to ensure that the process of land transfer meets global standards, but the implementation is not as effective. The policies for land identification are based on economic, environmental and social benefits. A forward-looking R&R policy (2007) exists with provision of benefitting the community through access to assets. Public bodies to deal with land transfer exist which share information with other public institutions and departments. This has improved the efficiency and timely action by IDCO, which is visible as quick response-institution to investors (within 15 days). Sharing of information through website and catering to people's complaints are another positive attributes.

However, lesser efficiency is observed in monitoring of investment projects. Safeguards such as EIA takes care of environmental hazards to some extent but are not in line with the global best practices. Investors are asked to submit DPR, but the risk assessment is ex-ante and the contractual agreements mention benefit sharing as per R&R policies, but without involvement of land right holders in negotiation. None of the policies mention benefit sharing by changed land use with community. As investors generally comply by contractual agreements, changing these can improve outcomes. Opportunities are the introduction of benefit sharing mechanisms with communities as per changed land use, as well as the use of scientific environmental assessments, involving the State Pollution Control Board and environmental scientists, which can be in a cumulatively way for several industries, can play a greater role.

There are issues with the transparency in sale or lease of land. The land is leased neither through tender process nor auction. The lease fee is based on an assessment by IPICOL and IDCO, but the process is dubious and discretionary. Concessional transaction of land is another serious issue, whereby the processes are nebulous and no clarification on the amount of concessions given to the industry.

Land Acquisition process in the state, particularly for industrial and economic development, has been fraught with protest and mistrust by communities and civil society. Repeated audits by CAG have report irregularities by the state government to favor industrialization in the state. While the latest Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act 2013, have some provisions to address equity, justice and sustainability issues through a more participatory and responsible land acquisition process, there has been resistance in adopting the cumbersome procedures laid out.

Industrialization is required for economic development, but a balance has to be created between human, ecological and economic development. Given the local conditions and the reliability of poor and vulnerable on public land, there is a need for more sensitive policies and social acceptance. Therefore there is a strong need to make policies and plans which adhere to 'Triple Bottom Line' principle. To improve outcomes is a GIS based zonation and use of information technology in data records, to ensure a more accurate assessment of resources for designing land use and its transfer to investors. Therefore, it is strongly recommended to initiate process of land use policy and zoning. Compliance should be at par with global parameters and both investors and public bodies should adhere to it. On similar lines monitoring should be participatory, periodic and consistent throughout project period and improve accountability and transparency.

3.6 Provision of land information: Registry and Cadaster

The Record of Rights (RoR) is prepared under The Odisha Survey and settlement Act, 1958 and Odisha Consolidation of Holding and Fragmentation of land Act, 1972. The survey and settlement in Odisha takes place through an elaborated process, where preparation of cadastral maps and record of rights are created to settle land revenue. A separate sketch is made for each survey field during the Survey and

Settlement (S & S) process. The land records in different forms are maintained at two different organizations i.e. Settlement/consolidation and Tehsils.

First time recording of rights is affordable as per Orissa Survey and Settlement Act and Rules and includes proper safeguards to prevent abuse. However, regarding the reliability of land information, links are in place for some types of land information but checks are insufficient to eliminate a significant number of potentially fraudulent transactions.

The legal framework²³ for the formal recognition of possession in the state is quite elaborate (see also 2.1). Though, there is no Substantive/statutory legislation in Odisha, the procedural laws (viz. Indian Limitation Act, 1963) is there for regularization of long-term unchallenged possession on specific type of lands viz. public land under OPLE, 1972. Provisions under FRA, 2006 accept non-documentary evidences to decide rights over property, when documentation is not available.

In between two S & S, which may take minimum about 25 years, the ownership transfer takes place through registration and mutation, resulting in updating of RoR only. The registration act does not provide for or empower the sub- Registrar to verify the ownership of the land, which get sold or purchased till 2014, when a government brought in amendment²⁴ to this effect. The total cost for recording a property transfer is more than 7% (2% registration fees + 5 % stamp fee + other fees). In most of the Tehsils, only records are being updated without updating of maps. Stipulated 90 days period for updating and correction of RoR (as per ORPS Act, 2012) and issuing of patta at Tehsil, following the restart of land transfer, is not largely adhered to.

Most of the relevant private encumbrances restriction/conditions are recorded in the RoR but not in a consistently and in a reliable manner. Bank mortgages of property are not recorded except for the case of State Bank of India.

The state Government has started the process of modernizing the land records through NLRMP and by bringing out Odisha Special Survey and Settlement Act, 2012, which made the commitment of completing Hi-tech survey across the state within two years. Almost all record of rights (RoR) has been computerized and accessible at <http://ori.bhulekh.in>. New mutation software has been developed to link the Registration offices with the Tehsil offices, keeping with the objective of automatic and automated mutation after registration through e-Dharni portal.

The updated land records as per Odisha Mutation Manual become the base data for preparation of RoR in the subsequent settlement/consolidation operation. In *Bhulekh* and *E-dharani* provisions have been made for updating the information regularly. However, record updating in *Bhulekh* is little lagging along with some software issues. Anywhere registration is still not provisioned in *E-dharani*, and a pilot linking of registry with mutations has just begun.

Digitization of cadastral maps has been completed and are planned to be uploaded for online access soon. However, the land records are not up to date and there is lack of synchronization among actual, textual and spatial, due to involvement of multiple organization, limited coordination and lack of repeat surveys and settlements. Not all the records (parcels/plots) of land (privately and publicly held) in the

²³ Several progressive and pro-poor land laws have been enacted in last six decades many of which directly or indirectly address formalization of land possessions by poor e.g. under section 30 and 36 of OLR, 1962 the settling of rights of tenants are given and as per Sec 9 and 10, homesteads for raiyats and agriculture laborers/ landless are provided

²⁴ The state law department notified the Registration (Odisha Amendment) Act, 2013, (on February 22 and the new law came into force from April 25) which has now made land patta compulsory for registration of transaction of immovable properties.

RoR (computerized data base online at bhulekh.nic.in), are readily identified in maps and the gap are more in urban pockets, where subdivision takes place faster. Hi-tech survey through use of DGPS, ETS and aerial survey have begun to be used to update the records.

There is no difficulty for searching the records in the registry. The Land Records Web Portal of Odisha (<http://bhulekh.ori.nic.in>) or *Bhulekh* has options to access all the details of the property. Similarly through *e-dharani* portal all registration offices across the state have been computerized and networked and anybody can access property valuation and stamp fee for any plot of land. Though, Rule 30 of Orissa Survey and Settlement Rule, 1962 states that the distribution of copies of record-of-rights should be within 7 days, in practice, it takes more than a week.

The revenue collection system is cost effectiveness as the total fees collected by the registry exceed the total registry operating costs. Receipts are given in all the transactions but the rationale of fee-fixation is not publicly accessible and updated. The investment in Human and physical in Odisha is adequate to maintain medium service standards but does not allow to proactively adapting to new developments.

There is a mechanism to monitor the services and imposition of penalty on designated officers, but monitoring is inadequate. The State Vigilance Directorate has reported the prevalence of corruption at Sub-Registrar and Tehsil offices. Though, the mechanisms to check corruption exists in the offices of Sub- Registrars and Tehsils, these are not working effectively.

Maintaining quality, transparency and equitable access to land information are vital for good land governance. In order to provide quality and easily accessible reliable system of registry and cadaster, the state government needs to develop a comprehensive and consolidated revenue code and synchronize the existing institutional framework to reduce horizontal and vertical layers in provisioning of land information. With respect to instruments, the State needs to invest in expediting the process of Hi-tech survey, linking of digitized map with Bhulekh and providing everywhere registration options. Fraudulent transactions can be avoided and real-time syncing of spatial and textual records can be addressed by linking registration, mutation office with integrated bhulekh records. The investments in physical and human resources need to be increased to provide quality and timely services to the people of Odisha.

3.7 Land Valuation and Taxation

The valuation and taxation process is regulated in OGLS, Act, 1962, OPLE Act, 1972, OLR Act, 1960 and the Rules thereunder. The Board of Revenue (BoR) administers the above Rules or Acts and being assisted by Secretaries and Offices of Revenue department. The state Government had abolished the collection of land revenue in 1978 by enacting Orissa Land Revenue Abolition Act. Since then, the government has been collecting *cess* instead of land revenue, which is about 75 percent of land revenue fixed at the time of settlement. In 2001, Odisha Government introduced Orissa Stamp Rule incorporating clear procedure for determining the value of a piece of land with due approval of standing committee. This replaced the old system of valuation prevailing in the state based on using the highest sale transaction of a plot.

The assessment of land/property values for tax or compensation purposes reflects market prices. However there are significant differences between recorded values and market prices across different uses and types of users. Fixing the valuation and addressing under-evaluation has been provisioned under Orissa Stamp Rules, 2001. The Gram Panchayat is empowered to levy tax on property. However, the recent CAG Audit reports indicated lack of implementation of these provisions leading to loss of tax revenue.

Holding Tax has got the nomenclature of Property Tax in the Orissa Municipal Corporation Act, 2003. But since Rules and by-laws regulating the Property Tax is in the pipeline²⁵, for the time being Holding Tax is collected as per Orissa Municipal Act, 1950. Though it forms the main source of revenue for Urban Local Bodies their coverage and collection is less and tax-fixation is not very transparent till now.

There is a policy that valuation rolls should be publicly accessible and this policy is effective for all properties that are considered for taxation. The state government has launched a comprehensive project called as “e-dharani” to deliver all property registration-related services in a timely, transparent, more accessible, reliable and sustainable manner. This initiative has received e-World 2011 Award for “Best Electronic Delivery of Services”.

Regarding the listing all eligible property holders on the tax roll, the position of rural Odisha is evidently better. While, in rural areas, more than 80% of property holders liable for land/property tax are listed on the tax roll, it is less than 50% in urban areas. In some cases, granting of exemption to the payment of property/land taxes are clearly earmarked in legal frameworks, but as a whole, the process do not follow equity and transparency. The collection of land/property tax in Odisha is between 50% and 70% of assessed land/property tax. After 2009-10, the actual tax receipts are more than the estimated revenue demand. However, the amount of property taxes collected by ULBs is less than the cost of staff in charge of collection in Odisha, which is about 3 to 5 times higher.

There is urgent need of bringing in some policy reforms like rationalization and standardization of rent as per *kisam* in rural areas, restructuring of rent collection mechanism and assessment of rent for all private lands, making transparent and on-line the urban property recording along with tax fixation and collection. There is also scope of reintroduction of land revenue with online payment options for maintaining accountability and sustainability in revenue collection.

3.8 Dispute Resolution

Reformist legislations and platforms like State Litigation Policy (Orissa) in 2011, Legal Service Authority Act, alternate dispute redressal frameworks, however provide space for better addressing of land disputes. Odisha land laws debar the jurisdiction of civil court in land matters and empower the revenue administration to address land disputes.

There is clear assignment of responsibility for conflict resolution under existing legislations that vest powers of dispute resolution in particular. However, awareness, financial, physical as well as institutional barriers, however, prevents recording and timely redressal of disputes. Delay to get judicial remedies is the main cause for affected parties not availing their rights.

There are Civil courts at *Tehsil* and District level to provide a first instance of conflict resolution. While, these institutions are accessible at the local level, illiteracy and lack of awareness obstruct resolution of conflicts through their use. The establishment of Lok Adalats (which is organized by Judiciary), help the Courts in resolving the conflicts with mutual understanding between both the parties and reduce the number of registered cases in various Courts. Though, appeals from decrees/orders of the lower courts have been provided under the code of civil procedure and Civil Courts Act 1984, the costs involved is very high and the process takes a long time.

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²⁵ Urban bodies in Odisha are going to migrate to Unit area based Method (non-discretionary method) for calculation of Property Taxes. The bill was introduced in the assembly, but was referred back by the legislature. The ULBs will be able to migrate to self-assessment system of property taxation after the unit area-based method of taxation is approved by the legislature. The ULB are required to collect and validate records to be digitized for property tax

Though, the responsibilities on dispute resolution are well assigned in Odisha, the pendency of land cases remains high. Analyses of the cases that are pending, newly filed and disposed in three different courts of Odisha indicate that disputes remains pending in the formal court for longer periods. A decision on a land-related conflict is reached in the first instance court within 2 years or more for most of the cases. The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases as confirmed from the data obtained from two different courts of Odisha.

The Legal Services Committee at different level and permanent Lok Adalats are some of the major steps taken by the State Government for speedy disposal of the matter. However such reforms are yet to be adequately grounded. Legislations should be amended to ensure that every land related cases should pass through Lok Adalat first and that land rights and legal assistance centers are established at every block/ sub-divisional headquarters either under the control of Legal Services Authorities or under DRDA.

In addition, the State Government needs to set up the 'Land Acquisition, Rehabilitation and Resettlement Authority' for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, resettlement and rehabilitation. The State Government in their revenue department may bring an enactment in the line of Bihar Land dispute resolution Act 2009 empowering a revenue officer to deal with the issues like unauthorized and unlawful dispossession of land, restoration of land to legally entitled person, partition of land, correction of entry made in record of right etc.

Judicial reforms for transforming the justice system in relation to land governance are already in process. Odisha has come out with a State Litigation Policy (Orissa) in 2011, based on the National litigation policy, aiming towards reducing pendency and delay in finality of litigation. Legal reforms should be taken also for prescribing time limits of land related matters in civil courts and revenue courts. For disposal of huge pendency of cases, fast track Courts should be established. Maintaining legal database is another gray area and need to regularize, land as a key word must be included in online database of courts to track the concerned cases.

3.9 Review of Institutional Arrangements and Policies

Odisha has a weak policy framework to address current challenges and equally weak institutional arrangements to ensure implementation. An explicit documented land policy is absent in Odisha. In IPR 2007, the Government had committed itself to formulating a 'Land Policy' but this has not been framed by the State Government so far. Most problems are due to institutional bottlenecks resulting in poor implementation. Priority areas: land rights recognition, forest and common land governance, urban and public land management, dispute resolution and institution and policy.

In Odisha, legal framework around land has been the result of various successive legislative documents, which have been evolved in reaction to the felt need at different time. Starting with, post-independent land reform for abolition of intermediary tenure and to promote equitable land distribution, other legislations have been brought in to address survey and settlements and land consolidation, to improve management of Government land and prevent encroachment, to protect the tribal land rights in schedule area, to involve local governance units in land governance and of late to bring in efficiency and transparency in land governance through use of IT and GIS. These legal reforms have been useful in meeting objectives for a considerable section of rural, tribal and urban population. But, in spite of reactive enunciation of many reformist legislations in Odisha, there have been limited proactive attempts towards developing common revenue code or omnibus legislation to make land governance more effective, simpler, robust and transparent.

There have been similar trends also in urban and forest land governance. While in case of urban land reform, the focus has been on to address planned urbanization, addressing of rights of slum dwellers

and apartment owners, on forestry front, the legal framework have enhanced space for forest conservation, participatory governance and in provisioning rights for tribals and forest dwellers.

The legal reforms were implemented by the same old colonial structures that were hardly reorganized. The basic institutional framework has remained the same but with further addition of horizontal layers. There are overlaps among different land use agencies and land-departments along with very limited coordination and synergy. Devolution of power to local self-governance units as well as participation of public in land governance process has been lacking in the state. However, land institutions should constantly have evolved themselves to meet the requirements of the community by becoming open, transparent and effective.

The institutional mandate of policy formulation, implementation and arbitration affecting land rights and land use are reasonably separated in the state across different land uses. However, while dealing with land, horizontal overlaps do exist between Forests and Revenue Departments while dealing with revenue forestland and between General Administration (GA) Department, Bhubaneswar Development Authority (BDA) and IDCO in case of urban land. Vertical overlaps between land institutions do not exist and information relating to land is shared.

The time has come for the Odisha state to focus upon the different policy and institutional options which need to evolve for better supporting land policies and good governance implementation in matters of to land. An appropriate Land Policy and Land Use Policy, given the context of the state need to be declared in consultation with important stakeholders. Secondly, the existing institutional mechanism has outlived its utility and requires to be changed not only incrementally but continuously to respond to changing environment and demands being made on it in terms of delivering transparent and effective land administration.

The State institutions need to strengthen their human resources capacity for land policy reforms and actions; institutional strengthening also applies to local government. In this context, Decentralization represents a huge opportunity for integrating statutory and customary tenure systems, providing more refined and contextual responses to local land tenure issues, and for embedding these in a more sustainable institutional framework.

4. Conclusion

Demand for better land governance is growing in Odisha, with land becoming more valuable, scarce, contentious and increasing source of conflict. Historically inherited skewed and inequitable land distribution²⁶, reducing land availability with increasing population²⁷, growing demands from more profitable uses in the wake of increasing focus and trend towards urbanization²⁸ and industrial development, are increasing the challenges for the land administration. Ensuring inclusive and proactive land governance, with multistakeholder involvement including PRI and communities and bringing in

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²⁶ As much as 83.4 percent of total land holdings of the state are small, marginal and sub-marginal holdings (<2 ha). Around a quarter of all households in Odisha operate with no land and a substantial number of people don't own any homestead. The skewness in land ownership and marginalization is higher in Scheduled V Areas of the state, which occupies about 45% of its geographical territory and home to 62 different tribal communities constituting 22.34% of its total population.

²⁷ 0.37 ha per capita geographical area; 0.13 ha per capita net sown area as in 2011 with increasing population

²⁸ Fast expanding urban population coupled with unplanned urbanization in the state is a serious concern. State is trying to address these by bringing in legislations like Orissa Development Authority Act, 1982, Odisha Town Planning and Improvement Trusts Act and Rules, Odisha Housing & Habitat Policy-2013 apart from Municipal Acts and developing an institutions around town planning, sewerage, housing etc.

desired transparency and efficiency in services delivery, require the land institutions to be restructured, better equipped with a leaner consolidated legal framework, well coordinated and more enabled with right human resources and complimentary infrastructure.

5. Overall Recommendation: Three Quick Wins

1. Development of an equitable and sustainable State Land Use Policy
 - Land Use Vision Plan 2050 with triple bottom line through integration of stakeholders' concern and IT-GIS to address Investment, conservation and development concerns
2. Assist state in inclusive, transparent and participatory land governance through support of a multi-stakeholder knowledge platform by drawing experts from LGAF panels
 - NLRMP: Syncing of Textual, Spatial and Actual; Monitoring of land entitlement schemes for gender and equity (viz. tribal)
 - Hi Tech Survey implementation: Complete survey of above 10 degree slope in Schedule Area with participation of community and Gram Panchayat
3. Launching an Flexible Pilot project with Revenue Department
 - Inclusive Governance with involvement non-state think-tank (e.g LGAF Panel +)
 - Institutional Reform and Synchronization, infrastructure Development and HRD
 - Implementation with Hi-Tech Survey as Field Activity and Land Use Vision Planning as Policy Initiative

Policy Matrix

ODISHA POLICY MATRIX			
Issues	Recommendations	Responsible Agencies	Monitoring indicator
<p>1. Rural land records are not updated regularly, presumptive and lack spatial synchronization;</p> <p>Gaps exist in records for same plot of land between that maintained in RoRs (hard copies kept in Tehsil), Bhulekh (digitized records on website) and cadastral maps (Tehsil office or digitized form Bhu-naxa)); Gaps exist also between actual position on the ground and data in the corresponding record. 72% of records (parcels/plots) of all land (including privately and publicly held) in the digitized register (bhulekh.nic.in) can be readily identified in maps; 4 % of Parcels are on Map but not in Bhulekh; 16 percent of Parcels in Bhulekh are not on the map (as per a sample study of 6 villages from one each Tehsil in 4 representative districts 1 coastal, 1 urban, 1 tribal and 1 irrigated; data provided through NIC from Bhulekh data base)</p> <p>High prevalence of tenancy/ illegal lease transactions; Sharecropping is ubiquitous with considerable adverse impact on crop production. However these are never recorded.</p>	<ol style="list-style-type: none"> 1.1 Identify and implement on a priority basis, cost-effective ways of verification and updating of textual records based on ground reality and regular assessment of progress of synchronization in Bhulekh, Bhu-naxa, ongoing resurveys 1.2 Develop and implement mechanism for continued updating of textual and spatial records, prompt service delivery and seamless connectivity, to overcome need for special drives; 1.3 Assess the resource requirements for digitized record maintenance (regular and frequent sync), verification and resurvey in different situations (with special attention for survey & settlement of lands above 10 degrees slopes) 1.4 Develop a comprehensive program that would allow to accomplish record maintenance and resurvey in a specified and realistic time frame; exploring mission mode implementation with stakeholder collaboration 1.5 Regular Publication of Land Use and Ownership Status and Land Revenue Administration Report. 1.6 Consolidation, consultation and implementation of tenancy reforms recommendations made by different forums in the past; introducing a system of recording tenancy in RoR 	<p>RDM Department-NLRMP Cell, NIC SC & ST Development Department (for facilitating survey and recording of titles above 10 degree slope) PR Department (ensuring participation of PRI)</p>	<p>% of records verified and updated % of records identified on maps % of area mapped with land holder identified % of area mapped with land holder identified having documentation of tenure (gender and community – SC and ST disaggregated) % of rural households having land records % of rural households having updated land records</p>
<p>2. Urban land records are incomplete and not spatially referenced; High level of housing is in violation with urban regulations;</p> <p>In urban areas, land is hold as private freehold or lease land grant (99 years) and under Government control; but 1,5 million people (25% urban population) (census 2011) live in slums – mostly without rights. Urban lands including maps are not separately maintained to suit the of urban requirements as done in other states.. Spatial records of ownership and landuse vary widely from textual data. Allotment of government land in Urban areas is fraught with discretion. It is reported that most of the private plots are entangled in legal disputes. Many of the buildings and housing schemes are in violation with regulations, but amnesty schemes exist. Considerable demand and supply gap for</p>	<ol style="list-style-type: none"> 2.1 Establish a base map for all cities, using existing information as much as possible; establish a common spatial data infrastructure focusing on maintenance and updating of records rather than repeated one-off re-surveys. Make it accessible easily to all citizens 2.2 Review laws, schemes/programs and systems in place and possibilities for streamlining for formalization of urban housing ; for tenure upgrading in informal settlements and expanding availability of affordable housing; 2.3 Define workflows and responsibilities involved in urban land management and records maintenance, building permits and enforcements and re-engineer where possible, effectively and sustainably. 2.4 Based on this analysis, clearly assign institutional responsibilities, ensure 	<p>RDM Department; ULB- BMC, CMC etc. Department of Housing and Urban Development , Development Authorities (BDA, CDA etc.)</p>	<p>% of area mapped with land holder identified having documentation of tenure (gender disaggregated)</p>

<p>housing for poor, in spite of existence of schemes and provisions</p>	<p>appropriate role of Urban Local Bodies and citizen participation and assess the resource requirements and gaps</p> <p>2.5 Facilitate coordination among urban land-institutions, make government land allotment more transparent</p>		
<p>3 Records are not updated automatically and not all transactions are registered Institutional and automated procedures for syncing and updating land records on a regular basis are absent; Process of mutation at Tehsil office usually experiences long-delays. The records maintained in e-registry (bhulekh.nic.in) contain errors due to the format, typing, software limitations; print outs of ROR from Bhulekh are not accepted by officials of Revenue Department. Public encumbrances are mostly recorded but not in a consistent way nor easily verifiable; Bank mortgages usually not recorded except for State Bank of India. Private encumbrances are usually not recorded.</p>	<p>3.1 Improve reliability online mutation/ E-Linking and synchronisation registry office and tehsil office to facilitate automatic mutations and updating of records on transfer of land. Build on ongoing pilot in Jatni, Khurda district and experience with merging settlement & consolidation organizations with the Tahasil administration as per Odisha Special Survey and Settlement Act & Rules, 2012. Till that time ensure mutation to happen within stipulated 90 days as per ORPS Act, 2012</p> <p>3.2 Ensure implementation GoO amendment to Section 22 A of the Registration Act 1908 (vide Law Department Notification dated 22nd February 2014) whereby transferor is bound to satisfy the registering officer that he/she has right, title and interest over the property' to be transferred. This enables the sub-register to verify the ownership of the land to be transacted, thus preventing disputes.</p> <p>3.3 Design strategy to encourage registration of all transactions and encumbrances, with provision of 'any where' registration</p> <p>3.4 Upload the already digitized maps into Bhu-naxa website and make it publicly accessible; introduce a system in Bhulekh and Bhu-naxa to get feedbacks for corrections through crowd-sourcing; introduce system for query-based reports in these websites</p>	<p>RDM Department – NLRMP, NIC Cell</p>	<p><i>Ratio of number of textual to spatial parcels</i> <i>Ratio of Registered vs. mutated transactions</i> <i>Number of new registration per month</i></p>
<p>4. Revision of Legislative and institutional framework to eliminate outdated and ineffective sections, and update specific sections; and improve institutional coordination, There is a vast set of revenue related laws, thanks to inheritance of multiple revenue systems and subsequent repeals , amendments and many important GO and circulars. Implementation is by multiple agencies, but with limited coordination across rural, urban and tribal land and also around registry and cadastre processes. Land Records are maintained by different offices (Settlement/ Consolidation Wing, Tahasils and Registration Offices) but land administration has become secondary. State is starting to emphasize modernization of Record management (digitalization -Bhulek) and use of Hi-tech Survey methodologies and digitalization of maps (Bhu-naxa).</p>	<p>4.1 Develop a comprehensive and consolidated Revenue Code by merging and harmonizing all land revenue legislations and administrative orders (statutory and non-statutory) and harmonizing the contradictions between different legal instruments (OSS Act 1958, OGLS Act 1962, OLR Act 1960, OGP Act 1964, OPLE Act 1972 etc being the old ones, and 73rd and 74th Constitution Amendments of 1992, PESA Act 1996, FRA 2006 and LARR Act 3013)</p> <p>4.2 Review, rationalize and streamline the administrative structure for land administration; reduce discretions at all levels; take up inventory of resource requirements, resource availability at all levels and time available for land administration (human resources incl capacity to use new technologies, tasks, infrastructure, equipment)</p>	<p>RDM Department</p>	<p>Efficiency/output indicators Geographical coverage of Revenue Inspector Number of village with repeat surveys/updated land records</p>

<p>4 Effectiveness of public land redistribution for eligible poor and the actual possession for granted public land needs strengthening</p> <p>About 43% households were landless as per comparison of Agriculture Census (2006) with Census 2001 figures, which may be on higher side. About one third of the households are poor as per figures of planning commission. There are about 63 lakh acres of Govt waste land under Abad Jogya and Abada Ajogya Anabadi (Culturable and Unculturable waste lands), which is 18% of total rural land as per Bhulekh (Feb -2014).</p> <p>Land distribution to poor, legal landless (owning less than 1 standard acre) especially of ST and SC communities is an important policy in Odisha. However, it is hampered by non-availability of accurate village wise data of landless and homestead less people or availability of public land for distribution; problem most pronounced in tribal areas. There is need of secured tenureship of slum dwellers in urban poverty alleviation program.</p>	<p>5.1 Identify available land for redistribution as well as the number of land- or homesteadless who could benefit from land distribution through involvement of PRI and local community and ensure equitable, transparent distribution</p> <p>5.2 Develop effective steps to ensure continued possession and effective use of land that has been redistributed to marginal groups and promote participatory monitoring (with special attention for effective distribution and monitoring of Bhoodan and Ceiling Surplus land and Waste land among the eligible households.</p> <p>5.3 Identify number of people that have been displaced and develop effective mechanisms to restore such land so as to improve the affected population's livelihoods.</p> <p>5.4 Take up land rights mapping and ensure land rights to landless and homesteadless before taking up any area/village development programs viz. under watershed, MGNREGS etc.</p>	<p>RDM department SC ST Development Department PR Department</p>	<p>% of area mapped with land holder identified having documentation of tenure (gender disaggregated % landless ness/ homestead less Ratio of % of land allotted in the name of SC/ST to the % of their population Percentage of continued possession of land (say for 5 years) allotted to ST</p>
<p>6. Lack of clarity in assignment of institutional responsibility for forestland and tribal land prevents assigning ownership</p> <p>Lack of legal clarity between Forest & Revenue Department (land use classification vs ownership, 1369 forest blocks with 8847 sq km, exist as Proposed Revenue Forest, though FD treats them as deemed reserve forest); Legislation for protection to Tribal land Rights and rights over forest land exists (Provisions under OLR, OSATIP regulation, PESA and GP Act Amendments, Forest Rights Act) but declaration remains complex and contested. Overlapping institutional responsibilities (forest, tribal revenues, GP etc.); FRA/JFM implementation quite satisfactory; but forest land allotted under FRA is not accompanied by map, nor the record updated in ROR, though there is a Govt Order; progress of CFR is very slow</p> <p>Common land is not clearly defined; can be easily acquired under LA Act, can be allotted to private individuals/agencies through discretion; not vested with GP for the purpose of evictions as instructed by the Supreme Court-</p>	<p>6.1 Define responsibilities and workflows involved in forest land management and assignment of ownership/CPR rights and re-engineer where possible</p> <p>6.2 Establish State Level Monitoring Committee to monitor effectively the process of determining and approval of all the rights over forests / tribal lands</p> <p>6.3 Devolve management of common land to GP (73rd amendment 1992) and to Gram Sabha (PESA Act 1996) and assess implementation mechanisms and resource requirements</p> <p>6.4 Time bound Settling of the PF and RF proposals pending for long time; reverting to Protected Forest or settling as Reserved Forest; survey and identification of all the lands belonging to forest categories.</p> <p>6.5 Facilitating full implementation FRA rules and process (preparation of prescribed maps with various rights; Handing-over of forest and revenue maps, voters' list and awareness kits to every FRC/Gram Sabha); clear definition of rights and Management responsibilities at all institutional levels</p> <p>6.6 Updating of RoR following individual rights recognition under FRA and Forest Record (RF,PF etc.) after CFR</p>	<p>RDM Department Forest department GP</p>	<p>% of land mapped identified as CPR/public land + management responsibilities clearly identified (CPR or not) % of CPR land under management of GP % of FRA land allotted with map % of FRA patta recorded in RoR</p>
<p>7. Legal and administrative opportunities to enhance women's access to land are not used sufficiently</p> <p>The Government of Odisha has directed to</p>	<p>7.1 Introducing 'gender' parameter in recording of information in Record of Rights to help tracking of progress with respect to women land rights.</p> <p>7.2 Promote title on name of women for public</p>	<p>RDM Department – NLRMP, IG-Registration</p>	<p>Share of ROR held by women Share of pattas issued to women (share of women</p>

<p>issue joint patta in the name of both husband and wife, while settling the govt wasteland, house sites and ceiling surplus lands with landless persons. Under FRA, also joint patta is being distributed. The law also gives women the right to share equally in decisions over transfer of land, but implementation is not effective. Although inheritance laws provide for daughters and daughters-in-law to receive rights over ancestral or in-laws' property, the state does not act proactively. Women are incapable of enjoying such rights, due to lack of knowledge, access and resources.</p>	<p>land/housing distribution 7.3 Ensure lower registration fees for recording of property in the name of women</p>		<p>holding land?) % share of new registrations with woman's name</p>
<p>8. Urban development and expansion is unplanned with infrastructure put in place afterwards Urban areas grow unplanned, spontaneously and continuously in the direction of least resistance. GoO has a robust legal and institutional framework around Urban land (Orissa Municipal Act, 1950, the Orissa Municipal Rules, 1953, the Orissa Municipal Corporation Act (OMCA), 2003, Orissa Town Planning and Improvement Trust Act, 1956, The Orissa Development Authorities Act, 1982 and The Urban Land (Ceiling and Regulation) Act, 1976, Orissa Development Authority Act, 1982), but implementation and coordination remains a challenge. Separate institutions for planning and development of urban centres and rural areas exhibit disjointed efforts. The state government is set to start a new town planning scheme (TPS), under which private land would be taken over from owners, pooled together and some portions would be used for roads and civic amenities, but with most of the private plots entangled in legal disputes, it will be difficult for the government to go for land pooling. Policy of affordable housing for urban poor is in place that includes multiple cost reduction measures (making available land at reasonable cost, cross-subsidization through higher floor area ratio and transferable development right, concessional land conversion charges, stamp duty exemption or reduction, liberal land-use norms, promotion of low-cost housing technologies) with a clear provision of shelter fund, but there is no effective implementation.</p>	<p>8.1 Establish base maps for all cities to establish a common spatial data infrastructure focusing on maintenance and updating of records rather than repeated one-off re-surveys (see 2) 8.2 Review the justification for restrictions on urban land use, ownership and transferability, eliminate those that do not serve any useful purpose and improve enforcement. Involve ULB and public in such decision making 8.3 Develop and maintain publicly accessible databases that allow for routine and effective implementation of land use restrictions. 8.4 Assess the resource requirements for town planning; urban development and design strategy to address capacity constraints; Explore opportunities to transform the urban local bodies to be more effective in planning and development of urban centres in coordination with Development Authorities 8.5 Synchronize urban expansion with infrastructure development 8.6 Extend legal support for registration of common open spaces within layout plan area in the name of resident welfare associations, to prevent unauthorized use and/or transfer. 8.7 Reviewing scope of functioning of district planning committees in consolidating urban/ municipal plans and rural/ panchayat plans</p>	<p>Housing and Urban Development Department Urban Local Bodies (ULB) – BMC, CMC Development Authorities – BDA, CDA etc. Directorate of Town Planning (DTP)</p>	<p>% of urban land with claimant identified/ documented evidence</p>
<p>9. Public lands not protected nor managed effectively; Transfer of public land to private investors does not always serve growth and contribute to inequity and conflict GoO (RDM and Forest Department together) owns substantial public land: 70% of all land; Majority are de-facto common resources (above 80% in Schedule V areas). Public land is with Forest Department (40%) including non-</p>	<p>9.1 Identification, adequate-recording and demarcation of public lands; Develop State Land Use and zoning policy for rural land (participatory approach making use of latest technology-GIS), identifying viable land for distribution to poor (equity), zoning of industrial areas (economy), protection of public land for environmental services (ecology); develop a prioritized index keeping</p>	<p>RDM Department, GA Department, IDCO, IPICOL, Development Authorities</p>	<p>Share of land in different categories mapped with ownership and use rights clearly assigned Number of land acquisition</p>

<p>surveyed farmed land (fallows of shifting cultivation, land above 10 degrees slopes - 1 million ha); and about 30% rural area under revenue department (upto 35% in Schedule V); Public lands are difficult to identify on the ground and boundaries on maps and RoR is not updated.</p> <p>Public land use is governed through multiple laws (OGLS Act, OPLE Act, OLR Act, Govt Grant Act), and several departments but with limited coordination between them, and inadequate resources. Rural and urban local self-government bodies (Panchayats and Municipalities) do not manage commonlands, despite Constitutional (73rd and 74th Amendment Acts and PESA Act) provision; There is no Land Use Policy and Zoning in Rural and Tribal Areas in place; Lack of clarity and uniformity in Conversion/de-reservation/acquisition of Common lands; much Encroachment including Water Bodies. GoO aim is more public land allotment for poor and also for industrialization. Pro-industrialization policy influences preferential public land allotment to industries through specially created institutions (viz. IDCO, IPICOL etc.). Land is leased out as per requirement of investor (often the area required is not scientifically assessed), within the discretion of the concerned competent authority; land disposal process is not transparent. Land is leased at concessional rates, below the market value of land. Only 10% of land is auctioned; Land bank scheme has been initiated. There is limited public consultation and negotiation in public land allotment, though there is a high de-facto dependence. Utilization of land allotted to private purposes are not monitored (such as purpose, within stipulated time)</p>	<p>culture also in the context (particularly habitation of PVTG and other such groups)</p> <p>9.2 Establishment unified land data base and management system for land possessed by different State / Central Government Departments and Public Sector Corporations. The public land database will be easily accessible and interpretable by using GIS tools and enabling syncing of public land information across spatial and textual records along with ground situation</p> <p>9.3 Review and streamline responsibilities and procedures for public lands and assess resource requirements for every department having public land and legal responsibility for safeguarding public property, prevent and remove encroachment,</p> <p>9.4 Improve coordination and consider reconstitution land commission and instituting a single nodal agency for coordination of public land management with clearly defined role of Local Self Government in both rural and urban areas in line with OGP Act, 1964 and provisions of PESA</p> <p>9.5 Restoration of Govt lands fraudulently settled with private persons via putting in place a State Litigation Management Mechanism. (with special attention also for endowment land which is increasingly encroached and disputed); Consider Enactment of a law for Odisha in line with Andhra Pradesh Land Grabbing (Prohibition) Act 1982 to address encroachments of public land more effectively</p> <p>9.6 Regular publication of transfers and lease/rent payment, which also allows follow-up; consider third party monitoring to ensure compliance of contractual obligations by investor and grievance mechanisms</p> <p>9.7 Implement and enforce rehabilitation and resettlement mechanism as per LARR, 2012. Assess possibilities benefit sharing. Upgrading compliance parameters to global best practices and strengthening the process of monitoring; and consider appointment of the Commissioner for Rehabilitation and Resettlement</p> <p>9.8 Assign responsibilities for implementation and monitoring; monitor policy to improve equity in asset access and use by the poor according to law of the state.</p> <p>9.9 Review of functioning of land facilitating agencies like IDCO, GA etc. to bring in place a more transparent and accountable mechanism of land allocation for private use viz. only auctions for industry etc.</p>		<p>disputes</p> <p>Ratio of land allocated through auction to total Govt. land allocated to Industry</p> <p>Amount of concessional rate in comparison to market value of land allocated to industry</p> <p>Ratio of land allocated to poor versus land allocated to industry on concessional rates versus land retained for ecological/cultural purposes.</p> <p>Ratio of Urban Govt land allocated through discretionary quota to total Govt land allotted</p>
<p>10. Improve tax collection and rationalize exemptions</p>	<p>10.1 Identify and publicize revenue potential vs. actual collection for all major cities.</p>	<p>RDM Department,</p>	<p>% Property tax collection/</p>

<p>Tax revenues are an important for improving service delivery but cities are not maximizing revenue potential and have not rationalized collection mechanisms. In rural areas, more than 80% of property holders liable for land/property tax are listed on the tax roll, it is less than 50% in urban areas. The collection of land/property tax in Odisha is between 50% and 70% of assessed land/property tax. The valuation and taxation process is regulated OGLS, Act, 1962, OPLE Act, 1972, OLR Act, 1960 and the Rules thereunder. The state government in 1978, has abolished the collection of land revenue by an enactment known as the Orissa Land Revenue Abolition Act 1978. Since then, the governments have been collecting cess instead of land revenue. The levy and collection of Stamp Duty (SD) and Registration Fee (RF) are regulated under the Indian Stamp Act, 1899, the Indian Registration Act, 1908 and Rules made there under. Valuation rolls are publicly accessible for all properties considered for taxation ("e-dharani").</p> <p>Holding Tax has got the nomenclature of Property Tax in the Orissa Municipal Corporation Act, 2003. Since Rules regulating the property Tax is in the pipeline, Holding Tax is being collected for the time being as per Orissa Municipal Act, 1950. Its collection is hampered by constraints like rent control, inefficiency in updating property rolls and resistance to periodic assessment. It is possible also that State Government is losing huge revenues due to a lesser determination of conversion fee, non-realization of outstanding premium, interest and consent fees, and not taking up auction where applicable.</p>	<p>10.2 Rationalization and Standardization of taxes as per kissam (standardised land types) following re-survey; explore scope of reintroduction of land revenue with online payment options (for sustainability and accountability)</p> <p>10.3 Review cost to government of exemption of taxes to various institutions and religious trusts and explore option for increasing their contribution to service charges through holding taxes; tax should be assessed for all private lands (including bebandobast lands)</p> <p>10.4 Review and streamline procedures for tax collection and assess resource requirements to improve the administrative capacity of ULB Property tax collection in ULBs needs to be ensured with adequate institutional arrangement along with a system of online transparent assessment and payment provision.</p>	<p>Housing and Urban Development Department, Urban Local Bodies</p>	<p>potential by municipalities Increase in registration revenue</p>
<p>11. Enhance effectiveness of dispute resolution mechanisms and develop monitoring capacity</p> <p>Land dispute cases account for over 50% of total cases in judicial and revenue system; Delay in completion of provisional survey for updating of records, denial of entitlements during preparation of RoR, Incorrect recording of land holders in the RoRs, and archaic nature of both substantive and procedural laws regarding titles and above all knowledge deficit of the dealing personnel, f compensation and R&R entitlements in land acquisition cases, are the main reasons for the proliferation of land related cases brought before Civil Courts. Disposal takes a long time to the detriment of both State and litigants and costly, because of complex laws,</p>	<p>11.1 Develop scheme for categorization/recording of disputes for all courts/instances so as to allow identification of legislative/regulatory bottlenecks and causes for slow disposal. Inclusion of 'land' as a key word in online database of Courts to make it easier for everyone to track the concerned cases and the particulars there of pending at different levels.</p> <p>11.2 Review and streamline mechanisms and procedures, and consider time limit for disposal of cases with judicial and revenue courts, and appeals before the Revisional Authority (requires amendment of Odisha Right to Public Services Act 2012).</p> <p>11.3 Capacity increase and unclogging of cases long pending in judicial and revenue courts. Encourage standard use of Lok Adalat;</p>	<p>RDM Department, High Court of Odisha, Law Department,</p>	<p>For various courts/ instances & categories of disputes</p> <ul style="list-style-type: none"> - Level of pending land related disputes - No. of cases treated; - Length

<p>cumbersome procedures, lack of knowledge and lawyer's fees, Court fees etc. The share of long-standing land conflicts (> 5 years) is more than 20% of the total pending land dispute court cases as confirmed from the data obtained from two different courts of Odisha. Many land laws debar jurisdiction of civil court, providing revenue court and authorities an arbitration role, but causing also incomplete separation of arbitration and implementation authorities. Capacity is insufficient, and at least one Grama Nyayalaya for a Block area and at least a Civil Court for covering 20,000 people should be provided along with adequate staffs and infrastructures. Recent spurt of progressive legislations and proactive orders of the apex court to contribute to speedy resolution of land disputes needs to be implemented. Standard use Lok adalat requires sensitization of the judicial and quasi-judicial personnel on the imperative of adopting the new judicial culture of out-of-court and fast-track settlement of civil disputes through mediation, conciliation arbitration or Lok Adalat.</p>	<p>11.4 Fast track Courts could be established for disposal of huge pendency of cases or emerging issues The State Govt may establish separate endowment courts for effective disposal of the land disputes, which arise between sevayats and the deities.</p> <p>11.5 Consider establishment of land rights and legal assistance centres at every block/ sub-divisional headquarters either under the control of Legal Services Authorities or under DRDA.</p>		
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Introduction

Odisha, physiologically as well as socio-economically, can be broadly divided into Coastal Plains (18% of its area) and Highland Region (82%). The highland region consists of three physiological set ups – northern plateaus (23% of total area), central flood plain table lands (23%) and the eastern ghat mountains in the south (36%). The state has Scheduled Areas (with higher concentration of tribal people) that occupy about 45% of its geographical territory. Odisha is the home to 62 different tribal communities and has a relatively high concentration of tribal population, constituting 22.34% of its total population and 7.76% of the country's total tribal population. Most of the high land regions and scheduled areas of the state are hilly and have got higher slopes, which are under the ownership of Government due to different geo-political, socio-cultural and historical reasons. An analysis of the Agriculture Census data of 1995-96 in the tribal districts²⁹ shows that the percentage of tribal landholders having less than one standard acre³⁰ of land ranges from 41% in Malkangiri to 77% in Gajapati, whereas 62% to 86% of the land in these districts is state owned. At an average 74% of the land in these districts is categorized as state (read public) land, with forest land at 47% and non-forest land³¹ at 27%. Gajapati has only 14.82% of its total area under private landholding, with the rest of the land belonging to the government including its 46% categorized as forest land. Kondhmal is another district where almost 86% of the land is owned by the State, with 75 % of the land categorized as forests. (Kumar et al, 2005)

Odisha is predominantly an agrarian economy despite rapid growth of industrial infrastructure. Almost three fourth of the total workforce (65percent) depend on land resource for their food sustenance and livelihood. As much as 83.4 percent of total land holdings of the state are small, marginal and sub-marginal holdings (<2 ha.). Around a quarter of all households in Odisha operate with no land and a substantial number of people don't own any homestead of their own. However, Odisha's economy is dominated by agriculture and allied subsectors that contributed more than 70.0 percent of the Gross State Domestic Product (GSDP) in the 1950's has come down to about 15.0 percent in 2012-13 (Economic Survey, Govt. of Odisha, 2012-13).

Admittably, the land available for agricultural purposes has been alarmingly declining over the years owing to unbated transfer for non-agricultural purposes. This trend is distinctly witnessed in the recent years due to greater priority to industrial development despite agriculture sector being the mainstay of Odisha's economy. However, due to lack of structural changes, more than 60.0 percent of state's workforce exclusively depends on agriculture for employment and sustenance directly or indirectly. During last six decades of economic planning, there has not been any substantial change within agriculture sector in diverting a substantial proportion of the agricultural workforce from farm to non-farm sectors enabling the economy to grow at a faster and higher rate. Despite frequent natural calamities like cyclones, droughts, and flash floods, however, the agriculture sector has grown at a rate of 4.2 percent (at 2004-05 prices) per annum during the 11th five year plan (GOO, 2013a).

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²⁹ These districts are Koraput, Nabarangpur, Malkangiri, Rayagada, Sundargarh, Mayurbhanj (wholly under Schedule V), Kondhmal (mostly under Schedule V) and Gajapati (partially under Schedule V)

³⁰ The landholdings in standard acre were calculated on basis of the extent of irrigated and un-irrigated holdings. The irrigated holdings were assumed to be having two irrigated crops of paddy each year (Class I land- one acre equals one standard acre) whereas un-irrigated lands categorized as Class IV land measured at the rate of 4.5 acres of Class IV lands being equivalent to one standard acre.

³¹ Non-forest state land was calculated by subtracting the Forestland area and the total operational landholdings in the district from the total area of the district. This could therefore be on higher side and include areas under reservoirs etc.

Land is no doubt an important natural resource and cannot be expanded endlessly. In the recent years, due to multiple demands for land, land devoted to agricultural and allied sub-sectors seems to have been increasingly declined. Though tenancy has been officially abolished, concealed tenancy is widely notified in all parts of the state. Historically, the state had the distinction of being administered by three separate revenue systems since the colonial times. While the northern parts of the state were administered by the Bengal presidency (later Bihar, since 1912), the western parts and southern parts were governed by the central provinces and Madras Presidency respectively. This led to the evolution of a number of land revenue assessment systems resulting in operationalization of different revenue systems and tenancy laws prevailed in different parts of the present-day state of Orissa. The two most common systems of revenue assessment prevalent then were; Zamindari and Ryotwari. Zamindari system existed in districts like Cuttack, Puri, Balasore and Angul, whereas Ryotwari in just one part of Sambalpur district. In addition there were 24 princely states, which were controlled by the British through a subsidiary alliance, under which the princes had the freedom to decide their internal administration so long as they regularly paid tributes to the colonial authority. Many intermediary forms of tenure developed in Zamindari areas turned into the growth of sharecropping. In Zamindari areas, the rights of landholders were governed by executive instructions and the landholders could freely sublet land to the tenants who enjoyed no protection under the law. The Princely states had separate land settlements and revenue regulations under the Government of India Act, 1935. There was no law to protect the interests of tenants. However, the Orissa States Order 1948 conferred occupancy rights on tenants. (Behuria, 1997) This so called historical records cannot in anyway help in resolving land disputes even today and in establishing the basis for contemporary land claims. The complexities inherent due to such diverse systems still have lasting effects on the ground, leading to misgovernance of land resource. This appears to be contentious issue and needs adequate attention for remedial measures in sustaining food security and livelihood of bulk of rural people in the state.

In early nineties, Odisha rode on the economic reforms and liberalization process started in India to attract investments leveraging on its natural resources to unleash state's development (GoO, 2006) With state according greater priority to industrial and urban development, the land available for agricultural purposes has been declining over the years owing to unabated transfer for non-agricultural purposes. While, cumulative investment commitments received by the state is over 2.3 trillion USD since the turn of the century around land-intensive industries, there has been a sharp reduction of productive public lands (under tree crops and groves, pastures and culturable wasteland) during 1990-2013.

Land Acquisition process in the state, particularly for industrial and economic development, has been fraught with protest and mistrust by communities and civil society. Repeated audits by CAG have report irregularities by the state government to favor industrialization in the state. While the latest Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act 2013, have some provisions to address equity, justice and sustainability issues through a more participatory and responsible land acquisition process, there has been resistance in adopting to the cumbersome procedures laid out.

During the last 50 years a number of laws have been enacted in Odisha in order to establish the legal framework for land reforms (e.g. Orissa Estate Abolition Act 1952, Orissa Survey and Settlement Act 1958), Orissa Land Reforms Act 1960 Subsequently, the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land (OCH&PFL) Act 1972, and the Orissa Prevention of Land Encroachment (OPLE) Act 1972 (to prevent unauthorized occupation of government land). Odisha, like many other states has enacted legislations to abolish tenancy (Land leasing), except in the case of the persons of disability (the definition of which includes widows, divorcee, unmarried women etc.)

Modernization of land record management has begun in the state through NLRMP. Almost all record of rights (RoR) has been computerized and accessible at <http://ori.bhulekh.in>. Digitization of cadastral maps has been completed and will be uploaded for online access soon. Registration process has also been computerized through e-Dharni portal. However, the land records are not upto date and there is lack of synchronization among actual, textual and spatial, due to involvement of multiple organization, limited coordination and lack of repeat surveys and settlements. Hitech survey through use of DGPS, ETS and aerial survey have now begun to update the records and online processes to link registration with mutation are on.

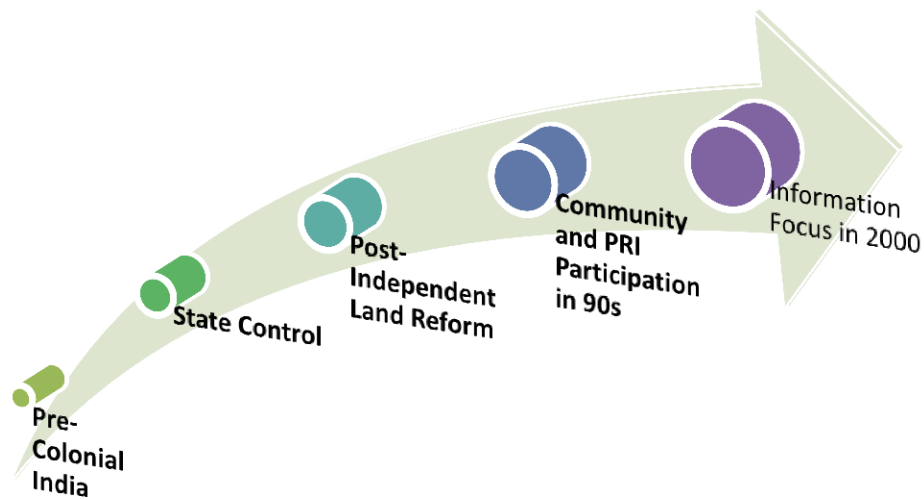
Fast expanding urban population coupled with unplanned urbanization in the state is a serious concern. State is trying to address these by bringing in proactive legislations like Orissa Development Authority Act, 1982, Odisha Town Planning and Improvement Trusts Act and Rules, Odisha Housing & Habitat Policy-2013 apart from Municipal Acts and developing an institutions around town planning, swerage, housing etc. Key areas of planned urbanization in the state are affordable dwellings and property rights to slum dwellers, development of GIS based master/development plans/Town Planning Schemes of cities/towns etc.

Odisha land laws debar the jurisdiction of civil court in land matters and empower the revenue administration to address land disputes. Awareness, financial, physical as well as instituional barriers, however, prevents recording and timely redressal of disputes. Reformist legislations and platforms like State Litigation Policy (Orissa) in 2011, Legal Service Authority Act, alternate dispute redressal frameworks, however provide space for better addressing of land disputes.

In spite of reactive enunciation of many reformist legislations, there have been limited proactive attempts towards developing common revenue code or omnibus legislation to make land governance more effective, simpler, robust and transparent. The institutional framework, in face of multiple legal reforms, remains the same colonial one, with further addition of horizontal layers. There have been overlaps among different land use agencies and land-departments along with very limited coordination and synergy. Devolution of power to local self-governance units as well as participation of public in land governance process has been lacking in the state

The land governance trajectory of Odisha can be presented as below

Figure 1 Land Governance Trajectory in Odisha



1. **Pre-colonial Odisha:** In the medieval period, pattern of landholding were under 3 categories: The King as the major share-holder of land who enjoyed supreme authority being the ruler of the state, traditional or the then land holders; created land holders such as Brahmans, officials and temples. The practice of making land grants to Brahmans created a new class of landholders in Odisha. This practice existed as early as 4th Century (Panda, 1991)³². The apparent objective of this land grant was to secure religious merit of the donors. Most of these donations could have been for political motives, to enlist support from elites of the society who were supposed to be guardians of legal and religious systems of the then Odisha. There were also land grants to the officers who got land in lieu of the salary for the services to the state – Service grants-irrespective of caste Land donations to temples mostly started during Ganga period and continued till advent of Muslims, following decline of Budhism and Jainism. As in South Indian temples, practice of donating land to temple servants for the services they rendered to the

temple were also prevalent. In the process, some temples like that of Lorg Jagannath in Puri has become one of the big Land Lord³³.

Large-scale land survey during 211-1238 AD covering entire country (Ganga to Godavari and Bay of Bengal to Sonapur); measured by a measuring rod called nala³⁴. Percentage of Common Pool Land Resources was higher with free access regime.

2. **State control** began during Colonial Period with the declaration of “reserved” and “protected” forests towards end of the 19th century, excluded access to common resources and gradually disintegrated local community management (IFA, 1928, LA, 1894 etc.); Revenue collection maximization through different strategies, particularly creation of intermediaries (viz. zamindar, gountias, muthadars etc.), converting CPR to agriculture in high CPR areas by colonizing with communities from outside become the focus
3. **Post-independent:** Land Reform in sixties, like other states to abolish Zamindari, tenancy and promote agriculture production through increased control of the farmer/tiller (OLR Act, 1960 and OEA Act, 1952, O S & S Act, 1956), optimization of Government Land management (OGLS Act, 1982, OPLE Act, 1972); protection to tribal land (OSATIP regulation, 1956)
4. **Post 1990s** – Local Governance of Land through involvement of PRI (Panchayat Raj Institutions) through 73rd and 74th amendment and PESA (Panchayat Extension to Schedule Area Act); increased community participation in land use planning and management in Watershed Development, Irrigation and Joint Forest Management Projects.
5. **Information-based land governance in twenty First Century**– Use of IT and GIS to make land record and information management transparent, effective and accessible (O S & S Act, 2012 – Hi Tech Survey through DGPS, ETS and Aerial Survey, National Land Record Modernization Program-NLRMP promoting availability of land records-RoR in online through bhulekh platform as well as digitization of cadastral maps and linking mutation with online-registration), inclusion of land related services in Citizen Services Act.

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³³ Listed as a landlord in the Orissa government’s revenue records, Lord jagannath He reportedly owns 56,000 acres, of which at least 25,711 acres is registered against the name of “Sri Jagannath Mahaprabhu Bije, Puri” in the state’s land revenue records. The temple’s managing committee headed by the Puri king manages the land on behalf of the deity. The lands are spread over 23 of Orissa’s 30 districts as well as states such as Andhra Pradesh, Maharashtra, West Bengal, Madhya Pradesh and Chhattisgarh. But the land mafia, allegedly helped by bureaucrats and corrupt politicians have parcelled away at least 20 per cent of his recorded land in Orissa. The temple administration cleared 250 acres in Jatni area near Bhubaneswar and Delang area of Puri district. The land is worth an estimated Rs 500 crore

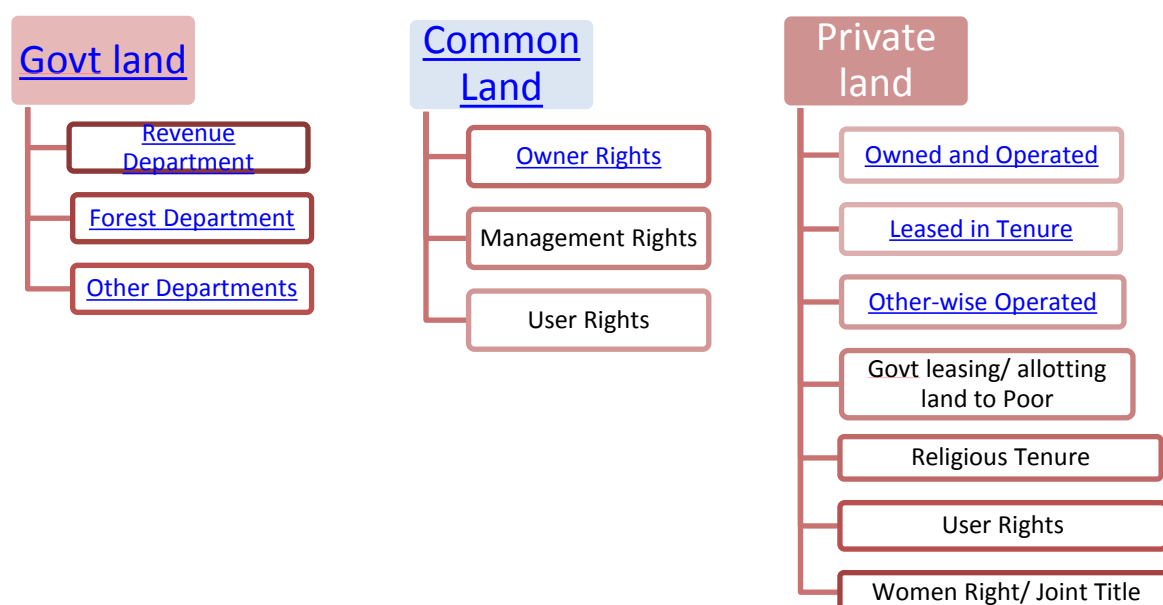
³⁴ Land excluded from assessment which were occupied by hills, nullahs, towns and waste land – 1,480,000 vatis (about 10 acres); Assessed land reserved for personal use of King – 2,430,000; Land assigned to officials, Brahmans and temples – 2,318,000; Total land measured – 6,228,000 vatis

Tenure Typology

Land tenure systems are diverse and complex. They can be formal or informal; statutory or customary; legally recognized or not legally recognized; permanent or temporary; of private ownership or of common property; primary or secondary. Tenure systems in India including Odisha have been influenced by former colonial land policies that overlaid established patterns of land distribution. Thus, many state systems are made up of a multiplicity of overlapping (and, at times, contradictory) rules, laws, customs, traditions, perceptions and regulations that govern how people 'rights to use, control and transfer land are exercised.

Land tenure and typologies are very complex in due to adoption of historical legacy and the compulsions of the welfare state and emerging economic development. While the typologies have been described in detail and discussed under respective LGAF panels (Panel 3 and 4), a broad overview of them is provided below with the following four figures. (Figure 2 to 5) below

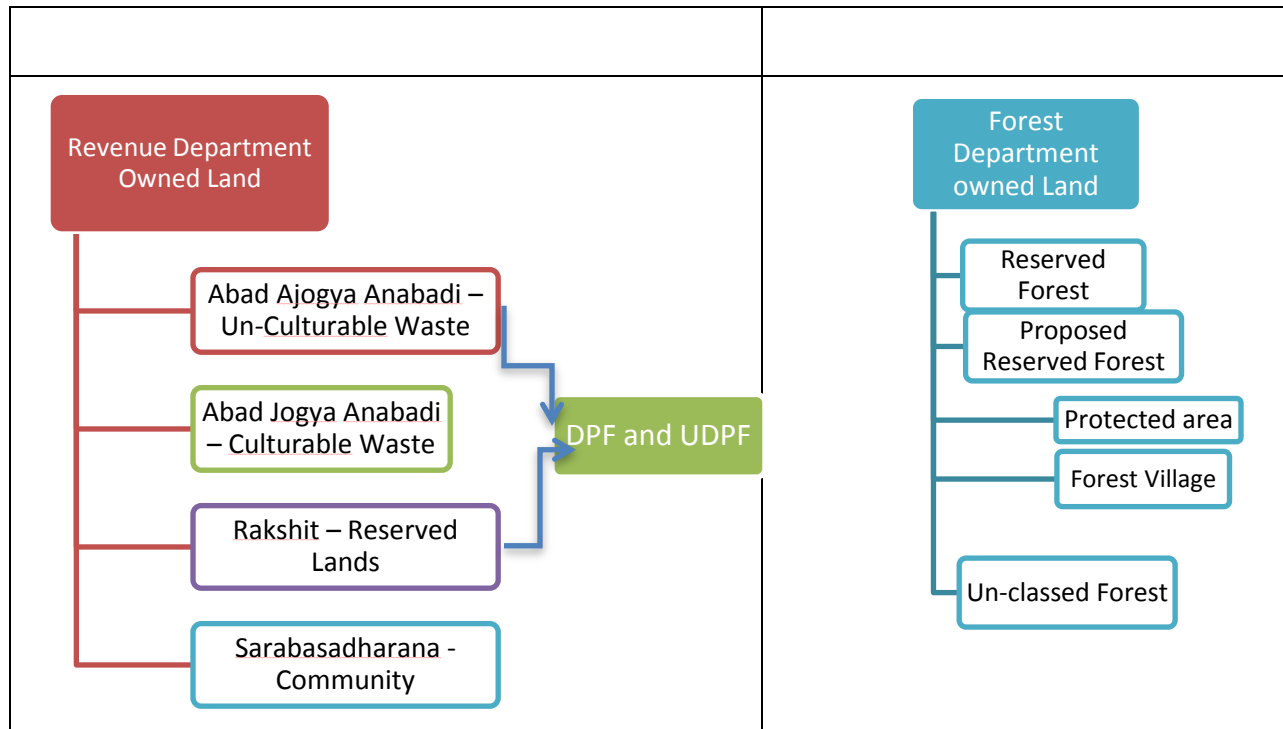
Figure 2 Broad Land Tenure typology around three main land types in India as per Ownership and Use



Government Land (revenue department-owned) : Means any waste land belonging to Government, whether cultivable or not, recorded as House-site, Anabadi, Chot Jungle (small forest), Puratan Patit (old Waste), Nutan Patit (new Waste), Parityakta Bedakhali, Gochar(pasture) or by any other description, whatsoever (As per OGLS, 1962). The subtypes under this land are

- *Abad Ajogya Anabadi* : Lands include “uncultivable wastelands” such as water bodies (including rivers, lakes and sea), hillocks, mountain, hilly areas and sandy areas. This category often forms the most important category of non-forest government land in tribal areas where hills and sloping areas have been categorized as abad ajogya anabadi. This category is also treated as “objectionable” for settlement, as it is presumed to be uncultivable.

Figure 3 Land types under Revenue and Forest Department Owned Land in Odisha



- *Abad Jogya anabadi* (Cultivable wastelands) : Include cultivable land within village boundaries not settled with raiyats, abandoned holdings, surrendered holdings, land reserved for Panchayats and armed forces personnel. These lands are “unobjectionable” for regularization, and can be settled with raiyats.
- *Rakshit*(Reserved) : Lands include acquired lands (under Land Acquisition Act, 1894) but not transferred, irrigation works, lands transferred to Gram Panchayats, Gocharl ands (grazing land),land for village settlement, poramboke land, Gramya jungle etc. Gramya Jungle is owned by the Revenue Department, but the provisions of Forest Conservation Act (FCA), 1980, apply on these lands, prohibiting their diversion for non-forestry purpose
- *Sarbasadharan*: Land is defined in section 2(b) of the Orissa Government Land Settlement Rules, 1983, as communal land used by village for community purpose such as graveyards or cremation ground, places where festivals or melas are held, playgrounds, temples, mosques and other religious places of worship, village roads and other land reserved for public purposes. In tribal areas these include Dhangada or Dhangidi Ghar (common dormitories for boys or girls)

Land treated as property of Government, including land owned, controlled or managed by any state government department or undertaking, land acquired under Land Acquisition act, 1894 etc. Land treated as public premises under Orissa Public Premises (Eviction of unauthorized Occupants) Act, 1961.

WRD, Education, Health, Mining, SC ST Dept, Agriculture, ARD, Fisheries etc.

Acquired and Used, Acquired and Not Used (E.g. Hirakud, HAL etc.)

With change in use, tenurial status also change e.g. PA, Mining, Reservoir etc.

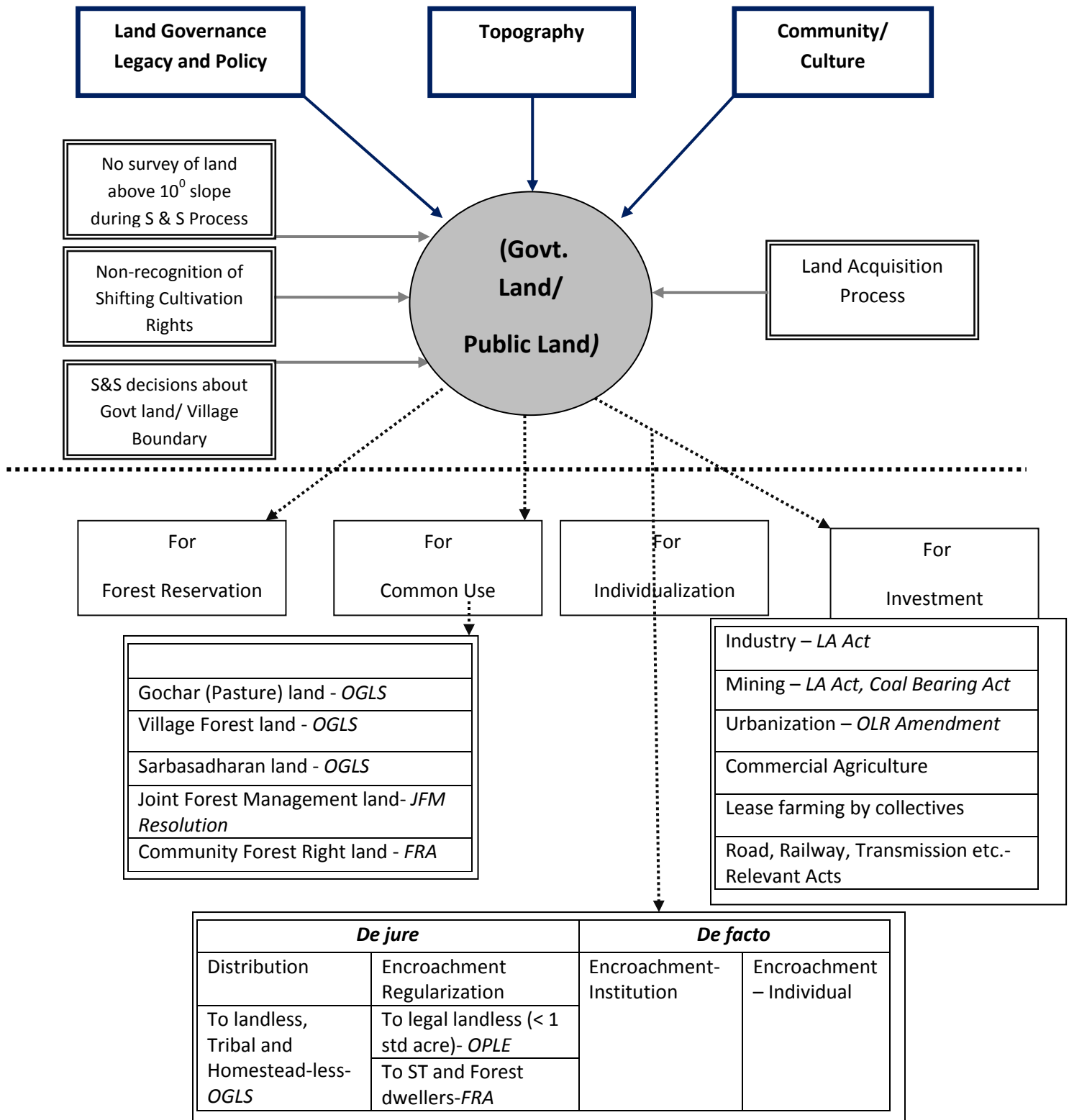
Common Land: The word ‘Communal Land’ was first defined in Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948, u/s 2 (a). The lands recorded as *gochar*, *rakshit (de-facto)* or *sarbasadharan (de-jure)* in the ROR or waste lands which are either expressly or impliedly set apart for the common use of the villagers, whether recorded, as such, in the RoR or not. Communal in respect to a land means a land which is used by any village community or any section thereof for a communal purpose like burying and cremating dead bodies, celebrating public festivals, holding melas or common worship and the like without any interference from anybody or paying any fees for the purpose (u/s 2 (b) of OGLS Rule 1983). There exists following types of tenure on common land

- **Ownership Rights:** Customary Tenure of PVTG/ tribal communities for shifting cultivation over hill slopes (also respected under FRA, 2006 and PESA); Community Forest Right (The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006), Panchayat Land
- **Management Rights:** Joint Forest Management (GOO, 2011)
- **User Rights:** Over use of village common land (seven categories defined above) as collective user rights.

Private Land Tenures

- **Land owned:** Land possessed by the cultivator on lease from the government or others under grant or lease or assignment with permanent right of possession with or without right of transfer. Land operated under perpetual lease.
- **Self-operated land include:** self-cultivation, land cultivated through members of the family and land cultivated with the help of hired labour which does not include land leased out to others.
- **Land Leased:** Land leased in tenure is without any permanent right of possession for the leasee; classified by terms of lease: Fixed money, fixed produce, share of produce and usufructory mortgage
- **Usufructory mortgage:** Ownership of the property remains with the mortgager but the possession is with the mortgagee. Income from the property accrues to the mortgagee and the mortgage is terminated as soon as the full amount is realised.
- **Land otherwise operated** includes encroachment land, land forcibly occupied, and unauthorizedly occupied or land in dispute etc., which cannot be treated as land owned or leased in.
- **Govt leasing/allotting land to Poor (OGLS, 1962 and Amendment Rule, 2010)**
 - *Agriculture land tenure:* Allotment of government wasteland for cultivation to the landless tenant.
 - *Homestead tenure:* Rural areas distribution of homestead site to the homesteadless households
- **Cultural and religious Land Rights (Endowment and Waqf Commission)**
 - Land Tenure of the deities and scared places like *Debottar*, Endowment land
 - *Service tenure* like *Bramhotar* land (to the priests for worship of deities)
- **Women’s rights** over land with joint title in the name of both the spouse

Figure 4: Govt (Public) Land Typology in Odisha

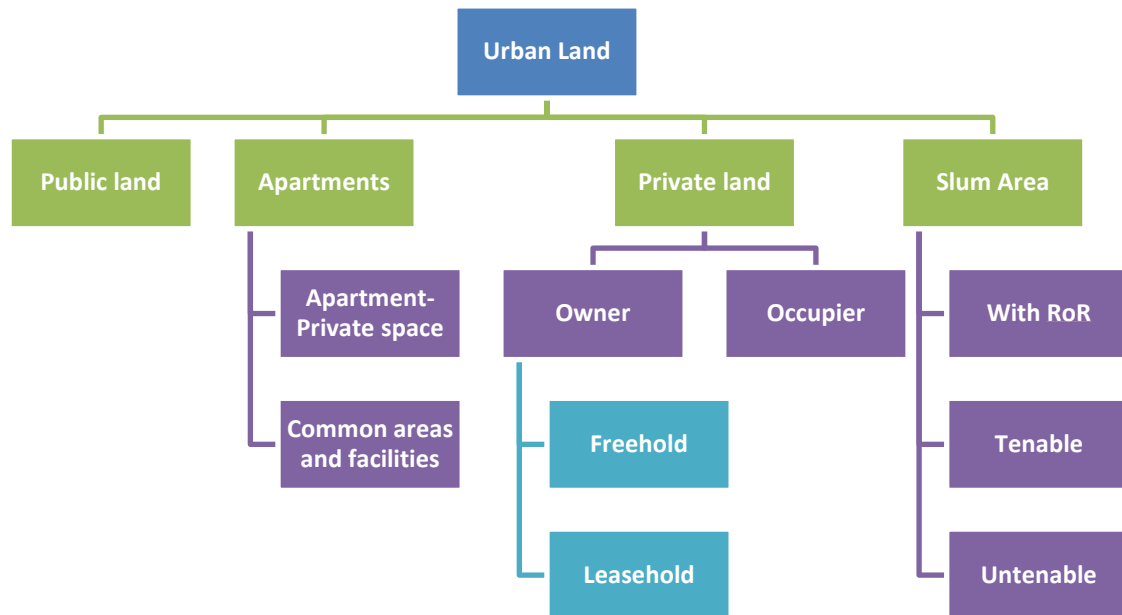


- **Usufruct (User) rights** in the name of tribal men/women over fruit plantations ; examples include
 - Issue of Dafayati Patta (Usufruct Rights) in Tribal Area viz. Cashew Plantations on Hill Slopes under ERRP (Economic Rehabilitation of Rural Poor) and IRDP (Integrated Rural Development) Scheme in 1980s; > 15,000 ha in Koraput district during till 1980-99 under ERRP and other schemes
 - User Rights in OTDP-IFAD Project (1992 – GOO Circular); >7000 ha of sloping land settled in name of 6,137 tribal beneficiaries (about 1 ha/benef)
- **Bhoodan and Ceiling Surplus** land Redistribution : Orissa Bhoodan Yagna Act, 1953 provided for the establishment of a Bhoodan Yagna Samiti in the State of Orissa. Government of Orissa passed the Orissa Bhoodan and Gramdan Act in 1970. Out of the total 11, 065 Gramdans made in the entire country by November,1965, Orissa made a handsome contribution of 2807 Gramdans and thus occupied the second place in the country in that respect. Since 1951 to the year 2012, around 6, 38,706.50 acres of land was collected as donation by the Bhoodan Yagna Samiti. So far, 5, 79,994 acres has been distributed among 1, 52,852 landless person according to the Bhoodan Yagna Samiti (BYS)

Urban Land: "Urban land" as per The Urban Land (Ceiling and Regulation) Act, 1976 No. 33 OF 1976 means,-

- (i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or
- (ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee,. a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.

Figure 5: Urban Land typology in the state



Urban Land Tenure

- Public (Common) land : Include Public Building, Public Open Space, Public Place, Public Street
- Private Land : Include Residence and Other lands including Buildings
 - Owner includes a mortgage in possession, a person who for the time being is receiving or is entitled to receive or has received, the rent or premium or any other consideration for any land whether on his own account or on account of, or on behalf of or for the benefit of any other person or who would so receive the rent or premium or any other consideration the rent or premium or any other consideration if the land were let out to a tenant and includes the Head of a Government Department, General Manager of a Railway, the Secretary or other Principal Officer of a local authority, statutory authority or company in respect of properties under their respective controls (ODA, 1982)
 - Occupier includes (a) a tenant, (b) an owner in occupation of, or otherwise using his land, (c) a rent-free tenant of any land, d) a licensee in occupation of any land, and (e) any person who is liable to the owner any consideration including damages for the use and occupation of the land (ODA, 1982)
 - *Freehold private land* is called “stithiban” land. Stithiban land is freely transferable and heritable. Recorded in Record of Rights (RoR) after transfer and due process of mutation
 - *Lease land grants* from the government are called “pattadar” land. Various types of lease grants may have been given by the government over time with respect to nazul land vested with it. In urban areas, occupants (or encroachers) have been given “homestead” leases under the Orissa Government Lands Settlement Act, 1962, the term of which is generally 99 years. These leasehold rights are heritable, and owners are entitled to construct permanent structures on their land, but these rights are not transferable. In general, leasehold rights granted by the government may be converted to freehold, after which owners would have the right to sell, transfer or mortgage their land.

- Private Land Tenure in Apartment (Condominium) lands (as per Orissa Ownership of Apartment Act, 1982)

Apartment means the part of a property intended for any type of independent use including one or more rooms or enclosed space located on one or more floors (or part or parts thereof) in a building intended to be used for residence office, practice of any profession or for carrying on any occupation, trade or business or for any other type of independent use and with a direct exit to a public street, road or highway or to a common area leading to such street, road or highway

Common areas and facilities unless otherwise provided in the declaration or in lawful amendments thereto, includes (i) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building (ii) foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, life-escapes and entrances and exits of the building; (iii) the basements cellars, yards, gardens, parking areas, shopping areas, schools, garages and storage spaces; (iv) the premises for the lodging of janitors or persons employed for the management of the property; (v) installation of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning, sewerage; (vi) elevators, tanks, pumps, motors, compressors, pipes and ducts and in general all apparatus and installations existing for common use; (vii) such other community and commercial facilities as may be specially provided for in the declaration; and (viii) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use

Slum Area

- Slum area, as per *Orissa Development Authority Act, 1982* means any predominantly residential area, where the dwellings which by reasons of dilapidation, overcrowding, faulty arrangements or designs, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to safety and health of the inhabitants or others and which is defined by development plan as a slum area.
- Slum, as per *Slum Rehabilitation & Development Policy (SRDP)* for Orissa, means a compact settlement of at least 20 households with a collection of poorly built tenements, mostly of temporary nature, crowded together usually with inadequate sanitary and drinking water facilities in unhygienic conditions.

Slum Tenure

- *Slum households/areas with RoR(Record of Rights)*
- *Tenable settlements* are such as are decided by the Government. These include sites where existence of human habitation does not entail undue risk to the safety or health or life of the residents or habitation on such sites is not considered contrary to public interest or the land is not required for any public or development purpose.
- *Untenable settlements* are such as are decided by the Government. These include sites where existence of human habitation entails undue risk to the safety or health or life of the residents or habitation on such sites is considered contrary to public interest or the land is required for any public or development purpose

Methodology

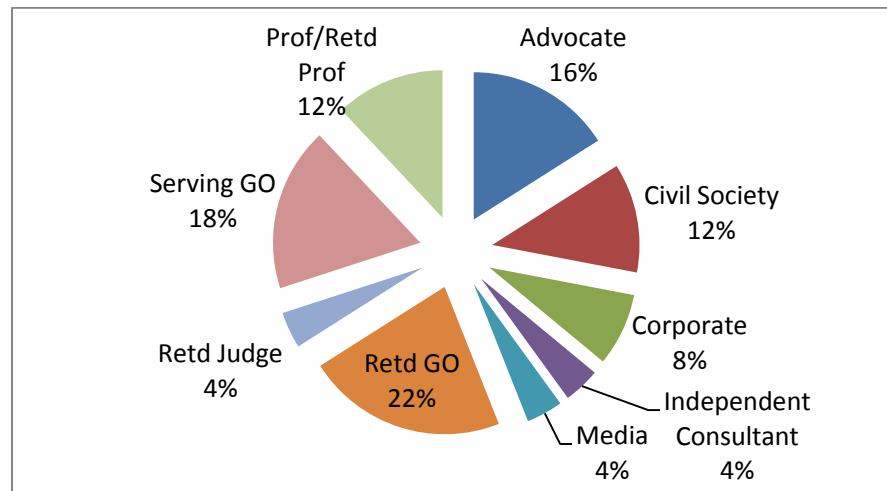
The **Land Governance Assessment Framework (LGAF)**, developed by the World Bank in partnership with FAO, UN Habitat, IFAD, IFPRI, the African Union, and numerous bilateral partners, is a diagnostic tool to assess the status of land governance at country level in a participatory process that draws systematically on local expertise and existing evidence rather than on outsiders. It has been completed/ongoing in 35 Countries. In large countries viz. Brazil, Nigeria and India it has been done at State level. This is a participatory process of about 6 months that draws systematically on local expertise and existing evidence relying primarily on secondary information and expert opinion.

It was implemented **in India** in six states including Odisha, based upon the state's request to the World Bank through Department of Land Resources, Govt. of India, in response to a presentation on the same by Dr Klaus Deininger in a workshop in Haryana. Based upon the feedbacks from state representatives and Technical Advisory Group (TAG) members in a workshop in Institute of Rural Management, Anand (IRMA) in August, 2014, the Global format was refined to have 9 panels and 116 dimensions to suit the Indian context. The process of LGAF implementation in India, has been refined and adapted during the period of its implementation through series of consultative meeting and intense deliberation among state coordinators, TAG members and World Bank Teams. The active and meaningful participation of Expert Investigators (experts identified by state around different panels) and panel members (subject matter experts and users of land systems, from different backgrounds/stakeholders) contributed in developing context analysis and EI background papers around different themes, finally leading to scoring of dimensions and delineations of recommendations for the state. The whole process have been peer-reviewed and guided by the TAG members along with constant involvement of the state government. There was a nodal officer identified in each state to ensure involvement of state at each process.

In Odisha, KIIT School of Rural Management, KIIT University was the host institute, which implemented LGAF in coordination with Revenue and Disaster Management Department of the state, which nominated a Nodal Officer. The team consisted of a State Coordinator, seven Expert Investigators and three Research Associates. There were about 60 panel members, consisting of retired Govt officers (22%), serving Govt officers (18%), retired judges (4%), legal experts (16%), NGO representatives (12%), Academicians (12%), corporate (8%), media (4%) and independent consultants (4%), who substantially contributed to the LGAF processes, especially scoring and making recommendations over two rounds of deliberations.

Odisha adopted an inclusive and elaborate **methodology**, which, though was time consuming and difficult to organize, became quite meaningful and acceptable at the end. Not only did, listing of 70 experts and professionals around land drawn from different sectors was a big challenge, but also ensuring their participation in two rounds of panel deliberation and bringing in consensus around scoring and recommendations was difficult. However, the deliberate process enabled integration of thousands year of cumulative experience and a 360 degree informed perceptions into the LGAF process and documents, which itself is a rare feat. Multi-stakeholder knowledge and information collation to a great extent helped in addressing the challenges of information availability and acceptability around land domain, which are not only inadequate, but also, quite often are subject to contestations. This inclusive approach will help the Post-LGAF processes of execution of recommendations and monitoring multi-stakeholder-based.

Figure 6 Backgrounds of Panel Members



Odisha, unlike other state, conducted two rounds of panel workshops. While the second one was meant for consensus scoring and enlisting recommendation, like the other states, the first round of workshop were organized, primarily to make the panel members understand the LGAF objectives, processs and institutions. This advance interaction with panel members, enabled the panel members not only to better appreciate the framework and more meaningfully contribute to 2nd round processes, but also ensured a process of continuous interaction with them during the LGAF implementation process of about six months. Many panel members also contributed to writing of EI background report, having been involved from the beginning. The engagement with panel members was continued also by involving them in the deliberation of State Level Validation Workshop. LGAF team also intends to engage with this unique and rare resource pool to continue informed advocacy with state as well as launch monitoring processes for better implementation of Governance reform. Presented below are some of the insights of the first round processes.

1st Panel Meetings: Learning

- Considerable time and energy required to be spent in identifying, convincing and coordinating with panel members wherein both involvement of SC and EI required. Peer-reference and snowballing methods help in better mapping and contacting of panel members
- Initial responses varied from Skeptism (Doesn't Govt know about the status? Will the Govt act on the recommendations? Why?); to **Apprehension** (Why only developing or under-developed countries? Is it reqd to involve other-stakeholders when land is treated under eminent domain principle and governed primarily by the state? Who are other members?); to **Welcome** (LGAF offers a comprehensive approach, indicate best practices, bring in multi-stakeholders; suggestions to include this person)
- Dialogue among panel members varied from accepting own 'Limitation' and scope of Learning from others; to continue with own 'Perception' legacy; to an appreciation of such a multi-stakeholder platform

1st Panel Meetings: Key Responses

- Involve Govt from the beginning in form of including/inviting Govt representatives to each panel, sharing all reports with Govt and requesting concern department to score
- Panel members of Language/Grammar/Expressions regarding LGAF ranged from LGAF being a Global tool, its application in local context would require much refinements without which it would suffer from more Interpretation bias. There was demand for clear definitions of many global terms used and suggestion to localize the dimensions and statements. There were debates around norms of fixing of parameters (priority matching between that of state and Global best practice) and also fixing of scales (why 90%? why 3 years?; any link with Govt. standards)

1st Panel Meetings: Key Advantages

- Helped in enhancing access to relevant and important information especially Unrecorded Processes e.g. Land acquisition and transfer process by IDCO; Unavailable important decisions: GOO attempts at Single Revenue law/code like Karnataka and also Legal aspects and interpretations – a Judiciary perspectives
- Enabled access to right persons and their acceptance (peer-reference), link to data sources
- Absence or gap in information could be supplemented by informed perceptions of EI and Panel Members
- Gain from Informed and 360 degree Perceptions: Practitioner, Decision maker, Activist, Judiciary, Media, Academics

The **participation of the state** in the whole process was quite encouraging, starting from very positive response of the Chief Secretary during first briefing to getting tacit support from Additional Chief Secretary, RDM Department. The participation of the Nodal Officer appointed by the State has been consistent and quite supportive in terms of provision of data and information support. Besides, there were about 11 serving & 13 Retd Senior officers from Revenue, Urban, Legal and Forest department were involved as panel members including important positions like Special Secy, Additional Secy, Joint Secretaries, Directors and Deputy Secretaries.

The findings of the LGAF implementation in Odisha presented below include a panel-wise context, analysis of scores and recommendations.

4. PANEL 1: Land Tenure Recognition

4.1 Context Analysis

4.1.1 Land Reforms Initiatives

Land legislations in independent India had the objective of reforming and addressing the exploitative as well as iniquitous system of land revenue assessment that existed during the colonial regime. It was also motivated by the concern to provide 'land to the tiller'. To confer such ownership rights on the tenants, the State realized the imperative need for abolition of intermediaries and providing adequate security of tenure to the tenants³⁵. The provisions created for grounding such a grand objective were regulation of rent and de-concentration of land holdings by way of fixing a ceiling. As such, the fixation of a ceiling on land holdings to prevent excessive concentration of land was a formidable challenge before the State. Though land tenure reform was thrust forward as a national mandate from above as allowed under the Directive Principle in Article 39(c) of Constitution, the land was included under the State list in the Indian Constitution as per the Item No. 18, which reads, "Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans; colonization". Thus the federal States were free to legislate on land reforms in accordance with local specificities.. In the two and half decades post independence the Government of Odisha has enacted a number of legislations, well intentioned and progressive in those times, to establish a comprehensive legal framework for land reforms, such as Orissa Tenants Protection Act 1948, Orissa Estates Abolition Act 1951, Orissa Tenants Relief Act 1955, Orissa Anchal Sasan Act 1955, Orissaa Scheduled Areas (Transfer of Orissa Immovable Property) Regulation 1956 (Regulation 2 of 1956), Land Reforms Act 1960, Orissa Survey and Settlement Act 1958 and Orissa Govt Land Settlement Act 1962 followed by Orissa Bhoodan and Gramdan Act 1970, Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act 1972, and Orissa Prevention of Land Encroachment Act 1972.

While the OTP Act, 1948, OTR Act, 1955 and OAS Act, 1955 have been repealed the rest of the laws have been subject to repeated amendments, though still fall far short of the needs and imperatives that have emerged with March of time.

The above mentioned State legislations were part of the land reforms initiative in India's first and second five year plans, which had the objectives (i) to remove the barrier to agricultural production that arose from the typical feudal-colonial tenurial structure inherited from the past, (ii) to eliminate all elements of exploitation and social injustices within the agrarian system in order to provide security to the tiller of the soil and (iii) to assure equality of status and opportunity to all sections of rural population.

Objectives of Odisha's Tenurial Reforms Initiative can be summarized as below:

- Abolition of zamindary /intermediary tenures
- Protection of tenancies and conferment of ownership rights on them
- Introduction of uniformity in the land rights of raiyats

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³⁵ OLR Act has defined 'tenant' means a person who has no rights in the land of another but under the system generally known as Bhag, Sanja or Kata or such similar expression as under any other system, law, contract, custom or usage personally cultivates such land on payment of rent in cash or in kind or in both or on condition of delivery to that person - (a) either a share of the produce of such land; or (b) the estimated value of a portion of the crop raised on the land, or (c) a fixed quantity of produce irrespective of the yield from the land ; or (d) produce or its estimated value partly in any of the ways described above and partly in another.

- Provision of better rights in favour of temporary lessees, share croppers and tenants
- Conferment of occupancy right in homestead lands and imposition of ceilings on agricultural land holdings
- Distribution/ settlement of government lands/ ceiling surplus land to the landless and weaker sections
- Protection to SCs and ST raiyats from illegal alienation of land and special protection of land of the STs in the Scheduled Areas
- Determination of non-resumable areas of tenants

To achieve the above objectives the Orissa Land Reforms Act 1960, a comprehensive legislation bearing in large or small degree on each of the above targets was passed by the Orissa Legislative Assembly and notified in the Orissa Gazette No. 705 dated 11th Nov. 1960 as the Act No.16 of 1960 after receiving the assent of the President. But curiously enough it was not enforced immediately. However, before its enforcement the OLR Act 1960 had to be amended in 1965 and the Act so amended received the assent of the President on 11th August 1965 and thereafter was notified as the Act No. 13 of 1965 in Orissa Gazette No. 1235 dated 17th August 1965, which is considered the official date of enforcement of the OLR Act 1960. But the chequered story of its enforcement didn't end here. Going by the Section 1(3) of the OLR Act, the State Government reserved the discretion for itself of enforcing its different provisions on different dates. The OLR Act consists of a total of 76 Sections covered in 6 Chapters. The first Gazette notification announcing the enforcement of the OLR Act made on 25 September 1965 had withheld the enforcement of two crucial Chapters, namely Chapter-3 (Resumption of Land for Personal Cultivation) and Chapter-4 (Ceiling and Disposal of Surplus Land) for a future date. Subsequently, the Chapter-3 came into force by a Gazette Notification dated 8th December 1965 and the Chapter-4 by another Gazette Notification dated as late as 5th January 1972. Similarly, the Orissa Land Reforms (General) Rules 1965 which was notified in Orissa Gazette first on 26th September 1965, has remained subject to a long series of amendments at quick intervals. Till the year the whole Act had come into force, that is, 1972, the OLR (General) Rules had undergone as many as 10 amendments and that too in quick succession. Besides, another crucial set of Rules made under the OLR Act i.e. Orissa Land Reforms (Financial Rules) was notified as late as 1975, that is, about long 15 years after the original enactment.

The delay in the enforcement and actual implementation of the Act provided ample scope for large-holding landowners to escape the ceiling restrictions. For instance, about 80% of leasing activity indeed is by small and marginal farmers prevalent both in the irrigated and un-irrigated areas mainly in coastal and western Odisha (Mearns and Sinha, 1999)³⁶. Odisha Land Reforms Act 1960 banned leasing of land except by certain specific categories of raiyats, namely 'persons under disability' (Section 2-21) comprising widow and divorced/ separated woman, a minor, physically or mentally challenged, a raiyat having not more than 3 standard acres, and privileged raiyats (Section 2-24) comprising Cooperative Society, Lord Jagannath, Trust, Trust Estate or Public Financial institution. By explicitly banning tenancy, the law has swept the problem of sharecropping under the carpet. No provision has been made till today to record the concealed tenancies. It is understood that removal of the ban on agricultural tenancy will encourage both landowners and sharecroppers to make rational decisions regarding the land use that corresponds to agricultural cycles. Sharecroppers may be in a better position to be able to manage their risks by getting the land leased to them for several years at a stretch, and this will naturally lead to improved yields. Since the payment by the share-cropper to the landowner is

³⁶ Social Exclusion and Land Administration in Orissa, India by Mearns and Sinha A World Bank Report, September, 1998

proportional to the size of holding and the yield therefrom, the landowners will may naturally gain by the formalization and legalization of the lease arrangements as the yields keep on improving.

Administrative machinery required for implementation of the Act is provided under its Chapter-5. The Section 53 of OLR Act for authorises the government to constitute by notification in official gazette a Land Commission comprising a total of 7 members (3 officials and 4 non-officials nominated by the Govt). The Land Reforms Commissioner shall be the *ex-officio* Secretary of the Land Commission and the Govt shall nominate one of the members as Chairman of the Commission. As per Section 54, the Commission shall review the progress of implementation of land reforms from time to time, publish report at least once a year and advise the Government in all matters relating to the reforms. *However, after 53 years of the enactment of the OLR Act 1960, astonishingly the Land Reforms Commission has not been constituted in Odisha till today as it should have been.* The implementation of land reforms in Odisha remained far from satisfaction due to a slew of critical gaps and flaws in the legislation itself besides inordinate delayed enforcement in several phases. In point of fact, huge number of tenants exists in Odisha without their tenurial rights formally recognized or record and also without their persons having been identified as tenants as such. The high prevalence of unrecorded tenancy/ illegal lease transactions is one of the visible failures of the land reforms legislation in the State.

4.1.2 Land Rights Recognition of Women

Under the concurrent reading of OLR Act and the Hindu Succession Act 1956 as amended 2005 women's rights over the landed property are permissible in the following situations-

1. After the death of husband, wife becomes a joint share holder of the deceased's land, along with her children.
2. If a family has more land than the ceiling limit set by the government, the surplus land is recorded in the name of the wife/daughter to avoid ceiling restrictions.
3. When there is no male heir in the family, daughters get the RoR transferred to their names.
4. Unmarried women (those who could not marry and are living with their parents/ brothers) are entitled to equal co-parcenary as their brothers in both homestead and agricultural lands. This however does not happen automatically. This has to be claimed and fought for.
5. There are cases in which a woman's in-laws also transfer the RoR from their sons to the daughters-in-law's, where an alcoholic man's parents believe that their son will sell off all their land.
6. In some cases, when a woman marries a widower or divorced man, her parents generally insist that the man first of all transfers some land in his new wife's name. This is done to ensure some economic security for the second wife in case the man marries for a third time (while the second wife is alive). Another reason is that any children of the man may have by his first wife and might claim the entire property of the father leaving the second wife with no legal claim.

4.1.3 Bhoodan and Gramdan in Odisha

The Orissa Bhoodan and Gramadan Act, 1970, provides for the acquisition of lands by way of donation, for distribution to the landless persons, or for the community purpose³⁷. Its main objective was to reduce disparities in land ownership by encouraging people to voluntarily donate some land and distribute the land donated by several generous persons among the landless people.

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³⁷ Under section 2(a) of The Orissa Bhoodan and Gramadan Act, 1970 define Bhoodan Yagna meansthe movement initiated by Acharya Shri Vinoba Bhave for the acquisition of lands by way of donation.

Odisha Bhoodan Yagna Samiti, constituted by the Government u/s 3 of the Act, as a body Corporate, having perpetual succession, which is empowered to enter into contracts and to acquire, hold, administer and dispose of property both moveable and immovable in its name. As per its Section 12(1) suggests, any owner³⁸ who may donate his land for *Bhoodan Yagna* or for *Gramdan*³⁹ by declaration made in the prescribed manner. The Samiti shall consist of a Chairman, the Vice Chairman and 9 other members to be appointed by the State Govt. Section 14 of the Act provides for the grant of land to the Samiti “The Samiti may (after taking into consideration the wishes of the donor as far as possible, and subject to the limitations hereinafter provided) grant any land (which has vested) to a landless person who is liable and willing to cultivate the land, (or alternating to the Government or to a local authority). The maximum extent of land to be granted to a landless person shall be two acres. (If a person does not own any land; or an area by which the land owned by him falls short of two acres, if he owns less than two acres). As per Annual Activities Report of Revenue and Disaster Management Department for the year 2011-12, an area of 638,706.50 acres of land was collected as donation of which 579,994.21 acres of land has already been distributed among 152,852 landless persons. The balance 58712.29 acres of undistributed land are pending with the Samiti.

4.2 Land Governance Indicators: EI Report and Scoring

1. RECOGNITION OF A CONTINUUM OF RIGHTS

Panel	LGI	Dim.	<i>Land Governance Indicator 1</i>
1	1	0	Recognition of a continuum of rights: the law recognizes a range of rights held by individuals (incl. secondary rights of tenants, sharecroppers, women etc.)
1	1	1a	<i>Individuals' rural land tenure rights are legally recognized</i>
			B: Existing legal framework recognizes rights held by 70% - 90% of the rural population

Existing legal frameworks recognizes the rights held by rural population except for that of concealed tenancy, occupancy rights of tribal communities in particulars and others above 10-degree slope, mostly in schedule V area. Rights of all tribal and rural communities have also not been recorded during Survey and Settlement process and Forest reservation processes.

Some of the key legal provisions in this context are

- Legal provisions for protection of rights of all types of landholders are available under various revenue laws of the State like OLR Act, OGLS Act and OPLE Act. The OLR Act 1960 in its Section 6 (2) says that, a transfer of land after the commencement of this Act by way of a lease of any land held by a raiyat shall be void and inoperative. Accordingly the rights of a raiyat in any land held by him as such shall be permanent, heritable and transferable. However a privileged raiyat (who is a **person under disability**) is allowed by way of exemption, to lease out his lands to any tenant. However, tenants' (sharecroppers) tenurial rights are not at all recognised as leasing in all forms is banned (Section 6A of OLR Act).

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³⁸ Owner means- u/s 2(i) (i) in relation to land held by a raiyat with permanent heritable rights in the land, the raiyat; (ii) in relation to land held under a grant, lease or assignment from the State Government or a land holder, the person who so hold; and (iii) in relation to any other land, the person to whom the land belongs.

³⁹ Gramdan means a voluntary donation of land in a village made in pursuance of the provisions of this Act.

- Although the provisions are made to protect the rights of the tenants under OLR Act 1960, the Act or Rules made there under or any subsequent instrumentality of the State has not put in place any provision and procedure to identify who are the tenants.
- The rights and liabilities of tenants (saved under Section 7 of OLR Act to the effect that the rights of a tenant) in any land held by him shall be heritable but non-transferable. The rights, benefits, protection, privileges, obligations or liabilities of any tenant in lawful cultivation of any land at the commencement of the OLR (Amendment) Act, 1973 as were existing immediately prior to such commencement shall not be liable to be modified or extinguished in any manner whatsoever. Besides, the rights of the tenants are recognised and conferred under Section 36 A & 36 C of OLR Act. However, there is no formal procedure to identify and record the lists of tenants in OLR Act or in any other revenue law of the State
- Section 3(2) of OGLS Act, 1962 has provisions for allotment of agriculture land for a landless person for the purpose of agriculture or homestead land for the homestead deprived person for the purpose of residence. It has authorized the government to determine the maximum extent of land to be settled with any person for purposes of agriculture or for homestead from time to time. Section 3(2) of the Act under its subsection (1)(e) prescribes that 70 per cent of the land shall be settled with the persons belonging to STs and SCs in proportion to their respective population in the village in which the land is situated and the remaining land shall be settled with other persons For settlement of land, order of priority is prescribed under Section 3(3) of the OGLS Act 1962
- Section 7 of Orissa Prevention of Land Encroachment Act 1972 has authorized the Tahasilar to settle unauthorized occupation of any land to landless persons instead of evicting him/ her. Government land to the extent of four decimals was being provided to each homesteadless family for house site since 1974-75 under OGLS Act, 1962 and the Rules 1983. Subsequently, the limit has been enhanced upto 10 decimals of homestead land by the government in the year 2008⁴⁰.
- To improve the economic status of the weaker sections of the society and to boost agricultural production, Govt land up to one standard acre is being allotted free of *salami* to landless persons since 1974-75 under the OPLE and OGLS Acts.
- **Ceiling surplus land allotted to landless:** In order to improve the socio-economic condition of the weaker sections of the society and to boost agricultural production in the state, ceiling surplus land up to 0.7 standard acre is being allotted free of *salami* to the landless persons for agricultural purpose since the year 1974-7 (**GOO, 2013**)
- **Dafayati Tenure:** The Government of Odisha has issued a letter through the Chief Secretary (in its letter no GE (GL)-S-23/2008/51607/R&DM) for issue of tree patta as recognition of dafayati rights of the ST persons in tribal areas (Scheduled areas/ Cluster areas/ MADA pocket) maximum upto the extent of 2 acres per family. If there is surplus area for plantation of cashew available, the same will be distributed among the BPL SC families belonging to the landless, small and marginal farmers and other SC farmers. It is worth noting that the names of both husband and wife are recorded in *dafayati* patta.
- **Forest Tenure:** The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 *inter alia* recognises rights of individuals over forestland, which is under their occupation and cultivation. The conditions for vesting of such rights would be the status of such

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⁴⁰Letter no. LD-25/2008 - 28733/R&D.M, Dated: 03.07.2008, Revenue & Disaster Management Department, Government of Orissa, Enhancing the limit of distribution of Government Land under the Scheme 'Vasundhara Scheme'.

forest to remain heritable but non-transferable, joint title in the name of both the spouses and continuation of the legal classification of such land as forest.

1	1	1b	Individuals' rural land tenure rights are protected in practice.
			B: Existing legal framework protects rights held by 70% - 90% of the rural population

The protection of rural tenure rights is in practice and the following achievements over last years indicate the same. However, the institutional arrangement and socio-political context has not been able to protect the rights completely especially in case of tenants and in the scheduled area.

- As for the magnitude of tenancy in Odisha, the NSSO data puts the total number of holdings⁴¹ under tenancy as 5,019,000 and that of the operational holdings as 4,356,000 ha for all social groups. The percentage of area leased to area operated in 1990-91 was 9.5% (All India figure was 8.3%). There were about 6.9 lakh tenant holdings, which constituted 16.4% of all operational holdings. However prevalence of tenancy has been reducing while in 1970-71 tenants were tilling 13.5% of operational area (GOO, 2004), in 2005-06, it has come down to 6% (Agriculture Census, Odisha, 2006).
- A study made as far back as 1998 has pointed that 80% of the leasing activity was being undertaken by small and marginal farmers⁴²
- During 2011-12, (till December end 2011) 2071 nos. of families including 986 STs, 562 SCs and 523 other categories have been provided with house-sites as per OPLE, 1972 claimed by the Government. **(GOO, 2013)**. However, A survey report RDM department reveals that 236,427 families in the state are homesteadless, out of which 101,624 are STs, 59,913 SCs and 74,779 families belong to other categories (GOO, 2012)
- During 2011-12, (December end 2011) Govt waste land for an areas of 319.729 acres have been distributed among 356 landless families which include 118.079 acres to 138 STs, , 81.94 acres to 92 SCs and 119.71 acres of land to 126 other landless families for agriculture purpose as per OPLE and OGLS. (Annual Reports of RDM Department)
- Since the inception, ceiling surplus land for an area of 160559.723 acres has been distributed among 143382 families which include 51313.732 acres among 49076 SCs, 66424.056 acres among 53149 STs and the rest 42831.935 acres land among 41157 other families. During the period 2011-12(up to January, 2012) an area of 2.52 acres of ceiling surplus land has been distributed among 5 ST families and the areas of 10068.324 acres of land involved in litigation is pending in different courts. **(GOO, 2013)**
- Section 22 of OLR Act 1960 suggests any transfer of holding by a raiyat belonging to ST in areas other than Scheduled Areas voidable only except that it is made in favour of a person belonging to ST or from SC to SC and if any land is transferred by STs/SCs to Non-STs/SCs without permission of the competent authority or Revenue Officer (RO) As per Sections 23 and 23A the competent authority shall act *suo moto* or on the application interested cause of restoration of the property to the transferor or his heir. If it has been transferred without prior written permission of the competent authority or if the land has been under un-authorized occupation by non-SC or non-ST persons as the case may be. However, the experience in the backward rural and tribal areas shows

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⁴¹ All land which is used wholly or partly for agricultural production and is operated as one technical unit by one person alone or with others without regard to the title, legal form, size or location

⁴² Social Exclusion and Land Administration in Orissa, India by Mearns and Sinha A World Bank Report, September, 1998

that, the provision for *suo moto* initiative by RO or any competent authority is not practically followed. The actual number of cases found in government records is extremely low and do not reflect on the ground realities. Restoration of land means actual delivery of possession to the transferor or his heir. However, though the restoration is made in official papers, the property is not given actual possession in the field and very much depend upon factors of the local area or other local political dynamics. . Hence, the objective of land reforms initiative as envisaged in OLR Act or other revenue legislations gets lost in the persisting socio-economic-political matrix marked by glaring caste divide and class exploitation⁴³.

- Since inception of OLR Act 1960 till December 2011, land restored in favour of the STs and SCs families/s 23 & 23A of the Act, is given in table below.

Table 1: Land Restoration to SC & ST

Social Category	No. of beneficiaries	Area of land ordered for restoration (in acre)
SC	25271	17805.684
ST	14084	13183.432
Total	39355	30989.116

- A special land rights campaign named “Mo Jami Mo Diha” was launched by the Government of Odisha since 2007 to protect the land rights of the poor. The objectives of the campaign are (a) to protect and ensure the land rights of the poor who were allotted lease of government lands earlier or to restore their lost land (b) dovetailing the programme with the development schemes to ensure that the land allottees are in a better position to utilize the land and (c) to assist the poor with emphasis on those belonging to ST and SC communities, to retain their land and homestead land within the existing legal framework. Under this campaign (upto end of December 2011) out of 233,484 numbers of cases received for verification, 141,808 cases have been disposed⁴⁴.

Passing of a whist of radical laws is necessary but may not be a sufficient condition for securing and protecting the rights of the poor, unless they are backed by robust political will and effective

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⁴³ It is worthwhile to mention here that the Governor Odisha empowered under Para 5(2) of Fifth Schedule of Constitution had promulgated Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation 1956 (Regulation 2 of 1956) amended latest by 2002, to prevent alienation of tribal land to non-tribal persons and to ensure the restoration of the alienated land to its bona fide owner by the competent authority i.e. District Collector. But the Provisions of Panchayats (Extension to Scheduled Areas) Act 1996, briefly called PESA Act in its Section 4(m)(iii) had empowered the Gram Sabha and Panchayat at appropriate level ‘to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe’. The two legislations, namely OLR Act 1960 and OSATIP Regulation 1956 are not synchronized with the PESA Act 1996 enacted by Parliament. In absence of this and persisting absence of role clarity in prevention of alienation and restoration of tribal land shall continue to defeat the constitutional and statutory assurance for the non-alienation of tribal land.

⁴⁴ Activities of Revenue and Disaster Management Department, Government of Odisha, For the year 2011-12, page 23

administrative mechanisms for implementation of the same along with a vigilant system in place for constant monitoring of the said implementation. Despite preventive and punitive laws in place, the scale of illegal land transactions go unabated owing to lack of space and structure to initiate suo moto inquiry, lack of designated human resource and lack of periodic review of laws restricting such transactions. Besides, the role of Gram Sabha as mandated by PESA Act in prevention of illegal land transfers in Scheduled Areas has invariably not received the due attention.

1	1	2	<i>Customary tenure rights are legally recognized and protected in practice.</i>
C & D			C: There is partly recognition and effective protection of customary rights
			D: Customary rights are not legally recognized and not protected in practice

Some customary tenure rights are legally recognized but not all. With enactment of new legislations like FRA the habitat rights of PVTGs and Community Forest Resource rights of village community have been at least statutorily recognized. There is some service tenure systems like *Bramhattar*, *Jagir*, lands for village Chowkidar that existed in the past and now recognized and protected in the Odisha statutes.

Customary rights like *nistar* rights existed in a few places of Odisha. Customary access to forest resources for livelihood needs are recognized and rights and concessions in the forest working plans provided accordingly, as per the OFA 1972 and IFA 1927 in the given regions and periods. However, the customary rights of tribal communities were never accepted either by Revenue laws or during declaration of reserved forests. By declaring the land above 10 degree slope as Govt. land rights over most of the customarily owned land were not recognized.

Under FRA 2006, provisions have been made to recognise and legalise the customary and traditional tenures over forestland and forest resources of the forest dwelling communities. Customary rights including the rights to community tenure of habitat of PVTGs, community rights such as *nistar* and grazing rights are recognised under FRA. Thus, legal provisions exist for protection of some customary rights, but not for all the customary rights that existed in the past.

1	1	3	<i>Indigenous rights to land and forest are legally recognized and protected in practice.</i>
			B: Recognition of indigenous rights but only partly protected

Odisha laws neither recognise nor define the indigenous rights as such. As already mentioned in previous section, FRA 2006 does recognise the rights of PVTGs over their community tenure of habitat, which can be considered as indigenous rights over ancestral territory. This also includes their religious and cultural rights. In reality, however, before any settlement of those indigenous rights could be carried out, the concerned areas were declared as protected areas or reserved for conservation or other development projects.

One of the key indigenous rights was that of shifting cultivation or 'podu' that most of tribes of Odisha were practicing, but it has not been legally recognized. Schedule V areas (having preponderance of tribal population) in Odisha constitute 44% of its geographical area and STs 22.8% of its population (2011 Census). Past estimates of the area under shifting cultivation in Odisha ranged from 5298 sq. km. to 37,000 sq. km. (Pattanaik, 1993; Thangam, 1987). It was estimated that 44% of the forest area (highest

in India) of the state was under shifting cultivation, of which 8.8% (5298 sq. km.) was under active shifting cultivation and the rest either idle or abandoned (Mishra, 1995). The Forest Enquiry Committee Report of 1959 mentioned that 12,000 sq. miles (almost 30,720 sq. km.) of land in Odisha were under shifting cultivation (GoO, 1959). Individual families have traditionally owned shifting cultivation area, though the land within the customary boundary of the village is owned by the settling clan (Kumar, et al., 2005).

The customarily cultivated shifting cultivation lands on hill slopes were recorded as government land during the Survey and Settlements process, with no recognition of tribal rights. Many of the shifting cultivation tracks in South Odisha, (which were under the Madras Presidency or Princely States,) were recorded as deemed reserve forests (during the post-independence,) without going for the process of rights settlement⁴⁵. Section 10 of IFA 1927, dismissed the rights of shifting cultivators in RFs during forest settlement processes (Kumar, 2004). Verrier Elwin pointed out that during 1930s-40s, Kondh Villagers were approached by the Forest Guards, who had orders to demarcate "Reserve Forests", and how in almost every case the Forest Guards demanded bribes, and if the villagers refused to pay, they (forest guards) designated the forest fallows (which the Kondhs habitually used for shifting cultivation) as Reserves (Padel, 1995).

Indigenous rights are recently recognized w.r.t forest and habitat rights with enforcement of provisions of FRA, 2006. However, the rights of all the indigenous communities have not been identified and protected by law as yet.

1	1	4	<i>Urban land tenure rights are legally recognized and protected in practice.</i>
			C: Existing legal framework recognizes and protects rights held by 50% -70% of the urban population

All urban areas in the state are governed by legal and institutional framework as per the provisions of the Orissa Municipal Act, 1950, the Orissa Municipal Rules, 1953, the Orissa Municipal Corporation Act (OMCA), 2003, Orissa Town Planning and Improvement Trust Act, 1956, Orissa Development Authorities Act, 1982 and Urban Land (Ceiling & Regulation) Act, 1976 etc.

As per ODA Act, 1982, Private Land in urban areas has been defined as residence⁴⁶ and other lands including buildings with two types of tenures i.e. Owner⁴⁷ or Occupier⁴⁸. There are broadly two types of private land tenure that are relevant to urban lands in Odisha:

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⁴⁵ During post-independence, the forest transferred from 24 ex-princely states were deemed to become Reserve Forests or Protected forest by of amending the IFA, 1927 in 1954. (Amendment through Section 20-A (1) and Section 20-A(4) of the IFA, 1927), which managed to convert all the "Reserved Forests" and other forests in merged ex-state areas into Reserved forests or Protected Forests as defined under the IFA, 1927, even though most of these areas had not been properly surveyed and rights settled as required by the law. Similarly, in the erstwhile Agency Tracts of Madras Presidency i.e. the undivided Koraput district and Gajapati districts, Reserved and Protected land created under Chapter III of the Madras Forest Act, 1882, were deemed to be Protected Forests under Orissa Forest Act, 1972 (Section 33(4)). These forest areas were neither surveyed nor the rights of the cultivators and inhabitants settled at any time.

⁴⁶ Residence includes the use for human habitation of any land or building or part thereof including gardens, grounds, garage, stables and out-houses, if any, appertaining to such building and "residential" shall be construed accordingly (ODA, 1982); *Building* includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial, industrial, or other purposes, whether in actual use or not (ODA, 1982)

⁴⁷ Includes a mortgage in possession, a person who for the time being is receiving or is entitled to receive or has received, the rent or premium or any other consideration for any land whether on his own account or on account of, or on behalf of or for the benefit of any other person or who would so receive the rent or premium or any other consideration the rent or premium

- *Freehold private land* is called “stithiban” land. Stithiban land is freely transferable and heritable. For these lands a Record of Rights (RoR) is issued following the transfer and due process of mutation by Tehsildar office.
- *Lease land grants* from the government are called “pattadar” land. Various types of lease grants may have been given by the government over time with respect to nazul land vested with it. In urban areas, occupants (or encroachers) are given “homestead” leases under the OGLS Act, 1962, the term of which is generally 99 years. These leasehold rights are heritable, and owners are entitled to construct permanent structures on their land, but these rights are not transferable. In general, leasehold rights granted by the government may be converted to freehold, after which owners would have the right to sell, transfer or mortgage their land.

Private Land Tenure in Apartment⁴⁹ (Condominium) lands is defined as per Orissa Ownership of Apartment Act, 1982. This act also prescribes tenurial arrangement for *Common areas and facilities in Condomonium*.

Rights of slum dwellers: As per 2011 Census, 4% (1,560,303) of the population of Odisha lives in slums which is about one-fourth of its urban population. Over 90% of slum dwellers do not have access to formal housing. The BMC in collaboration with United States Agencies for International Development (USAID) under Fire (D) project had identified (August 2009) 377 slums developed under BMC area with a population of 3.09 lakh.

Slum has been defined in ODA Act, 1982 and as per Slum Rehabilitation & Development Policy (SRDP), there are two types of settlements, with respect to tenure recognition/regularization-

- *Tenable settlements* are such as decided by the Govt that include sites, where existence of human habitation does not entail undue risk to the safety or health or life of the residents on such sites. This is not considered contrary to public interest or the land is not required for any public or development purpose.
- *Untenable settlements* are such as decided by the Govt., which include sites where existence of human habitation entails undue risk to the safety or health or life of the residents. However habitation on such sites is considered contrary to public interest (or the land is required for any public or development purpose)

or any other consideration if the land were let out to a tenant and includes the Head of a Government Department, General Manager of a Railway, the Secretary or other Principal Officer of a local authority, statutory authority or company in respect of properties under their respective controls (ODA, 1982)

⁴⁸ Occupier includes (a) a tenant, (b) an owner in occupation of, or otherwise using his land, (c) a rent-free tenant of any land, d) a licensee in occupation of any land, and (e) any person who is liable to the owner any consideration including damages for the use and occupation of the land (ODA, 1982)

⁴⁹ Apartment means the part of a property intended for any type of independent use including one or more rooms or enclosed space located on one or more floors (or part or parts thereof) in a building intended to be used for residence office, practice of any profession or for carrying on any occupation, trade or business or for any other type of independent use and with a direct exit to a public street, road or highway or to a common area leading to such street, road or highway

Table 2 Slum Tenure Typology in Odisha⁵⁰

Type of Settlement	Title	Right to Occupy	Right to Transfer	Development Approval	Building Approval
Regularised unauthorised Colony	Yes	N/A	Yes	Yes	Yes
Unauthorised colony	Yes	N/A	Yes	No	No
Urbanised village settlement	Yes	N/A	Yes	Yes	Yes
Slum with tenure	Yes	N/A	Yes	Yes	Yes
Slum with temporary tenure	N/A	N/A	N/A	N/A	N/A
Slum with no tenure	No	No	No	No	No

SRDP calls for providing Individual land tenure incrementally to the concerned households, improving over time from restricted (occupancy and short-term lease) to full title with property rights as provided under the state property rights legislation. The tenure shall be incrementally made more permanent through conversion of licenses into lease rights (for longer or shorter durations) and eventually to full property titles or RoRs.

Bhubaneswar city has formulated a street-vending policy through an eight-step procedure, which begins with the enumeration of street vendors and ends with awarding trade license for recognized vendors. So far 47 vending zones have been approved, and vendors are provided with some tenurial security. Such efforts have been treated as a best practice and seem to have been replicated in many other cities in India.

Despite clear legislations, rules and procedures being put in place, the instances of unauthorized occupations are still large in urban areas. As per CAG Audit Report (General Social Sector Audit Report of Odisha, March 2012) while 6.051 acres of encroached land was regularized, 11.187 acres of land was under the occupation of encroachers as of March 2012 with no effective steps taken by the Dept in the matter.

LAND GOVERNANCE INDICATOR 2: RESPECT FOR AND ENFORCEMENT OF RIGHTS

1	2	1	<i>Accessible opportunities for tenure individualization exist.</i>
B & D			<p>B: The law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land rights if they so desire. Procedures to do so are affordable and include basic safeguards against abuse.</p> <p>D: Although there is demand, the law provides no opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land rights</p>

The law provides opportunities for those holding land under customary, group, or collective tenure to fully or partially individualize land rights, if they so desire for some specific tenure. The procedures are xlix—

⁵⁰ Arkaja Singh (2012) In Legal Aspects of Tenure and Housing Finance in Informal Settlements Law and Practice in Indian States, arkaja@gmail.com

generally affordable, but not always clear. They primarily contain basic safeguards against illegal transfer. For example, under recently amended OGLS Rules, 2010, huge tracks of *Paramboke* land have been settled under individual tenure with simple procedures and basic safeguards.

Gramkanth Paramboke land is available only in undivided Ganjam (that now includes Gajapati), Koraput (Raygada, Nawrangpur and Malkangiri) and Kondhamal districts that are used for homestead purpose. This is a homestead land category used in Madras Estates Land Act under the Madras Presidency. The rights of *Ryots* (Farmers) in these areas were governed under the Madras Estate Land Act 1908, till enforcement of Orissa Estate Abolition Act, 1951. The M.E.L. Act was mainly dealing with the rights and responsibilities of the occupier's ownership over farmland. The village sites or the *basti* area where the villagers were residing otherwise known as *Gramkantha*, which was excluded from the ken of ryot lands. Under the M.E.L. Act the survey of agricultural land started in these districts in the 1930s, and the village sites were not surveyed and kept under a single plot for identification. After repeal of MEL Act, survey operations were held under the OS& S Act, 1958, but survey was not taken up till rules were framed in 1962. During the settlement, *Basti* site in rural areas (except in a few villages) were not surveyed, and as a result, no RORs could be issued to the villagers for their house sites in villages. This created a legal question. Govt. of Odisha issued a letter in 1978 and directed that *gramkantha paramboke* lands need to be assessed for rent in terms of individual possession. The revision settlement was started in 1985 and during this period some village sites were surveyed and RORs issued to individuals with *Gharabari* (homestead) status. However, majority of villages could not get any ROR in the absence of detailed survey and maps for individual occupants, were withdrawn for revision settlement. The current amendment to the OGLS Act & Rules 2010 made it clear that the families on GKP land were to apply for patta for their current house site within a stipulated date. As of year 2011-12 the Government of Odisha has made settlement of 18,859 acres of Gramakantha Paramboke / Nazul / Khasmahal / Abadi land in favour of 5,58,392 families. (**GOO, 2012**).

Under the Section 8 of Orissa Consolidation of Holdings & Prevention of Fragmentation of Land Act, 1972, some lands were earmarked for community use, which cannot be used for other purposes. Under Section 34 of the Act, *chakas* cannot be altered (*chakas* refer to consolidated plots) and no agricultural land in the locality can be fragmented. Under the Act fragmentation of land was declared illegal. However, the Amendment made to the original Act in 2012 said that nothing in subsection 1 & 2 of Section 34 (5) of the original Act shall apply to (a) Any land which is covered under the approval of Master Plan published under the Odisha Town Planning and Improvement Trust, Act 1956 or as the case may be, approved development plan published under the ODA Act 1982 and, (b) A transfer of any land for such public purposes, as may be specified, from time to time, by notification in this behalf, by the State Government.

Similarly, households occupying forestland are being provided with individual land pattas and settled under the FRA 2006. In June 2004, the Government of India made a significant admission in the Apex Court by maintaining that a 'historical injustice' had been done to the tribal forest dwellers of the country, which needed to be immediately addressed by recognizing their traditional rights over forests and forestland. This admission came just months after the eviction of about 168,000 families from over 150,000 hectares through a Government order in May 2002. This led the Government of India to introduce the Scheduled Tribes (Recognition of Forest Rights) Bill 2005 in Parliament in December 2005, and this was finally made into an Act in 2006 and is now widely known as 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006'.

The FRA 2006 provides for recognition and vesting of forest rights to Scheduled Tribes in occupation of forest land prior to 13th December 2005 and to other traditional forest dwellers who have been in occupation of forest land for at least 3 generations (75 years), up to a maximum of four hectares. These

rights are heritable but not alienable or transferable. Forest rights *inter alia* include the right to hold land and live on it under individual or common occupation for habitation, self-cultivation for livelihood and so on.

1	2	2	Individual land in rural areas is recorded and mapped.
			B: Between 70% and 90% of individual land in rural areas is formally recorded and mapped.

All de jure individual lands are recorded and mapped, while de facto rights are not always recorded and mapped. Major settlements and consolidation operations have recorded rural individual land. However, maps are available either of the old settlements that are not up-to-date or do not correspond to ground realities. Recent land distribution programmes have focused on providing titles without preparing sketch and cadastral maps. However, during registration process, in the state, a sketch map of the plot on a trace paper with boundary information is recorded.

Table 3 Khatas in Villages of different districts and addition of new records⁵¹

Type	District	No of Khata per Village	Total No of Private Khatiyani	No. of New Khatas	% of Plot Div/ new khata
Coastal	Cuttack	651	1,044,020	307,117	29
Tribal	Koraput	274	337,012	201,492	60
Irrigated	Baragrh	397	332,232	138,789	42
Urban	Khurda	616	770,758	261,419	34
	Average	484	621,006	227,204	41

The above table indicates the nos. of khata (indirect reference to individual land; a landowner may have more than one khata/khatiyani/RoR per Village) in four representative districts, and new individual lands that have been registered after survey and settlement. The average % of additions in records is about 40%. This is more in tribal areas because of more transactions related to sale/purchase and allotments. This indicates that while all these individual lands (old and new) have been recorded in RoR, about 40% new lands are not mapped, as the maps have not been updated.

There is no time limit for authority for revision of record. It is recommended that a time limit should be fixed by the Revenue Department for recording and mapping. There should be a mechanism also to implement. If the correction of record does not happen, a case should be filed within 90 days.

1	2	3	Individual land in urban areas is recorded and mapped.
			C: Between 50% and 70% of individual land in urban areas are formally recorded and mapped.

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⁵¹ As per Bhulekh records in February 2014 sourced from NIC, Bhubaneswar

In urban and peri-urban areas, faster subdivision and transfer of lands are not commensurated with change in land records, mostly in case of updating of spatial records i.e. map. A comparison of plots (parcels) as per Bhulekh database with that of digitized cadastral map (map as per last survey and settlement digitized by RDM department recently) of two villages in Bhubaneswar Municipality provided by RDM Department indicates the high variation between no of individual lands (private parcels) recorded versus mapped.

Table 4 Exampe of Increase in number of plots in textual record but not in spatial (map) records

Village	Cullturable	Unculturable	Common	Rakshit	Private	Total
Urban 1	2	-	-	22	660	684
Urban 2	12	-	3	16	264	295
Average	7	-	1.5	19	467	1,190

The Govt of Odisha in its letter no. 24350, dated 3rd June 2011 (by R&DM Dept.) issued an instruction on sale of agricultural land through plotted housing schemes for non-agricultural purpose without conversion under Section 8A of OLR Act. It was observed that in semi-urban areas, agricultural lands are being sold by builders through plotted schemes for homestead purpose without converting them under Section 8A of OLR. Therefore the types of land use changes actually, where as in records it remain different.

Following table provides an example of land use change that has taken place in field, but not has been reflected in textual or spatial records. Super imposition of cadastral map on satellite imagery (LISS IV) of recent dates indicate the encroachment of Govt land by private parties with land use change (cultivation or buildings), alongwith land use change in private lands which remain unrecorded in spatial and textual database maintained by the state.

Table 5 Land use change between Actual and Recorded

Village	Govt to Private (Cultivation)		Govt to Private (built up)		Cultivation to Barren/ Built up	
	No of Plots	Area (Ha)	No of Plots	Area (Ha)	No of Plots	Area (Ha)
Urban 1	36	12	90	30	290	10
Urban 2	35	7	41	17	287	23

1	2	4	<i>The number of illegal land sales is low.</i>
			B: The number of illegal land transactions is low and some are unambiguously identified on a routine basis.

As registration office doesn't require evidence of land ownership from the seller, many fraudulent transactions have taken place areas where land is in demand viz. in Bhubaneswar. Many lands in Bhubaneswar have been sold multiple times. Similarly the endowment land under 'Devottar' tenure belonging to temples have been found to transferred illegally including that of Lord Jagannath. To avoid these transactions, recently GOO has brought in a circular which stipulates production of land records during registration of land transaction.

Any transfer of land belonging to STs and SCs to people not belonging to STs and SCs without the prior permission of the competent authority is declared void and illegal as per Section 22 of OLR Act, 1960. In Fifth Schedule Areas of Odisha any transfer of immovable properties belonging to the STs to non-STs is illegal under Odisha Scheduled Areas Transfer of Immovable Properties Regulation 1956. Through progressive amendments made in 2002 to the OSATIP Regulation, transfer of land of STs to Non-STs was banned. The competent authority either *suo-moto* or on a petition by the interested person or on an information received from Gram Panchayat in that behalf, can declare such transfer as illegal and shall restore the land to the lawful land owner or his/her heirs with intimation to the Gram Panchayat. It also provides for eviction of persons in forcible occupation of the land belonging to any tribal and restoration thereof. Besides, 'a member of the STs shall not transfer any land to a member of STs if the total extent of his land remaining after the transfer is reduced to less than two acres in case of irrigated land or five acres in case of irrigated land.' However, it is not at all clear whether this will be applicable in cases where the government is acquiring land for public purpose. If yes, it could be interpreted that the Regulation is actually addressing on land-to-land compensation (Singh, 2005). Besides, all transfers from STs to non-STs during 4th October 1956 and 4th September 2002 must prove the legality of the transfers to the Sub-collectors concerned by 04/09/2004. Otherwise, they will be treated as illegal holders and persons in fraudulent possession of tribal land and therefore be liable to fine up to Rs. 5000/- and two years of rigorous imprisonment.

Table 6 Progress achieved under Regulation 2 of 1956 (from inception to March, 2007)

No of cases instituted	No of cases disposed	No of ST beneficiaries	Extent of land ordered to be restored (in ac.)	Extent of land actually restored
1,06,547	1,05,578	65,660	57,162.21	56,519.95

Source: (GOO, 2008)

Very recently, the State Government has proposed amendment to the OSATIP Regulation 1956 which would enable transfer of tribal patta land to non-tribals, though in specific cases. Government records reveal that in the tribal preponderant districts of Odisha about 48% are forest land and about 84% of the land in schedule areas belong to the Government under forest and revenue departments, and the rest are private or *ryoti* lands which are usually very small holdings. Since in most parts of the scheduled areas, tribals have been customarily depending on forest and other revenue land for which they do not have patta, such deregulation might have serious implications on tribal land ownership in the scheduled areas.

Section 22 of OLR, Act 1960 made any transfer of holding by a raiyat belonging to STs to non-STs shall be void only except it is made in favour of a person belonging to STs or SCs to SCs. If the land is transferred by STs/SCs to Non-STs/SCs without permission of the competent authority or Revenue Officer (RO) in areas other than Scheduled Areas, that transfer shall be void too. The competent authority shall act *suo moto* or on the application of interested persons for cause of restoration of the concerned property to

the transferor or his heir,(if it has been transferred without prior written permission of the competent authority or if the land has been under un-authorized occupation by non-SC and non-ST persons under Sections 23 and 23A of the Act). However, the experience in rural and backward tribal areas shows that, the *suo moto* initiative by RO or any competent authority is not practically followed. The actual number of cases found in government records is extremely low in the actual ground. Restoration of land means actual delivery of possession to the transferor or his heir. However, the restoration is made in official papers only but the hand-over of the possession over the property is not affected in the field. This is due long persisting local power structure or other local political dynamics.

The relevant information on detection and restoration of land u/s 23 & 23A of OLR, Act 1960 in favour of the ST and SC beneficiaries, is given in table below.

Table 7 Transfer and restoration of land u/s OLR act, 1960

Year	No of beneficiaries		Area of land ordered for restoration(Acre)	
	SC	ST	SC	ST
Till Nov. 2012(since inception)	25,410	14,115	17,917.054	13,254.872

Even then, the status of the cases of illegal transfer of tribal land reported is very large as per the Government record. During 2011-12 (till Sept 2011) the nos. of cases instituted is 34702 involving land areas of 32824.77 acres alienated to non-tribal persons, of which 27905 nos. of cases involving land area of 23641.39 acres have been disposed of⁵².

Table 8 Progress Achieved under Regulation 2 of 1956 (till Dec, 2012)⁵³

Year	No. of cases instituted	No. of cases disposed	Extent of land ordered to be restored(Acre)	Extent of land actually restored(Acre)
Till 2010	109769	109746		59017
2010-11	7307	1341	1455	
2011-12	34702	27905	32825	23641
Mar-Dec12	53353	46469	43649	34497
Total	205,131	185,461	77,929	117,156

Although the role of Gram Panchayat well addressed in the regulation, it does so tangentially, sans any real powers exercisable by Gram Panchayat or Gram Sabha. Be that as it may, there is no awareness

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⁵²Annual Activities Report 2011-12, Revenue & Disaster Management Department for the Year, Government of Odisha, page-23-24.

⁵³Annual Reports of Revenue Department, Government of Odisha

created about the role of such grassroots democracies in the prevention of tribal land alienation and its remedies in scheduled areas or in safeguarding and managing the village commons or community resources authorised under PESA as per which Odisha Gram Panchayat Act 1964 was amended in 1997. Even, there was found a conspicuous lack of knowledge among the officials Departments dealing with Revenue, Tribal affairs, Panchayat Raj etc about any such role of Gram Sabha or GP to deal with tribal land transfer under Regulation 2, 1956 and management of community resources under PESA. The details of this background are already mentioned earlier. As a matter of fact, there has taken place a large-scale informal mortgaging of the scheduled tribes land which remained under *de facto* possession and cultivation by *sahukars* or moneylenders. This seems to be a major factor of loss of lands by the tribals.

Besides, it was invariably noticed that a highly relevant law like PESA and the role of Gram Sabha specified therein were not referred to in the orders and decisions of Courts or Revenue authorities while dealing with the illegal land transactions happening on a rampant scale in the Scheduled Areas.

1	2	5	<i>The number of illegal lease transactions is low.</i>
			B: Existing legal restrictions on land leases, if any, are clearly identified, justified and accepted by all parts of society, but not fully understood by land users, so that compliance is partial.

There is defined legal restriction on land lease in both scheduled and non-scheduled areas and adequately clubbed with stringent amendments. However, lack of awareness, lack of effective drive and monitoring at the level of governmental authorities have resulted in huge occurrence of illegal leases.

Many legal restrictions to land leases, particularly in urban areas like Bhubaneswar, are not clearly identified, justified and accepted by all parts of society,

Though the law makes provisions for the protection of such allottees, such cases are rarely reported and *suo moto* action is taken for the amount of illegal land lease that takes place is more than that reflected in government records?

The changing legislations also made the system more complicated. For example some of the bona fide cases of transfer made within the framework of previous laws became illegal after amendments were made to those laws. For instance, the OSATIP Regulation 1956, following its amendment made in 2002 rendered several of the bona fide transactions made since 1956 illegal.

1	2	6	<i>Women's property rights in lands as accrued by relevant laws are recorded</i>
			D: Less than 50% of the cases are effectively recorded.

The Government of Odisha has directed to issue joint patta in the name of both husband and wife, while settling the govt wasteland, house sites and ceiling surplus lands with landless persons (through a series of administrative circulars commencing with letter no 48425 dated 19th Aug 1987). In one of such circulars i.e. letter no. 73774/R dated 27-12-89, the Govt observed that the Tahasildars are not issuing pattas/ intimation slips jointly in the name of husband and wife. Reiterating the earlier order, the letter emphasized that in case of widow or widower, patta/ intimation slip may be issued in the name of the individual applicant and also directed the Tahasildars to return the applications received for the assignment of land to the applicant if the same has not been signed both by husband and wife and also with the instruction that they apply jointly. Further, in letter no. LD-25/2008-28733/R&DM dated

03.07.2008, the govt while enhancing the limit of distribution of Government Land for housesite under Vasundhara Scheme from 4 decimals to 10 decimals, the government also have reiterated that the lease of homestead land needs to be made jointly i.e., in the name of the wife followed by the name of the husband.

In the Settlement of Donger Land exclusively in favour of Tribal Women the Government in its letter no S-23/93-17783/R dated 21st April 1994, the then Revenue and Excise Dept had ordered that the Donger land should be recorded exclusively in favour of Tribal Women in Kashipur Tahasil areas by the Settlement authorities as settlement of such land in favour of the tribal people has been taken up recently for the first time in the state. The Tahasildar should suo motu settle the said land in favour of the tribal women. It also ordered that the aforesaid instruction should be followed in respect of all the Donger lands relating to Tribal Sub-plan area of the state where settlement of such land has to be taken up in future for the first time by the settlement authorities.

In the year 2008, in the matter of issue of tree pattas and Dafayati rights, the Chief Secretary in his letter no GE (GL)—23/2008/51607/R&DM dated 11.12.2008 has issued a circular for issue of tree pattas and recognising 'dafayati' rights of ST persons in tribal areas to the maximum extent of 2 acres cashew plantations per family, in which the names of both husband and wife of the beneficiary family need to be recorded.

The law intends to give women the right to share equally in decisions over transfer of land, but the law is not effective since it does not protect them against violence in the hands of their husbands or in laws. While recording of lands in the name of women and enforcing the government instructions on joint title, a patriarchal mindset also works among the concerned government officials. However, there are some positive changes observed in the process of recognition of rights in the name of women or jointly in the recent days in the process of FRA implementation and the initiatives of the civil society organisations like Landesea. This could happen because of statutory compulsion arising from the very format of the Title for Forest Land under Occupation annexure no. No.II to Forest Rights Rules 2007 under its Rule 8(h) where the Title needs to be issued in the name of both spouses and the names of both father and mother are required to be mentioned inter alia.

There are three ways that a woman can acquire rights over land: (a) from government allocation, (b) through inheritance and (c) by purchase. With regard to government land allocation, a single woman may acquire the land in her individual name while a married woman will acquire the land jointly in her name and the name of her husband. Of course, any land purchased outright by a woman has to be recorded in her name irrespective of her marital status. However, Inheriting either paternal or husband's property under Hindu Succession Act 1956 involves a process of property partition that is invariably cumbersome and complicated because each family member is likely to stake multiple and conflicting claims.

Although inheritance laws provide for daughters and daughters-in-law to receive rights over ancestral or in-laws' property, the state does not act proactively on behalf of the disadvantaged women, who even if willing are incapable of enjoying such rights, due to lack of knowledge, access and resources. The machinery of land administration at the local level being weak and gender-insensitive is yet to be capacitated to take up partition cases to ensure the women's due share in the inherited property. Whenever a widow or a deserted woman dares to file a partition suit, the powerful patriarchy on both sides ensures that the case finally lands up in the civil court since the sub-district land administration officials do not have the authority to decide these cases. Partition cases in civil courts take almost decades to resolve and by the time justice is rendered, the long delay has effectively denied any justice to the petitioner.

Amidst a wide range of progressive land reform laws, significant biases prevented women from acquiring land rights. Scholars believe that during the initial days of land reforms, secure tenure to the *raiyyat* (farmer) was given importance over the land rights for women, although Hindu Succession Act 1956 which granted Hindu women equal ownership in rights over agricultural land, if not over homestead, had been introduced by then. The Amendment of 2005 made to the HS Act of 1956 has granted the daughters equal share in the co-parcenary property that includes both agricultural and homestead property, the ground reality shows that neither the concerned women themselves nor the revenue courts are any way serious to get this new right effected.

Women's land rights have often been subsumed within the rights of her husband. In reality, she is not counted as an owner in her own right, making her disproportionately vulnerable to losing her entitlement over land⁵⁴. Under the law that prevents registration of land in the name of fictitious owners, if land is registered in the name of the wife or daughter, it is assumed to belong to her husband or father⁵⁵.

In October 2002, the Government of Odisha, in order to give preference to widows, unmarried women, and women living below poverty line, decided that at least 40% of ceiling surplus land be earmarked for distribution shall be allotted to women. The government further stressed that while distributing such land, at least 40% should be allotted to women belonging to the STs & SCs and disadvantaged groups that comprise large sections of the poor in India. The Land Ceiling Act (1974) (Check it, if it is Urban Land Ceiling and Regulation Act 1976, enacted by Parliament for application to some States including Odisha, but it was repealed in Odisha subsequent) classified the family unit as comprising husband, wife and up to three minor children. While adult sons are considered separate family units, the law ignores unmarried adult daughters. Regarding them neither as members of the parents' household or as constituting a separate family unit in their own right, nothing has been specified. The Odisha Tenancy Act (1913) now repealed, had given priority to males (from the father's side) in inheritance and allowed widows to inherit only in the absence of male heirs. However, the Hindu Succession Amendment Act 1956 as amended 2005 makes the daughter an heir of coparcenary in her own right by birth in the same manner as the son. It is already mentioned that the OLR Act 1960 allows widows, divorcees and unmarried women, considered as 'persons under disability' (Section 2-21) like the privileged raiyats to lease their land for cultivation, when leasing is otherwise prohibited. Priorities are also given to women as recipients of distribution of ceiling surplus land. Among them, landless widows and unmarried women up to 30 years of age are listed as beneficiaries and get high priority.

The OLR Act has some provisions which are based upon gender inequality. The Section 37 of the Act defines family as the individual and his or her spouse and children. However, a childless widow is still not considered to be a member of her deceased husband's family. Similarly, under the definition of family in the OLR Act, a mother is not a member of her son's family, although a son is a member of his mother's family. Since the family in relation to the mother would include the married daughter, it also needs to include widowed daughter (*Maharani Bewa v. State of Orissa*, 1985).

Moreover, although the state government has from time to time introduced progressive policies and programmes to allocate land to the landless, none has specifically targeted women, especially single women.⁵⁶ For example, the Vasundhara programme, introduced in 2005 to allocate government land to rural families who were without title to a homestead plot, did not specifically recognize single women,

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⁵⁴ *Kunjalata Purohit v. Tahasildar, Sambalpur and others*, 1985

⁵⁵ The Benami Transaction Prohibition Act, 1988.

⁵⁶ For the purpose of this paper, single women are defined as women without marital protection, therefore, deserted and abandoned women, widows, divorcees and unmarried women over the age of 30 may be considered as single women.

even when they otherwise satisfied the programme's eligibility criteria.⁵⁷ A family is eligible to receive land whether the head of the household is a man or a woman.⁵⁸ But a single woman staying with her father or brother is not considered as a head of household, therefore not have a separate family eligible to get land.

The current land distribution schemes do not identify such single women as families and therefore these schemes do not make them eligible as beneficiaries for land allocation. The implicit presumption in the law is that if a single woman is living within a joint household then she is taken care of and enjoys a share of the family's resources. However, in India, single women are typically viewed as not having a right to family resources and may not be fully cared for by the family. Possibly, only when the family throws her out, she becomes a separate family and therefore eligible to get land. This raises therefore a pertinent question.

Therefore, though the spirit of Constitution along with the Hindu Succession Amendment Act 2005 vouchsafes for equal rights of women in property, in ground reality the women face formidable barriers in terms of access, procedure, social milieus and knowledge in availing the secure land rights, especially while inheriting the family property. The relevant state laws have not been amended till today by incorporating the progressive, gender-just central legislations.

Good practice

In 2009 Landesa (Rural Development Institute) worked with government of Odisha to improve implementation of the state's Vasundhara homestead allocation programme by way of providing additional capacity to the Revenue Department by appointing local youth as Community Resource Persons (CRP) to assist land administrators in implementing the state programme. While facilitating the programme in the Ganjam district,⁵⁹ in April 2010, Landesa designed and established an exclusive cell at the Tehsil (sub-district) level to address women's land issues, and to undertake an assessment of women's access to land in some selected villages in the district.

The district administration named the cell as Women's Land Rights Facilitation Centre (now known as Women Support Centre) having an unique institutional mechanism to operate within the existing land administration structure to help to ensure, so that rural single women could obtain homestead land. It was piloted in Khallikote tehsil in 2011 in Ganjam district with the supervision of the Tahasildar and a lady Revenue Inspector served as centre's facilitator or nodal officer, who assumed primary responsibility for its operation.

In April 2012, the district administration gave a new dimension to the centre by enhancing the scope of its operations and extending its objectives for coordinating delivery of livelihoods services and social security to which women are entitled according to different government programmes. With the aim of providing land and other livelihoods as well as social security benefits to single women and women-headed households, the centre was redesigned and rebranded as Women Support Centres (WSCs) and

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⁵⁷ The criteria require that the household must be nuclear, must share one kitchen, must have an annual income less than Rs. 24,000 per annum, and must own less than one standard acre of agricultural land.

⁵⁸ In a joint family situation as long as the married sons are staying with the father, they will not be considered as separate families. Therefore, those married sons are not eligible to get a house site under Vasundhara. Similarly, a woman-headed household may be considered as a Vasundhara beneficiary.

⁵⁹ Ganjam, a southern district of Odisha, is primarily an agrarian district with maximum homeless as well as Vasundhara beneficiaries. Though Ganjam has a fairly good network of micro-irrigation systems, a sizeable chunk of its rural populace migrates for about 6-8 months a year for search of work in states like Gujarat. The district is also marred by high rate of liquor consumption and gambling that is invariably sustaining a land mortgage market and a vibrant rural credit operation through local *sahukars* (moneylenders). It is understandable that when Vasundhara patta was being distributed, in the absence of migrating men, the joint patta was given in the name of women.

expanded to the entire district. At the moment, 76 WSCs are in operational status in the districts of Ganjam, Mayurbhanj, Koraput and Kalahandi where initial assessment reveals 15-20% landlessness amongst single women. The centres of entire district comprising of 23 sub-districts are designated as Women Support Centres (WSCs).

While land continues to be the major focus, the WSC has been developed as a single window delivery institution to enhance women's improved access to other livelihoods and social security schemes. The Anganwadi workers were trained to provide additional assistance to the local land administration officers to identify eligible single women and women-headed households. They used a pre-designed survey format to identify eligible single women within a very short period. The processed data then goes to the respective sub-district land officials and rural development officials to initiate land allocation and link the women with relevant government programmes that help land owners to build houses, and install sanitation facilities, etc. In each of the WSCs, a nodal officer, who is necessarily a woman land administration official, is placed to ensure that relevant data that comes from the Anganwadi workers are entered in the specific formats, compiled and provided to both the land officials and rural development officials for necessary action.

4.3 Summary of Issues around Land Rights Recognition

a) Land Revenue Systems and Legacies

- i. Vast, archaic & complicated revenue laws and systems, resulting in – inaccessible, time consuming, rent-seeking and complex governance
- ii. Diverse land revenue administration inherited from different colonial systems
- iii. Two broad tenurial systems - *zamindari* (with layers of 'intermediaries' between the landlord and cultivator) & *ryotwari* (peasant-proprietor)

b) Land Reforms and Impacts

- i. Unsatisfactory results of land reforms
- ii. High prevalence of unrecorded tenancy/ illegal lease transactions Sharecropping being ubiquitous, its adverse impact on crop production
- iii. Very limited success of ceiling surplus land distribution strategy
- iv. Tardy implementation of land regularization and distribution

c) Land Rights recognitions

- i. Identification of concealed tenancy and recognition of rights of tenants
- ii. Lands above 10 degree slopes not surveyed and settled
- iii. Further alienation of land settled with STs through private transactions
- iv. Lack of proper recording of occupation rights through survey and settlements
- v. Inadequate survey & demarcation of Particularly Vulnerable Tribal Group (PVTG)'s lands over which rights are not settled
- vi. Titles provided under FRA without proper maps of the forest land; correction of RoR and Map for forest land in revenue villages for which titles have been issued under FRA as per letter of RDM department to Member, Board of Revenue

- vii. Once recognised collective use rights such as kudki patta not working at ground level
- viii. Gray areas around recognition and recording of women rights over property; Recognition granted only in Hindu Succession Act 1956, but not enforceable on ground.

4.4 Analysis and Recommendation

Based on the issues raised while analyzing the rationale behind scoring from the situation of present legal and institutional set up, the following recommendations are enlisted for prioritized and long-term actions

The situation of moderate land tenure recognition in the state can be refined by

- i. Consolidation, consultation and implementation of tenancy reforms recommendations made by different forums in the past (and the state level workshop recommendations held at the NCDS in December 1999 sponsored by the Revenue Department, govt. of Odisha in particular)
 - ii. Bringing in legislations to regulate and facilitate land lease market to avoid illegal lease transaction
 - iii. Recognizing customary rights of tribal communities including those over sloping land (in line with the Orissa Tribal Development Project-OTDP) in Kashipur and squarely addressing landlessness in tribal geographies
 - iv. Settling land rights in tribal geographies before taking up any land development plans and programs viz. through Watershed Development Programs and MGNREGS etc. in line with the Orissa Tribal Empowerment and Livelihoods Project (OTELP)
- b) Access to land records and maps though brought under Odisha Right to Public Services Act 2012, it is not effective yet at ground level due to some in-built shortcomings in the ORPS Act Management of Land database
 - c) Introducing 'gender' parameter in recording of information in Record of Rights to help tracking of progress with respect to women land rights.

Some key policy recommendations that emerged from the panel discussions are

- a) Legal Reform
 - i. Harmonizing the contradictions between different legal instruments of land governance, old and new such as the old laws like OSS Act 1958, OGLS Act 1962, OLR Act 1960, OGP Act 1964, OPLE Act 1972 etc being the old ones, and 73rd and 74th Constitution Amendments of 1992, PESA Act 1996, FRA 2006 and LARR Act 3013 Bringing in a common revenue code by consolidating the legal-institutional frameworks
- b) Institutional Reform
 - i. Developing an enabling mechanism with the application of modern technologies for involving Gram Sabha/GPs, SCSTs, PVTGs, Women and other marginalized sections with a view to checking land alienation and effective distribution and monitoring of Bhoodan and Ceiling Surplus land and Waste land among the eligible households.

5. PANEL 2: RIGHTS TO FOREST AND COMMON LANDS & RURAL LAND USE REGULATIONS

5.1 Context Analysis

5.1.1 Forest land in Odisha

Forest is an important land based natural and renewable resource whose importance is being recognized more and more globally, nationally as well as locally. India is one among the top ten countries with rich forest biodiversity. The country's forest cover is only 21.23% of the total land area (IFSR 2013). More than 273 million people have dependency on forests for their livelihood and some for subsistence needs. Per capita forest cover is about one tenth of the global figure of 0.6 ha per capita. However, in spite of vast pressure forest cover has stabilized for last decade as per the biennial forest cover assessments undertaken by Forest Survey of India (FSI). The state of Odisha accounts for 7.53% of the country's recorded forest area and 7.21% of the country's forest cover. It also has the largest number of forest fringe villages (29,302), which is 57% of its villages

Extent of Forests: There has been gradual changes in the national forest policies with regard to claims of forests vis-à-vis other land uses⁶⁰.

Under the federal system of Governance "Land" is included in the "State" list and "Forests" which was originally in the State List was brought on to the concurrent list by a constitutional Amendment in 1976. Thus, whereas land & land reforms are under the legislative and administrative jurisdiction of the States, both the Union and the state governments have jurisdiction over "forests". The Indian Forest Act 1927 and Madras Forest Act 1882 were applicable in Odisha till enactment of Orissa Forest Act in 1972. Accordingly these provided processes and procedures for notification of Reserve Forests, Protected Forest and Village Forests without defining "Forest". The Supreme Court (SC) of India in their Order dated 12-12-1996⁶¹ defined forest for the purposes of FOREST CONSERVATION ACT 1980 as: "the word, "forest" must be understood according to its dictionary meaning covering all statutorily recognized forests, whether designated as reserved, protected or otherwise and would also include any area recorded as forest in any Government record irrespective of ownership. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act." Then the SC has directed for identification of areas of all forests with geo-reference district forest-maps containing the details of the location and boundary of each plot of land that may be defined as "forest" for the purpose of FOREST CONSERVATION ACT, 1980.

In Odisha, during post Forest Conservation Act 1980, 41,891.25 ha of forest area has been diverted for mining, irrigation, power, roads, railways, industries and defence⁶² till March 6, 2013. Besides, 3,25,449

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⁶⁰ The first-ever national forest policy enunciated in 1894, during British period, provided for release of forest area for cultivation. Recognizing the intrinsic claims of forest over land, the first national forest policy of the Independent India, 1952, prescribed a national goal of 1/3rd of total land area to be maintained as forest. However, diversion of forest lands for extension of cultivation, and also for various developmental projects continued. In Odisha, about one lakh ha of forest area was diverted till 1980. With effect of Forest Conservation Act, 1980 a restriction on diversion of forestlands for non-forest uses without prior approval of the Government of India was imposed.

⁶¹ WP (Civil) 202/1995 in T.N. Godavarman Thirumalpad vs. Union of India

⁶² Business Standard, March 29, 2013 Kolkata/ Bhubaneswar

individual claimants have been granted heritable but inalienable titles covering 208,455.9 hectares of forest land under FRA 2006. It is important to note that the diversion under FOREST CONSERVATION ACT and issue of titles under FRA do not decrease in the area of forest since the legal status of such land would remain as “forest” despite actual change in land use.

Forest Management: Scientific management of forest in India is about 150 year old and was based on the principles of Sustainable Management of Forests (SFM) and gradually, more and more areas were brought under approved Working Plans⁶³. Initially major focus of management was on timber and prescriptions aimed at achievement of sustained yield of timber after meeting the demands of local people in respect of fuel wood, small timber, fodder, and grazing. The 1988 National Forest Policy brought in a paradigm shift in the management of forests. Two important outcomes of this policy was the beginning of formal community participation through JFM and a distinct shift from timber to livelihood and NTFP centric forest management.

JFM: MoEF issued a circular on 1st June 1990, popularly known as JFM Resolution, for involvement of village **communities in protection, conservation and development of degraded forests, and usufructory benefits** (MFPs – now called NTFPs/NWFP, grasses, lops and tops etc. and share in proceeds from sale of trees at maturity) to the members organised into village institutions (JFM Committees) specifically for forest regeneration and protection. JFM approach followed in India is a typical example of adaptive/incremental process, since it has gradually evolved over time and is still evolving towards the achievement of its goal (SFM) as is evident from the issuance of revised/re-revised State JFM resolutions based on field experiences⁶⁴. Odisha has always been pioneer in the JFM movement and in fact, brought out first JFM resolution (in 1988) even before the 1990 resolution of the Govt of India

The forests of Odisha are rich in NTFPs; many of them have been harvested commercially under different working systems/arrangements, and contribute significantly towards livelihoods for forest dependent communities. With increasing importance of MFPs/NTFPS in the state’s economy and welfare of the people, State Government brought out legislations for regulating harvesting/collection and trade related activities starting with Orissa Kendu Leaf (Control of Trade) Act in 1961 followed by the Orissa Forest Produce (Control of Trade) Act 1981. The trade in Kendu Leaf (KL) continued to be dominated by the Private KL contractors, until its nationalization in 1973 and since then production and sale of KL is continuing under a joint scheme of operation under the overall supervision of (KLAC- Kendu Leaf Advisory Committee) and (KLCC- Kendu Leaf Coordination Committee)

NTFPs other than KL and forest produce specified under the provisions of the Orissa Forest Produce (Control of Trade) Act 1981, continued to be worked through annual and short term leases till late 1980s, when Utkal Forest Products Ltd. (A joint-sector company comprising a private trader and State owned IPICOL- Industrial Promotion and Investment Corporation Limited) was granted monopoly lease of 32 NTFPs for a period of ten years which opened the scope of commercialisation of several obscure NTFPs and provided scope for collection of any of the 32 items of NTFPs by the state owned TDCC (Tribal Development Cooperative Corporation) in the areas where Utkal Forest Products Ltd (UFPL) was not interested.

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⁶³A ten year management plans containing detailed description of the forests areas covered, rights and concessions and privileges of the people in surrounding villages, detail condition of forest resources, analysis of past management practices and results thereof, and prescription to be followed during the plan period.

⁶⁴ Important changes in JFM resolutions include: extension for degraded areas to good areas, eligibility criteria for memberships, representation of women on Executive Committees, representation of local Panchayati Raj representatives, and devolution of powers from Forest Department officials to community members.

73rd Constitutional amendment 1992 mandated passing over of resources, responsibility and decision making in respect of 29 subjects including Minor Forest Produce to the Panchayats comprised in a three-tier structure of local self-government. Since the provisions of 73rd Amendment did not automatically apply to the Scheduled areas as per Article 243-M of Constitution, PESA Act that is Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996 was enacted in December 1996 which extended the provisions of 73rd Amendment to the Scheduled Areas in nine states including Odisha, subject to a number of exceptions and modifications mentioned therein. PESA provides that a State Legislature shall ensure to endow inter alia the Gram Sabha and Panchayats with the ownership of minor forest produce (Section 4-m-ii).

In response to both 73rd Amendment and PESA 68 MFPs, which were earlier leased by the Government, were freed from the control of Forest Department for hand-over to the Dept of Panchayat Raj by way of the Forest Department's Resolution no – 5503/F & E dated 31-3-2000. One more item (sal seed) was added to the list of MFPs subsequently. Then Orissa Gram Panchayats (MFP Administration) Rules were promulgated in November 2002, through which the responsibility of fixing the Minimum Procurement Price (MPP) was vested with the Panchayat Samiti and that of registering the traders with Gram Panchayat. Accordingly, the MPP so fixed by Panchayat Samiti, can be modified by the Gram Panchayat subject to ratification by Gram Sabha (Rule 5). As per the said Rules there is no restriction on movement of MFP items inside the state. However, the concerned Administrative Department i.e. the Panchayat Raj Department did very little to build capacities of Panchayats for proper implementation of OGP (MFP Administration) Rules, that required above all coordination with the State Forest Department (which administers/manages forest areas producing most MFPs).

5.1.2 Village Common lands in Odisha

'Commons' in reference to land means common property land resources within the boundary of the village⁶⁵. Common Property Resources (CPR) include all resources like village pastures and grazing grounds, government forests, waste land, common threshing grounds, watershed drainage, ponds and tanks, rivers, rivulets, water reservoirs, canals and irrigation channels. It has wide and multifarious role in the life and economy of the rural population besides their ecosystem benefits. The socio-cultural and economic life of rural Odisha is so interconnected and constructed in such a manner of interdependence that any loss/decline of village common lands and common resources severely affect the very foundation of rural social and economic systems. With the extension of state control over these resources, CPRs available to the villagers declined substantially over the years⁶⁶ due to individualisation, industrialisation, urbanisation, encroachments and illegal regularisation, etc. Besides, over-use and over exploitation of existing common resources has led to deterioration in its quality. The average size of the common village lands per households in Odisha is 0.28 ha⁶⁷.

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⁶⁵ Report No. 452: Common Property Resources in India, Jan - June 1998, NSS 54th Round, NSSO, Govt of India, December 1999, p.5

⁶⁶ ibid

⁶⁷ ibid, p.A-3

Table 9 Decadal Land Use trend & status of common land in Odisha (area in '000' hectares)

Year	Forest area	Misc. trees, groves	Pasture & grazing land	Cultivable waste	Non-agril. use	Barren & uncultivable	Current fallow	Other fallow	Net area sown
1990-91	5476	859	726	597	746	499	150	214	6304
2000-01	5813	482	443	392	999	843	430	340	5829
2010-11	5813	342	494	375	1298	840	773	229	5407

The gochar lands (pasture and grazing lands) seem to have declined very fast from 726, 000 ha. in 1991 to 494, 000 ha in 2001. This is in coincidence with the period of liberalization and opening of the public land for corporate investment, industrialization and other development projects.

As per analysis of Bhulekh (<http://bhulekh.ori.nic.in>) data maintained under NLRMP of Revenue & Disaster Management Department of 30 districts (317 Tehsils as per entries as of Feb 2014)⁶⁸, the average percentage of land under Gochar and village forest is 3% each in Odisha overall (in 2013). However, there is variability across districts in figure 5. Gochar land as per ORISSA GOVERNMENT LAND SETTLEMENT Rules 1983⁶⁹ should have been around 5% & village forest⁷⁰ around 10%.

In Odisha, nearly 60 % of the 1 million ha. used for development during 1951-95 were CPR (Fernandes and Asif 1997)⁷¹. In comparison to CPR constituting 58% of the land acquired for NALCO in the tribal dominated Koraput district, only 18 per cent of the land acquired in the non-tribal Angul district was commons (Fernandes and Raj 1992: 91.4). Among the lands allotted by IDCO more than one third

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⁶⁸ The data are as per entry in the Bhulekh site and may include some errors in entry and may not be complete

⁶⁹ As per OGLS Rules 4 (2) (i) in every surveyed village which is not included within the limits of an urban area, five per cent of the effective area of the village shall be set apart for pasturage subject to availability of suitable Govt. land; (ii) in every un-surveyed village, land for pasturage shall be set apart at the rate of one acre for every fourteen inhabitants of the village, and if the village is un-inhabited; reservation for pasturage, shall be made at the rate of one acre for every 3 persons having land in the village, subject to availability of suitable Govt land.

⁷⁰ Gramya Jungle is owned by the Revenue Department, but the provisions of FOREST CONSERVATION ACT, 1980, apply on these lands, prohibiting their diversion for non-forestry purpose. As per the Order of Govt of Odisha in 1966 dated 28 Jan bearing the instruction issued for reservation of land for various purposes, 10% of the effective village area is reserved as Gramya Jungle for the exercise of the rights and privileges of the villagers. Protected forests also come within the village boundary managed by Forest Department and owned and controlled by Revenue Department. These are recorded in the revenue records as reserved land (village forest/gramya jungle), cultivable or uncultivable wastelands – patra jungle (scrub forests), jhati jungle (forest with minor crops), pahad and so on (Social Ecology of Forest Resources By B. B. Malik, 375 pages, Gyan Books, Orissa, 2004).

⁷¹ Similar findings in Jharkhand in eastern India (Ekka and Asif 2000), in Goa in Western India (Fernandes and Naik), in West Bengal (Fernandes, et al. 2006) and in Assam (Fernandes and Bharali 2006). Even in Kerala, with just around 1 per cent tribal population, most lands acquired for major schemes such as the Idukki dam are CPRs and the DP/PAP were tribal or Dalit (Murickan, et al. 2003: 112.13); in Andhra Pradesh around 28 per cent of the 3.2 million DPs/ PAPs during 1951.95 were tribals, out of 24.4 million acres acquired, 6.68 per cent were forests and 25.39 per cent were common revenue land (Fernandes, et al. 2001: 57)

constitutes public (Government) land, percentage of which is higher in the four industrialized districts⁷² where almost half the lands were allotted (by IDCO). Encroachment of Government land is also very high in Odisha. Audit report of CAG (Civil, 2011) in respect of Revenue and Disaster Management Department observed that prevention of encroachment by Tahasildars was poor and deficient resulting in 1.51 lakh acres of land remaining under encroachment as of November 2011. As per Mearns and Sinha (1999), land in Odisha may be purchased, inherited, rented (leased), or in the case of public land and the commons, encroached upon.

The situation prevailing in the ground shows large scale encroachment on village common lands out of which major chunks have been under the *de facto* use and control of vested interests and unscrupulous elements and a small fraction of the same by the landless and homesteadless households. Though these facts are not officially admitted, but the officials admit off the record that there are only a very few patches of village commons left without encroachment.

Figure 7 Land under non-agriculture use in Odisha since 1990 (in thousand ha)

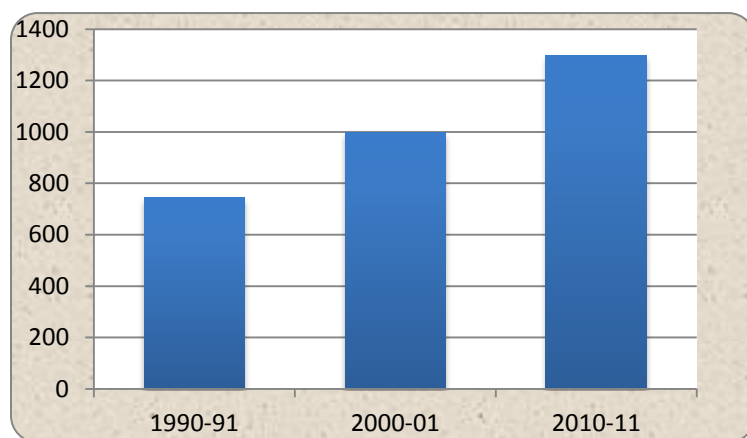


Figure shows the land utilized for non-agriculture purpose since 1990-91, the beginning of the era of globalisation and liberalization, for land and mineral based development projects for which largescale diversion of forest lands and other commons took place along with acquisition of private land. The land under this category of use also includes the conversion of agriculture lands for housesite, buildings and urbanisation, etc.

Legal Status of Common Lands and Issues related to classifications

Common village land or ‘commons’ land refers to common property land resources within the boundary of the village and was formally held

Village common & government land under encroachment: An example.

In Gourigaon, an OTELP watershed village in Kandhamal district, during the ground survey it was found that government lands and village common lands including major chunks of village forest land (within revenue boundary) were under encroachments and cultivation. Of the total 197 acres under permanent cultivation in the village 95.17 acres are government lands. Of the 95.17 acres, 76% was forestland and 24.3% non-forest category, which included Rakhita and Sarba Sadharana categories. The similar situation found in another Watershed village of Kalahandi district where village common lands was under encroachments. The legally defined common land categories (Rakhita and forest, both commons) were under encroachments in five villages under a single watershed, which was more than 120 acres out of 269 acres of govt land and under cultivation, which included AJA Non- Forest (20.47), Rakhita (20.44), Rakhita Forest (22.17), AJA Forest (58.90) and AAA (uncultivable waste) (147.03). These were not identified in official revenue encroachment registers. Therefore, it is difficult and challenging to conclude anything regarding the *de facto* and *de jure* situation of the village common lands.

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⁷² Jajpur, Angul, Jharsuguda and Jagatsinghpur.

by village panchayat or community of the village⁷³. The Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 defined “Communal land” (i) in relation to estates governed by the Madras Estates Land Act, 1908, (land of the description mentioned in Sec. 3 (16)-(a) or (b) of the MEL Act) and (ii) land recorded as *gochar*, *rakshit* or *sarbasadharan* in the record-of-rights or waste lands which are either expressly or impliedly *set apart* for the common use of the villagers, (whether recorded as such in the record-of-rights or not) in relation to cases governed by the Orissa Tenancy Act, 1913 (B. & O. Act 11 of 1913).

Orissa Government Land Settlement Rules 1983 (Section 2a) defines “Communal in respect to a land means a land which is used by any village community or any section thereof for a communal purpose like burying and cremating dead bodies, celebrating public festivals, holding melas or common worship and the like without any interference from anybody or paying any fees for the purpose”.

In Orissa in revenue village, on an average approximately 70 % is private land, and 30% is in different categories of government lands. Among the categories of government land the clearly defined common lands namely *gochar* and village forest (*gramya jungle*) measure respectively 3.14 and 2.93 percent to the total revenue land. The percentage of *gochar* land to the total govt revenue land is 10.52 and village forestland 9.8 percent. As per definition of Common land under Section 2(a) (ii) of OCF & PFL (Prohibition of alienation) Act 1948, the Rakhita (reserve) and Sarba Sadharan lands come under common lands. The percentage of Rakhit and Sarbasadharan lands constitute 11 percent and 1 percent respectively of the total land. There appears to be ambiguity; forestlands are found in both Rakhita, AJA and AAA khata. The recording of *kisam* and sub-*kisam* of lands needs uniformity.

In Odisha there are various sub types of common lands called by different names and in different regions of Odisha. Following are the broad sub-types of common lands, cremation ground, burial ground, ground used for throwing of carcass, Melan padia, play ground, Hat padia, Kotha ghar, threshing floor, dhangidi ghar, Bhagabat Ghar, Dera ghar, grounds used for religious festivals, Temple, mosque, church, gurudwar, matha, mandap, dolabedi, bijesthali, chaura, Danda, go-danda, go-dharana, gothapadia, etc., and Village road, pucca road, road under control of revenue department and Land reserved for public purposes are also covered under the category of common land.

Management & Protection of Village Common Land/ resources

The management and protection of village common lands have been entrusted to Gram Panchayat under Section 44(1) and Section 71 of OGP Act 1964 and to Gram Sabha under Section 4(d) of PESA Act 1996 in Scheduled areas⁷⁴.

Amendment to the Orissa Gram Panchayat Act, 1964 in 1997 in compliance to the PESA Act inserted a provision u/s 5(6) that in Scheduled Areas, the ***Gram Sasan shall be competent to safeguard and preserve*** (among other things) the ***community resources*** and the customary mode of dispute resolution consistent with laws and in harmony with basic tenets of the Constitution and human rights. However, In Odisha no effective steps and processes have been facilitated for the Gram Panchayats/ Gram Sabhas to manage the village common lands. As a matter of fact, thanks to so many ifs and buts that mark the

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⁷³ Report No. 452: Common Property Resources in India, Jan - June 1998, NSS 54th Round, p.5

⁷⁴The PESA 1996 provides (u/s 4 (d)) that “every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution; (m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a ST; (vii) the power to control over local plans and resources for such plans including tribal sub-plans.

compliance amendments made by State Government the Zilla Parishads have been endowed with more powers over the Gram Sabha in Scheduled Areas of Orissa.

The Supreme Court judgment dated 28 Jan 2011 on Common land in Civil Appeal No.1132 /2011 @ SLP(C) No.3109/2011 in case of Jagpal Singh vs. State of Punjab has reiterated the role of Gram Sabha/ Gram Panchayat to manage and provide protection to the common lands in the villages⁷⁵.

5.2 Expert Investigator Background Report and Score

LG1 3 Rights to forest and common lands

2	1	1a	Forests are clearly identified in law and responsibility for use is clearly assigned.
			B: Forests are clearly identified, responsibility for land use is clearly identified but implementation is ambiguous.

In Odisha, as also in other states in the country, the term “Forest” has not been defined in any law, although the Indian Forest Act 1927 and ORISSA FOREST ACT 1972 prescribe procedures for notification of Reserved/Protected and Village Forest, and the Odisha Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 defined ‘forest land’ to include any waste land containing shrubs and trees and any other class of land declared to be forest land by a notification of the State Government. However, the Supreme Court of India defined “Forest” in 1996⁷⁶, and directed for identification of areas of forests, irrespective of whether they are notified, recognized or classified under any law and irrespective of ownership of the land. The process of notification of forests (Reserve Forest, Protected Forests etc.) includes elaborate procedure for identification of boundaries of forests and settlement of rights and concessions of the people. However, at the time of merger of “princely states” and “abolition of Estates (Zamindari)” sizable forest lands got vested in the Government and were notified as “forest” without proper survey and settlement of rights and without following the detailed procedure under the INDIAN FOREST ACT 1927. But the Reserve Forests are clearly identified, and responsibility for management is clearly identified. But the same cannot be said in respect of other categories of forests.

Moreover, Orissa Survey and Settlement Act, 1958 and Orissa Government Land Settlement Act, 1962 provide procedures for identification and demarcation of forestlands within a revenue boundary. But there are sizable un-surveyed forest areas in the state recorded as *Pahad, Dongar, Parbat, etc*, mostly found in Kandhamal, undivided Kalahandi, Koraput and Gajapati districts.

Annual Activity Report of F&E Department, Odisha for 2012-13 mentions total recorded forest area as 58148.52 km². Of total 31333 km² is with the Forest Department (26329.12 Km² RF, 4983.38 km² PF, and 20.55 km² Unclassed Forest), and 26815 km² continuing with the Revenue Department (7602.3 km² DPF/PRF, 3838.78 km² as Un-Demarcated Protected Forests and 16261.34 km² as Revenue Forests). The

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⁷⁵ Observing that ‘village common lands have been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper’, the court directed all States to (i) prepare schemes for speedy eviction of illegal/ unauthorized occupants of Gram Sabha/Gram Panchayat/ Paramboke/Shamlat land; (ii) restoration of common land to the Gram Sabha/GP for common use of villagers; (iii) regularize exceptional cases e.g. where lease has been granted under some Govt notification to landless labourers or members of SCs /STs, or where there is already a school, dispensary or other public utility on the land. In such cases reservation of the required extent of alternate land for the use of the community should be made); (iv) ensure strict and prompt compliance of the order and submit compliance reports to this Court from time to time by Chief Secretaries of States; and (v) Monitoring the implementation of directions by the Supreme Court.

⁷⁶ Order dated 12th Dec. 1996 in WP (Civil) 202/1995 in T.N. Godavarman Thirumalpad vs. Union of India.

report also mentions that 35071 Km² of forest areas is covered under working plans for scientific management including areas in the books of forest and Revenue Department. Area not covered under working plans is largely the forest areas under the Revenue Department and include 0.76sq km under Forest Department.⁷⁷.

Issues/Concerns related to Forests:

- No comprehensive definition of forest in Central or State laws.
- Supreme Court defined “forest” in their Order dated 12-12-1996 and directed for identification of areas of forests, irrespective of whether they are notified recognized or classified under any law and irrespective of ownership of the land. Despite the reiterating orders of the Apex Court in July 2011, for completing the exercise of identification of all forest areas and preparation of district wise GIS compatible forest maps the job is still incomplete.
- Identification of all forestlands is still incomplete. Process of demarcation & reservation delayed.
- State revenue laws through survey & settlement identified forestland within a cadastral boundary.
- Sizable forestland in Odisha was not properly surveyed during transfer from princely states to the government and was notified as “forest” without following the detailed procedure under the Indian Forest Act 1927.
- A large portion of Revenue Forests, which is about one third of the total forest area, is inadequately demarcated or remains even un-surveyed with great ambiguity looming large about the responsibility for its management.
- The information from the PCCF Odisha reveal that 1369 forest blocks involving an area of 8847.42 sq. km. (notified u/s 4 of Orissa Forest Act 1972), are pending at various levels for final notification as RF under Orissa Forest Act 1972. The status of rights and concessions for the people and management responsibilities remain uncertain as yet.
- Under FRA 2006 the forest rights of the individual forest dwellers have been recognized but process is very slow regarding community forest rights. The issue of management and ownership of community forest resources (CFR) is yet undecided, resulting in ambiguity in governance.

2	1	1b	<i>Common lands are clearly identified in law and responsibility for use is clearly assigned.</i>
			B: Common lands are clearly identified, responsibility for land use is clearly identified but implementation is ambiguous.

As already noted, “Common lands” refer to common property land resources within the boundary of the village and was held by village panchayat or village community. “Communal land” is the land recorded as gochar, rakshit or sarbasadharan in the record-of-rights or waste lands which are either expressly or impliedly set apart for the common use of the villagers, (whether recorded as such in the record-of-rights or not) (ii), in relation to cases governed by the Orissa Tenancy Act, 1913⁷⁸.

The word “set apart” for the common use indicates ear marking by the Government, proprietor or the village community. It has been held by courts that in respect of the lands not recorded as Gochar,

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⁷⁷ Arun K. Bansal, CCF PF&E, O/O PCCF Orissa (2004)

⁷⁸ the Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948

Rakshita or Sarbasadharan in the record-of-rights, if there is no evidence that land was either expressly or impliedly set apart for the common use of the villagers, the said land cannot be treated as communal land to attract prohibition under the Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948. Keeping aside the question of ownership of communal lands, about which no clear cut evidence is available, the facts remain that they are burdened with communal rights, and that people have a prescriptive right.⁷⁹

Under the Orissa Government Land Settlement Rules, 1983 “Communal with respect to a land means a land which is used by any village community or any section thereof for a communal purpose like burying or cremating dead bodies, celebrating public festivals, holding melas or common worship and the like without any interference from anybody or paying any fees for the purpose”.

There are several critical problems and issues concerning the common/communal lands in Odisha. Such as-

- Identification and legal classification of commons are not fully comprehensive & clear.
- Management responsibility and procedure are ambiguous and very unclear in the law.
- No clear land use planning and policy exists for common land in Odisha.
- State law prescribes reservation, management & protection of gochar land and village forest but does not provide clear procedures for so many other types of common land.
- In scheduled areas Gram Sabha is not practically empowered to manage the village common lands like in other states (Rajasthan, Maharashtra, Punjab, etc). No facilitative initiatives have been as yet taken by the government to transfer the responsibility of management and protection of village common land to the Gram Sabha and Gram Panchayat although it is prescribed in the law.
- Common lands are largely not free from encroachment & are *not* used for the purpose *set-aside*.

Responsibility for use of common land

- Orissa Government Land Settlement Act 1962 and Rules made there under specifically mention reservation, management, and protection of gochar lands and authorize the Government to prepare scheme for their management and development. It can also vest their management in a Grama Sasan/ Grama Panchayat or can take them over for management and development. *However, there is no clarity about the circumstances in which the govt may take over management and development of gochar land. Moreover, the Act does not clearly prescribe procedures for other types of common lands namely cremation ground, burial ground, Melan padia, play ground, hat padia, kotha ghar, streams, rivers, nalas, tanks, canals, and other water sources, temple, mosque, mandap, bijesthali, etc.*
- Under the Section 5(6) Orissa Gram Panchayat Act, 1964 says that in Scheduled Areas, the *Gram Sasan shall be competent to safeguard and preserve* (among other things) the *community resources* and customary mode of dispute resolution consistent with the relevant law in force.
- Supreme Court has directed all State Governments to prepare schemes for speedy eviction of illegal/ unauthorized occupants of Gram Sabha/Gram Panchayat/ Paramboke/Shamlat land and

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⁷⁹ Dash, G (2004) Laws Relating to Government Land and Lease Principles in Orissa, The Law House, p.21

to restore to the Gram Sabha/Gram Panchayat for the common use of villagers of the village⁸⁰ However, in Odisha, neither the Panchayat or the Gram Sabha is specifically made aware about such provisions nor handed over the responsibility to safeguard and preserve the community resources that include the common land.

Issues related to common lands

- Massive encroachment⁸¹ (by contract farmers, companies, influential individuals) and easy alienation of common⁸² lands for development projects without effective arrangement for the alternative sources lead to resources scarcity and more vulnerability for the poor who depend upon such lands for their livelihood support. Even they are not protected by the Revenue Department for the purposes for which such lands have been “set-aside”. During 1990 to 2009, the lands under permanent pastures and other grazing lands have decreased from 7.2 lakh ha to 4.9 lakh ha. There is no detailed information available about other categories of common lands at state level.
- There prevails complete lack of awareness among the Panchayats/ Grama Sasans on their role in maintaining and protecting the commons. No coordination exists between Revenue Dept on one hand and Panchayat/ Gram Sabhas on the other on such issues even after the Supreme Court judgement ordered to hand over the common land to Grama Panchayat/ Grama Sabhas for management by them.

2	1	2	<i>Rural group rights are formally recognized and can be enforced.</i>
			C: The tenure of most groups in rural areas is formally recognized but ways for them to gain legal representation are not regulated.

In Odisha, all group rights are not clearly/specifically defined or legally recognized except for the PVTGs, nomadic tribes and artisan communities whose rights secured legal recognition under FRA 2006, and rights over the community forest resources (CFR) have also been recognized under FRA 2006. However, so far the process of recognition of habitat rights is not progressing due to procedural complexities and lack of clarity about the nature of rights. FRA 2006 in Section 3(2) provides for diversion of forestlands maximum up to one ha for each purpose for 13 specified types of public utilities managed by government under group rights, subject to the approval by Gram Sabha. The National Forest Policy 1988 provides that the rights and concessions, including grazing, should always remain related to the carrying capacity of forests.

As per LGAF definition the VSS/JFM, Pani Panchayats, CFR and Habitat rights of PVTGs (Particularly Vulnerable Tribal Groups) come under group rights. Such rights are mostly un-codified but defined
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⁸⁰ Civil appeal No. 1132 of 2011 in SLP (C) No. 3109 of 2011

⁸¹ Action for prevention of encroachment by Tahasildars was poor and deficient resulting in 1.51 lakh acres of Government land remaining under encroachment (November 2011) as per CAG Audit Report – Civil-2011 for the state

⁸² In Odisha, nearly 60 per cent of the 1 million ha used for development during 1951-95 were CPRs (Fernandes and Asif 1997). In comparison to CPR constituting 58% of the land acquired for NALCO in the tribal majority Koraput district, only 18 % of the land acquired in the non-tribal Angul district was common (Fernandes and Raj 1992: 91.4). Among the land allotted by IDCO (1990-2013) more than one third constitutes public (Government) land, and the percentage is higher in the four industrialized districts where almost half the lands were allotted by IDCO.

under existing community customary laws or practices. Many PVTGs have their customary law and regulatory mechanism of communal ownership and annual allotment of land on hill slopes for shifting cultivation to households. These are not codified or formally identified. Such rights are selectively enforced or often neglected because of the inherent difficulties in recording them and in regulating or implementing them for historical reasons. In Odisha, group rights are neither clearly defined nor legally recognized except in case of JFM, CFR, and habitat of PVTGs, nomadic tribes and artisans except under the recently enacted FRA 2006.

- Poor implementation of CFR rights and complex procedure for recognition of habitat rights of PVTGs led to non-implementation. Only in case of *Juangs*, a PVTG in Keonjhar district, records and maps of territorial rights of *Juangpirha* (ancestral domains of Juangs) were prepared during British government with description of rights, which are now available. Despite this, the ancestral rights of Juangs are not yet acknowledged, and are practically ignored.
- The new legislative reforms at national level don't lead to corresponding changes in the provisions of laws existing at State level.
- Institutional role for control, management & protection remains ambiguous, leading to halfheartedness in enforcement.

2	1	3	<i>Users' rights to key natural resources on land (incl. fisheries) are legally recognized and protected in practice.</i>
			B: Users' rights to key natural resources are legally recognized but only some are effectively protected in practice or enforcement is difficult and takes a long time.

It has already been mentioned earlier that the user rights in respect of key natural resources like land, water bodies and forest resources including fishing are recognized under INDIAN FOREST ACT 1927, ORISSA FOREST ACT 1972, JFM resolutions 2008 and 2011, FRA 2006, ORISSA GOVERNMENT LAND SETTLEMENT Act 1962 and Orissa Communal Forests & Private Land (Prohibition of Alienation) Act, 1948, etc. The right to *water course or right to use of water etc, extent of grazing rights and right to collect specified quantity of timber and other forest produce* are admitted and recorded under ORISSA FOREST ACT 1972 in the process of notification of forests as Reserve Forests. The FRA 2006 recognises both user rights and management rights of the forest dwelling Scheduled Tribes or other traditional forest dwellers over community forest resources.

Legal provisions are made for protection of the commons and user rights over village commons such as *gochar*, graveyards, ponds or any water bodies, fishing, village roads, worship places, *samsan*, play ground etc. The OGP (amended in 1997) Act 1964 in Section 5 (6) entrusts Gram Sabha with responsibility to *safeguard and preserve (among other things) the community resources* and customary mode of dispute resolution.

The rights of users are poorly protected in practice and enforcement of law is difficult (which takes too long a time). Thus, inadequate protection mechanism and lack of monitoring process in respect of continued enjoyment of user rights are the reasons for which the provisions for protection of commons are not effectively enforced.

2	1	4	<i>Multiple rights over common land and natural resources on these lands can legally coexist.</i>
			B: Co-existence is possible by law and respected in practice but mechanisms to resolve disputes are often inadequate.

Various land uses on areas leased out for extraction of minerals through Under Ground mining operations (under the mining laws, and diversion of forest land under FOREST CONSERVATION ACT in case of forest lands) legally coexist in respect of forest lands and other government lands (including common lands) subject to restrictions. Similarly, Right of Way for transmission lines is permitted through diversion under FOREST CONSERVATION ACT, 1980 and otherwise it is allowed in favour of the Power Grid Corporation or other power transmission company subject to certain restriction in terms of height of trees etc, and in case of transmission lines passing over common lands, other uses of lands can continue albeit with some restrictions. Similar is the case of pipelines under common lands or forestlands. Therefore, coexistence of rights over common lands and natural resources on these lands can legally co-exist.

Under the Orissa Forest Act 1972, the right of ownership of forest land and its management and regulations belongs to Government (Forest/Revenue Department) while the rights to access for grazing the cattle, ownership of MFPs, use of water bodies for fishing etc. are allowed to the communities. The rights over community forest resources (CFR) in any type of forest land and management rights over CFRs by Gram Sabha under FRA 2006 and PESA 1996 do legally coexist along side of the ownership, control and management by the Forest Department under the Orissa Forest Act 1972, Forest Conservation Act 1980 and Biological Diversity Act 2002.

However, in some cases the above mentioned co-existence gets lopsided when rights of community or individuals are taken away following acquisition of forest lands or other common lands or following diversion of forest lands for open cast mining, as found to be largely happening in Odisha. Similarly, ineffective monitoring of water bodies used for other purposes by different user agencies leads to contamination of water or lowering/depletion of water table caused by mining operations and all this results in impairment or virtual denial to the enjoyment of rights of communities although legally they coexist. Similar is the case resulting from improper maintenance of transmission lines (death of elephants).

2	1	5	<i>Multiple rights over the same plot of land and its resources (e.g. trees) can legally coexist.</i>
			B: Co-existence is legally possible and respected in practice but mechanisms to resolve disputes are often inadequate.

Forest Dept manages Notified and other forest areas (in the case of Protected Forests– national parks, sanctuaries etc.). Gram Sabhas have now the lawful rights of ownership, access to collect, use and dispose of Minor Forest Produce (MFP) which has been traditionally collected within or outside the village boundaries vide FRA Section 3(1)(c). They have also concurrently rights to protect, conserve and manage any Community Forest Resource which they have been traditionally protecting and conserving for sustainable use vide FRA Section 3(1)(i). Moreover, PESA Act under Section 4(d) vests the Gram Sabha with competence to safeguard the community resources that obviously include forestland and resources and under Section 4(m)(ii) vests the Gram Sabha and Panchayats with ownership of MFP. The OGP (MFP Administration) Rules, 2002 empowers the Gram Panchayats in consultation with Gram

Sabha, albeit with some limitations, to regulate the trade of MFPs vide Rules 3, 4 and 5(4). Besides, as per JFM Resolution 2011 of the Forest Department, Govt of Orissa, Van Sarankdhan Samiti constituted in part of a village, a village or a group of villages with villagers elected as its Chairman and Secretary (as per 2011 JFM resolution of GOO) is empowered to “protect the forest, wildlife and biodiversity” and to “ensure that the decisions taken in the Palli Sabha to regulate access to community forest resources and stop any activity which adversely affects the wildlife, forests and biodiversity, are complied with” vide Para 6.

Forest Working Plans prescribed procedures and also sometimes fix limit for harvesting/collection of forest produce by villagers including that by the right holders. The rights of artisan community for bamboo and particular types of soil may exist in the same forest areas or land along with rights of other users of minor forest produce. Forest Conservation Act, 1980 is also applicable to private forests and the owners are restricted from making arbitrary use of them for non-forestry purposes. Transport of logs/timber from felling of trees growing on private lands, except for certain exempted species, require transit permits to be issued by an appropriate Forest Department authority. However, Amendment Rules 2012 under FRA 2006 declares the Gram Sabha as the competent authority in respect of issue of transit permits and use of income from sale produce etc. vide Rule 4(g).

It is understandable that the exercise of the rights of one in some cases may take away the rights of another e.g., harvesting of timber by the Forest Department would take away the rights of community users over the MFPs. The rights of revenue dept leasing out or auctioning the sariat sources to the higher bidders restrict the collective rights of the villagers over the concerned resources. Thus, at the ground level we notice conflicting situations arising between the different statutory entities.

2	1	6	<i>Multiple rights over land and mining/ other sub-soil resources located on the same plot can legally coexist.</i>
			B: Co-existence of land and mining rights is possible by law and respected in practice but mechanisms to resolve disputes are often inadequate.

Various land uses and leases for extraction of minerals through underground mining operations (under the mining laws, and under Forest Conservation Act that allows the diversion of forest land for non-forest purposes including mining legally coexist in respect of forest lands and other lands owned by the Government and non-Government entities.

The Mines and Minerals (Development and Regulation) Act, 1957 u/s 2 states that the Union should take the regulation of mines and the development of mineralsto its control and the proprietary rights of mines needs to be vested with the state. In case of underground mines the rights over land and sub soil mining resources can legally coexist.

The Orissa Minor Mineral Concession Rules 2004 outlines different set of procedures dealing with grant of mining leases for two distinct type of land-holdings—(a) land where minerals vest in the government and (b) land in which the minerals vest in a person other than the

Pathar Bani (stone deposits) coming under uncultivable wasteland are leased out for quarrying, but are rarely valued before leasing those out for large projects. A *Pathar bani* as per revenue law is not leasable to the outsiders except under the condition that after a change is effected in its characteristics and kism it would be leasable to companies for any development project. Going by the MMDR Act there is as such no right of people over the minerals or mines and Govt is the owner of minerals.

However, under PESA 1996, recommendation of the Gram Sabha or the Panchayats at the appropriate level is mandatory prior to grant of prospective license or mining lease for minor minerals in the Scheduled Areas. In Odisha, the power to grant prospecting licence or mining lease for exploitation of minor minerals has been given to the Zilla Parishad⁸³.

A new debate around ownership of Under Ground (UG) minerals has emerged after the Supreme Court delivered its judgment where it was observed that ownership over minerals that lie beneath the soil does not necessarily lie with the state. It further said that “the MMDR Act 1957 does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision for divesting any owner of a mine of his proprietary rights”. The judgement concluded that “there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the state; on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process.”⁸⁴

2	1	7	<i>Accessible opportunities exist for mapping and recording of group rights.</i>
			C: The law provides opportunities for those holding group land under customary, group, or collective tenures to record and map land rights if they so desire. Procedures are not affordable or clear, leading to discretion in their application.

As already discussed (under dimension 2.1.3) about group rights in Odisha, it needs to be added that under Orissa Survey & Settlement Act, 1958 & Rules 1962 prescribe processes of preparation and recording of rights, including the process of recoding of common land and mapping. The JFM Resolution 2011 provides procedures and guidelines for mapping of VSS areas (Para-10).

FRA, 2006 and its rules provide procedure and authorities for vesting Forest Rights. Accordingly the Gram Sabha is the authority to initiate the process for determining the nature and extent of individual or community forest rights by receiving claims and consolidating as well as verifying them besides preparing a map delineating the area of each recommended claim indicating recognizable landmarks vide Section 6(1) of FRA 2006 and Rule 4 of FRA Rules amended 2012. But the complications and ambiguity that exist in the matter of recording and mapping of habitat rights of PVTGs and nomadic communities, create difficulties for Gram Sabha /Forest Rights Committee to properly discharge the said obligations and that is why poor implementation in respect of preparation of records and maps of forest rights for the above categories is noticed all over

2	1	8	<i>Boundary demarcation of communal land.</i>
			C: 10-40% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated claims recorded.

It is very difficult to collect the available data for a proper scoring. Besides, there was a practice not to survey areas with slope more than 10° slope, where most of the common lands in tribal areas are located.

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⁸³ “No prospecting licence or mining lease for minor minerals or concession for exploitation of minor minerals by auction shall be granted under any law on or after the commencement of the Orissa Zilla Parishad (Amendment) Act, 1997, except with the prior recommendation of the Parishad” (u/s 3(6)(a), OZP Act, 1991).

⁸⁴ Supreme Court Judgement on CIVIL APPEAL NOS.4540-4548 OF 2000 Threesiamma Jacob & Ors...Appellants versus Geologist, Deptt. of Mining & Geology & Ors. ...Respondents with CIVIL APPEAL NO. 4549 OF 2000 dated July 8, 2013.

More than 70% of the areas under communal and/or indigenous lands has boundaries demarcated and surveyed and associated claims recorded in Plain and Coastal districts while only 10-40% of the areas under communal and/or indigenous lands has boundaries demarcated and surveyed and associated claims recorded in hilly and Schedule V areas.

Orissa Government Land Settlement Act and Orissa Survey and Settlement Act provide for demarcation and mapping of common lands. However due to limitation of surveying equipment, land above 10-degree slope have not been surveyed in the state⁸⁵, though the boundaries at 10-degree slope have been demarcated. The internal boundaries of plots above this slope line are only marked in map in terms of rectangles.

About 55 percent of State's Reserve Forests are actually proposed Reserve Forests (PRF), as all the provisions of boundary demarcation and rights settlements as per Indian Forest Act, 1927 and Orissa Forest Act, 1972 have not been completed through forest settlement processes

The Rules amended 2012 under FRA, 2006 in Rule 11(4) authorizes the Forest Rights Committee to prepare the claims on behalf of Gram Sabha for community forest rights in Form B and the right over community forest resource in Form C so as to assist Gram Sabha in consolidating the claims thereof. And going by the provisions made in Section 6(1) of FRA it is the Gram Sabha, which is authorized to prepare maps of all forest rights including community forest rights. Further, as per the Rule 6(b) it is the SDLC (Sub-Divisional Level Committee) which shall "provide forest and revenue maps and electoral rolls to the Gram Sabha or the Forest Rights Committee." As a matter of fact, the Government of India has also provided funds under Article 275(1) of Constitution for such items as preparation of maps of villages and lands, procurement of GPS and other survey equipments, office materials and awareness kits etc required for implementation of FRA at village level. In case of Odisha such funds have been released annually to ITDAs for the villages falling under Scheduled Areas and to DRDAs for the rest of the villages in the State beginning from the financial year 2008-09 vide Letter No. 39223/SSD/TD-I-TSP-105/08 dated 11.11.2008 from Department of STSC Development, Orissa to AG (A&E) Odisha Bhubaneswar. But as of now, these provisions seem to have not been implemented, except for some areas where pro-active district collectors have taken some initiatives (viz. in Mayurbhanj)

Most of the notified forest blocks have maps (prepared earlier) on the basis of chain and compass survey which needs to be redone using latest mapping techniques. In five mineral rich districts, operations were conducted for Differential GPS Survey in 2010. However, the exercise has not yet been completed. Again, management of forest lands as assigned to Van Sarankshan Samiti/ Eco Development Committee under JFM Resolution requires above all appropriate mapping of the forest areas, which is a very basic necessity not only to prepare micro plans but also to establish the tenure of the particular community/user group. However, in most cases appropriate maps of forest areas are not available. In respect of the VSS which is associated with OFSDP (Orissa Forestry Sector Development Project) assisted under JICA (Japan International Cooperation Agency) project, GIS compatible maps with DGPS survey of the boundaries of the treatment areas have been prepared. These project covers only 2300 out of the total of 12000 VSSs in the State. (www.ofsdp.org)

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⁸⁵ Except for Kashipur Block in Rayagada district where survey of land between 10-30 degree slope was taken up under IFAD funded Orissa Tribal Development Project

LGI: 2.2 Effectiveness and equity of rural land use regulations

2	2	1	<i>Restrictions regarding rural land use are justified and enforced.</i>
			C: Regulations often do not effectively serve public purpose and enforcement is difficult.

In rural areas buildings do come up on agriculture land without conversion of their KISSAM to 'homestead'. Weak regulation allows misuse of common lands by vested interests and deprives the majority of the poor of their right to use of the commons. . The village roads, the canal or other water bodies are shrinking day by day. The area of pasturelands is declining. Several types of common land, which cannot be individualized like roads, cremation grounds, temples, etc., are required for very existence of the inhabitants. Individual encroachment over common lands leads to the denial of their use by the common villagers. Restrictions and prohibitions on encroachment or diversion of the commons are highly called for looking at the indispensable needs of the village community for the "commons". .

The gochar land in some areas of the state is used for other purposes, which obstructs the needful service to the common villagers. Again due to lack of boundary demarcation, individual encroachment over common lands is increasing and thereby decimating the common use by the villagers.

In a GIS pilot study conducted as part of this LGAF assignment in Odisha, in two tribal villages in Koraput, on an average about 24 no pf parcels/plots covering about of 13.5 ha recorded as government land in the cadastral map, that was prepared during S & S earlier, are now under cultivation.

Though umpteen regulations including penal provisions are in force to contain the encroachment of commons, no impact evaluation has been made of them as to ascertain the extent of achievement of intended benefits/results. This is essential in view of the insavouray fact that the anti-encroachment regulations have mostly led to widespread public resentments in some cases and lingering litigations in others.

2	2	2	<i>Restrictions on rural land transferability effectively serve public policy objectives.</i>
			B: There are a series of regulations that are for the most part serve pubic purpose but that are not enforced.

In addition to the explanation given to the last dimension there is prohibition of transfer of lands from STs to non-ST, from Gochars to other uses, and restriction on land use change from agriculture to other uses such as homestead, and also on diversion of lands meant for burial grounds, places of worship, water ways, roads etc. for other uses.

In fact, legal/ formal processes have been prescribed for both alienation acquisitions of lands for public purposes (for mining, industry, and other development projects like national high way, water supply, public amenities, etc.). The restrictions legally exist for protection of public lands in rural areas. However, enforcement of such restrictions is very poor at the ground level. Violation of such restrictions in the villages by the influential persons having financial affluence and political clouts deprive the common public for use of such lands for the purpose for which they were set aside under the law.

2	2	3	<i>Rural land use plans are elaborated/ changed via public process and resulting burdens are shared.</i>
			C: Public input is required and sought in preparing and amending land use plans but comments are not reflected in the finalization of land use plans.

There is no well-defined system for preparation of rural land use plans. The officials mostly go by what exists. At the time of Survey & Settlement only some area (20-50 ac) in a village was sometimes earmarked for future settlement (e.g. Basti Jogya).

There are provisions under Tehsil Account Manual of the state to involve and inform public about the land use change plan of that area. But the effective implantation of these provisions is lacking in the state.

2	2	4	<i>Rural lands, the use of which is changed, are swiftly transferred to the destined use.</i>
			D: Less than 30% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use (e.g. forest, pastures, wetlands, national parks etc.).

The land use change, which has to be reflected in the settlement records through mutation, is rarely updated every 3 years, as it should be. There is no mechanism in place to update the record so as to reflect the changes in the characteristics of land.

De facto land use is completely changed in case of diversion of forest lands for development projects but the de jure classification remains the same as per Forest Conservation Act 1980. In certain cases, diversion of forestlands is done in favour of private projects (by non-central PSUs) only after the latter makes available equal measure of non-forest area for Compensatory Afforestation (CA). During the last 10 years (from 2001 to 2010) the non-forest land diverted for plantation (as per Forest Conservation Act 1980) is 2161.57 hectares and the areas taken up for plantation is 1761.79 ha (which 81.5 percent of the area diverted).

No details of information on de-reservation of other common lands were found to have been complied or available at state level.

2	2	5	<i>Rezoning of rural land use follows a public process that safeguards existing rights.</i>
			C: Processes for rezoning are not public but care is taken to safeguard existing rights in virtually all cases.

There is no clear zoning/rezoning process. Also there are no comprehensive guidelines for rezoning rural land use except provisions for area to be set apart for Gochar⁸⁶. Rezoning, (if it can be interpreted as rezoning, as the purpose was not so) was done to some extent (viz. land for habitation, for agriculture,

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⁸⁶ Five per cent of the effective area of the village in every surveyed village subject to availability of suitable lands, one acre for every fourteen inhabitants of the village in every un-surveyed inhabited village, and one acre for every three persons having land in the village in every un-inhabited village as per OGLS Rule.

for pasture, for forest etc.) at the time of Survey and Settlement, which are taken up after a huge time gap of 30-50 years or so.

2	2	6	<i>For protected rural land use (forest, pastures, wetlands, national parks etc.) plans correspond to actual use.</i>
			B: The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is between 10% and 30%.

Roads, Tanks, Samsan and Forests to some extent are used for the same purpose. However, it is often noted that Forest Land is used for Grazing and Grazing/ Fodder land is abandoned/ encroached.

The protection for use of the set purpose is very weak. The village common grazing land, water bodies, roads, graveyards, etc are under private encroachment on a massive scale. They are not effectively protected at the actual ground. (Mearns and Sinha, 1999)

5.3 Summary of Issues

- a) Process of forest reservation
 - i. 1369 forest blocks with 8847 sq km, exist as Proposed RF- lack of legal clarity between Forest & Revenue Department, though FD treats them as deemed reserve forest
 - ii. Declaration of Reserve Forest (e.g. treating of Reserve Land in Madras Presidency area as Deemed Reserved Forest) in Schedule Area (46%)
- b) Common land not clearly defined; can be acquired under LA Act; not vested with GP for the purpose of evictions as instructed by the Supreme Court- no devolution to GP as per 73rd amendment 1992 and to Gram Sabha as per PESA Act 1996
- c) Conflict between 9- fold classification which is based on use and land information and the Revenue Department, which is based on ownership
- d) No Land Use Policy and Zoning in Rural and Tribal Areas; no provision of public participation
- e) Encroachment of protected rural land uses including Water Bodies
- f) Lack of clarity and uniformity in Conversion/de-reservation/acquisition of Common lands
- g) Lack of updating of boundary of common lands and land records (RoR and Map) in correspondence with the actual field situation

5.4 Analysis and Recommendations

- a) Synchronization of Institutional framework: Greater role for Institutions of Local Self Governance
 - i. Development of State Land Use Policy with focus on rational, equitable and sustainable use of commons with adequate concerns on ecology and culture along with clearly defined rights and management responsibilities.
 - ii. Comprehensive Policy on Management of Village Common lands and other resources o along with urgent development of management protocols for commons.
 - iii. Common Framework Law for Common Lands (with integration of Customary Rights)

with attachment of special status to PESA area

- Community Rights with GP as Custodian
 - Importance of 4 pillars: Equity-Ecology-Economy-Culture
 - Consultation (FPIC) and Compensation for Common transfer
- iv. A Comprehensive Users' Manual on use, maintenance and protection of commons on both revenue and forest lands, to be used by officials, PRIs and activists need to be prepared and published and as well disseminated on website.
- v. Recognition to Customary rights of tribal communities on non-Forest common land as Group/Community Rights
- vi. Including legal provisions around laying of Transmission line, Underground mining, pipe line etc
- vii. Empowering and capacitating the GP to manage common lands as per PESA Act-enabling community to manage commons in similar framework as Joint Forest Management and Forest Rights Act
- Involving GP in developing land use map and management plan (like Gochar provision under OGLS Act-); existing watershed microplans and JFMC microplans can form the basis
 - Developing GP level platform as Community –watch dog for protection of commons

b) Setting right the Governance of Forest land

- i. Time bound Settling of the PF and RF proposals pending for long time-reverting to Protected Forest or settling as Reserved Forest
- ii. Proper survey and identification of all the lands belonging to forest categories.

c) Ensuing equity by facilitating FRA process

- i. Proper arrangements should be made for preparation of maps for Community Forest Rights, Habitat Rights of PVTGs, VSS areas and other group rights; Handing-over of forest and revenue maps including maps of community forest rights along with voters' list and awareness kits by SDLC to every FRC/Gram Sabha in the State as required under Rule 6 of FR Rules by way of utilizing the funds sanctioned inter alia for the purpose by the Government of India under Article 275(1) of Constitution.
- ii. Rights and Management responsibilities and rights to be clearly defined with removal of any ambiguity at institutional levels as well as community level including management of community forest resources after recognition of rights under FRA.

d) Enhancing effectiveness and transparency through use of Technology

- i. Correcting and syncing of Records and Maps of common lands at Tehsil level with that of textual and spatial data in Bhulekh

- ii. Appropriate Mapping and boundary demarcation of common land through ongoing implementation process of Odisha Special Survey and Settlement Act, 2012 through Hi-Tech Survey methods
 - iii. Assisting in developing easy methodology for prioritization, quality control & monitoring in Common land
 - iv. Completing and harmonizing Forest boundary demarcation through ongoing DGPS survey covering all forest areas of the state
 - v. DGPS-ETS Survey with 100% ground realities in un-surveyed (>10% slope) areas in Scheduled Areas
- a) Harmonization of commons database with institutional mechanism for syncing with user interface
- i. Syncing 9-fold classification based on use with Revenue classification based on ownership and use
 - ii. Syncing common land types as per actual use and realigning the land as per the prescribed standard
 - iii. Provision of Single window data management system and for easy and quick Accessibility as well as user-friendliness of land data
 - iv. Rationalization and standardization of kissams of common land

6. Panel-3: Urban Urban Land Use and Development

6.1 Context Analysis

Odisha constitutes almost 4.74% of India's geographical area and its population is 41,97,4218 (2011 census), i.e. around 3.57 per cent of India's population. The density of population of the State is 270 persons per sq. km. (2011 census). With only 16.68 per cent (2011) of the population of the State living in urban areas, the ratio of rural-urban population is one of the lowest among the major States of India. Though the growth rate of urban population is not much in comparison to other States of the Country the growth of urban bodies is increasing in the State as witnessed in the last decades. The number of towns has increased from 138 to 223 and that of the Census towns has increased from 31 to 116.

Section 4(2) of the Orissa Municipal Act, 1950 defines the term urban area, saying "In this section, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by notification under clause (2) of Article 243-Q of the Constitution".

The Explanation added for the purposes of this Section says,

"Save as may otherwise be deemed fit by the Governor, population of not less than ten thousand, twenty five thousand and three lakhs, respectively, may be taken as sufficient population for the purpose of specifying respectively "a transitional area", "a smaller urban area" and "a larger urban area".

1.1.1. Urban Land Tenure

There are broadly two types of land in terms of ownership in urban areas:

- a. Public (Common) land: Includes Public Building, Public Open Space, Public Place, Public Street.
- b. Private Land: Includes Residences and Other lands including Buildings.

There are broadly two types of private land tenure that are relevant to urban lands in Odisha:

- i. Freehold private land is called "stithiban" land. Stithiban land is freely transferable and heritable. For these lands a Record of Rights (RoR) is issued after transfer and due process of mutation by Tehsildar office.
- ii. Lease land grants from the government are called "pattadar" land. Various types of lease grants may have been given by the government over time with respect to nazul land vested with it. In urban areas, occupants (or encroachers) have been given "homestead" leases under the Orissa Government Lands Settlement Act, 1962, the term of which is generally 99 years. These leasehold rights are heritable, and owners are entitled to construct permanent structures on their land, but these rights are not transferable. In general, leasehold rights granted by the government may be converted to freehold, after which owners would have the right to sell, transfer or mortgage their land.

The constraint posed by land is emerging as a key challenge in ensuring both inclusiveness and sustainability of the growth process. There is a constraint faced by the landless, small and marginal farmers within agriculture, as also the constraint faced by the growing need for land for the processes of urbanization is also a challenge.

One of the bigger challenges is the urbanization and urban poverty in Odisha, which is growing faster. Unplanned urbanization in the state is a serious concern, although recently government has become very proactive for the planned urbanization. To provide the basic services like water and sanitation and dwelling units and affordable housing to urban poor is yet a biggest challenge. Only 15 Urban Local Bodies (ULB) has been considered for reporting slums in Odisha out of 103 ULBs according to census 2001. About 30 % of Odisha's urban people are in slums. By 2030, when 40 % of population may be residing in urban areas as projected by the government, the challenges for our city managers and urban planners will be more critical to meet the would be situation. Government needs to be prepared now to meet the urban requirements. Government's efforts to ensure affordable dwellings through property rights to slum dwellers through Basic Services to the Urban Poor (BSUP) under Jawaharlal Nehru National Urban Renewal Mission (JNNURM), IHSDP and Low cost housing for Economically Weaker Section (EWS) are laudable, but it requires the capacity building of ULBs to implement them. The ULBs in Odisha are however grossly lacking in their capacity to understand minimum reforms agenda and basics of city and urban management⁸⁷.

Odisha government has decided to prepare GIS based master plan/ development plan of 106 towns in the next two years for monitoring the land use control in urban areas. Preparation of master plan through GIS mapping and remote sensing survey was taken up in 53 towns. Development plans for five places - Cuttack, Bhubaneswar, Khurda, Jatani and Choudwar - have already been completed and are in operation. Master plans were earlier essential for prescribing proposed land uses of the urban centres. Comprehensive Development Plan as per Orissa Development Authority Act 1982 for relatively larger towns/ town groups are being prepared for guiding urban expansion along with provisions of infrastructure for the future population. Master plans of several towns have not been updated since long. In absence of such Master Plan/ Development Plans along with requisite planning and building regulations the growth of urban centres has been haphazard while people are facing numerous difficulties in developing land in planned manner and in constructing houses.

Now, the state government is all set to implement town-planning scheme (TPS) as per Orissa Development Authority Act (ODA), 1982. Under TPS, the private land would be taken over from the owners, pooled together, and some portions would be used for roads and civic amenities. The remaining land would be returned to owners, who stand to gain due to value addition because of amenities like water supply, sewerage, parking lots, electricity and roads. As compared to the current scheme of things where builders renege on the promise of providing amenities, causing unplanned development, the scheme would ensure planned and orderly development.

For structural development of the housing sector in Odisha, the State Housing and Urban Development Department has framed a new policy, "Odisha Housing & Habitat Policy-2013". The new policy will also include development of the peripheral areas, which are beyond the city limits. The policy will take into account the provisions of affordable housing scheme, slum rehabilitation and development policy, property rights to slum dwellers etc. It aims at creation of land banks and housing stocks considering the affordability.

1.1.2. Legal and Institutional framework

Odisha Municipal Act and Rules and Odisha Municipal Corporation Act and Rules govern urban local bodies. Odisha Development Authority Act 1982 and Rules 1983 and Odisha Town Planning and Improvement Trusts (OTP & IT) Act 1956 and Rules 1975 provide procedures for preparation of Development Plans and Master Plans of the urban centres and their hinterland comprising some adjacent rural components over which ODA Act or OTP & IT Act, as the case may be, has been extended. The development plans/master plans envisages earmarking land within their jurisdiction for future suitable uses like residential, commercial, industrial, public and semi public, recreational and open, transportation, water bodies, special heritage and environmentally sensitive zones, irrespective of their ownership (government or private).

There being no suitable provisions in the Acts of urban and rural local bodies for preparation of such comprehensive plan for future development, during the plan period, usually development schemes undertaken within the concerned local bodies are supposed to conform to the proposed land uses as per the above master plans/ development plans.

Slum Rehabilitation and Development Policy of Odisha has been framed to ensure inclusive growth by providing improved urban infrastructural facilities for the slum dwellers besides up-gradation of their shelters.

The recently promulgated Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provides scope for proper public participation in formulation of a welfare programme and finalization of planning for economic development of any place besides boosting economic growth of the region.

The ULBs function under the overall administrative control of the State Housing and Urban Development Department. The Director of Municipal Administration is the head of the department. Each ULB is headed by an executive officer, which is ordinarily an officer of the Odisha Administrative Service. The executive officers of the three Municipal Corporations are known as Commissioners. The State Government has the powers to call for information, conduct inspections, give directions, and dissolve a ULB, cancel orders and even rescind resolutions of the Council under specified circumstances. ULBs in Orissa are governed as per the Orissa Municipal Act 1950, which was subsequently modified in 1994 and 2002 to incorporate the features of 74th Constitution Amendment 1992. Efforts have been made to bring changes in the composition of ULBs along with the related provisions such as reservation of seats for Scheduled Castes and Tribes, Backward Classes and Women, tenure of ULBs and tenure of office of the Councilors.

The Housing and Urban Development Department is the nodal department for ensuring proper and planned growth of cities and towns with the provision of adequate infrastructure and basic amenities. The continuous exodus of rural population to urban areas has contributed to the exponential growth resulting in severe strain on the existing infrastructure and subsequent demand for additional provisions. The department is responsible in the state for taking effective and adequate steps for efficient management & delivery of basic urban services like provision of safe drinking water, sanitation, roads, solid waste management and housing etc. Further, one of the important reforms during 1990s was the 74th Constitution Amendment Act 1992, which empowered the Urban Local Bodies (ULBs) to function as Local Self Governments. Here also the Housing and Urban Development Department has got paramount responsibility to make the ULBs self-sufficient and centers for good governance.

In Odisha the department functions through three Directorates. They are Directorate of Municipal Administration (attached to the Department), Directorate of Town Planning and Chief Engineer, Public

Health Organization (Urban). Besides, there are 4 P.H., S.E. Circles, 13 P.H. Divisions, 52 P.H. Sub-divisions, 20 District Town Planning Units, 103 Urban Local Bodies including (Bhubaneswar Municipal Corporation, Cuttack Municipal Corporation and Berhampur Municipal Corporation), 9 Development Authorities (including BDA Bhubaneswar & CDA Cuttack), 7 Regional Improvement Trusts, 36 Special Planning Authorities, Orissa State Housing Board, Orissa Water Supply & Sewerage Board, Orissa Rural Housing Development Corporation, Valuation Organization, and SUDA (State Urban Development Agency).

State Government constituted State Urban Development Agency in 1990 with some specified objectives, such as to restructure and strengthen the benefit delivery system through effective design of schemes, to bring about structural changes in the existing organizational set up, to integrate the process of planning, implementation and evaluation and also to have one coordinating agency at the State Level to monitor, supervise and evaluate the performance of the schemes implementation by the Urban Local Bodies, apart from resolving constraints and conflicts experienced by the executing agencies at various levels.

In 1954 first Town Planning Organization was created in the State for planning of the Cuttack city with appointment of Town Planner. This Organization conducted various surveys and prepared various reports for Cuttack. The Town Planning Organization created for Cuttack drafted the legislation and Odisha Town Planning and Improvement Trust Act, 1956 was enacted. Its major activities are to prepare Master Plans and processing approval of the same to be operated upon by the Special Planning Authorities/Improvement Trust, preparation of Project Reports for the IDSMT and monitoring of the schemes, technical guidance to Government as well as Planning Authorities with respect to implementation of Plan proposals and regulation of development/construction activities. Subsequently in 1975 the Directorate of Town Planning has come into being as the Head of Department under the administrative control of Housing & Urban Development Department.

6.2 Urban Land Governance Indicators: Expert Investigator Background Report and Score

Indicator 1: Restrictions on rights: land rights are not conditional on adherence to unrealistic standards

3	1	1	Restrictions on urban land ownership/transfer effectively serve public policy objectives.
			B: There is a series of regulations that are for the most part serve public purpose but enforcement is deficient.

The transfer of ownership of private land is done as per the revenue laws and allotment of Government land as per the categories prescribed in Revenue Master Plan. The disposal of developed sites by public agencies is for different income group beneficiaries. Transaction of land is not always following the regulation made by planning/ development authorities (Sub-divisional layout). Master Plan/ Development plan prescribes proposed land uses along with restrictions to provide desirable public amenities. The zoning regulations are prescribed in the Master Plans / Development Plans through which the land uses are either permitted / permitted under special consideration, or are prohibited in different use zones. However, delay in implementation, makes the plan outdated to the fast changing development contexts. Outdated plans require revision due to fresh development prospects.

There are restrictions regarding transfer of land owned by SC/ST to other categories. Restrictions in respect of land in vicinity of protected monuments notified by ASI and other historical monuments are taken care of by provisions of the relevant Acts and also preparation of the Master Plan/Development Plan with proper reference. The scope of competent authorities operating on such areas to restrict violation being limited, the implementation of the provisions of law is not encouraging in most of the cases.

Slum dwellers habitat are mostly on encroached Government land. Without proper policy settling Government Land in favour of deserving and bonafide slum dwellers, solution to the menace of such squatter settlement cannot be overcome. There is scope in the provisions of Orissa Government Land Settlement Rules (OGLS), 1982 Rules for earmarking land for low-income groups housing as one of five categories of Government land to be allotted as per Revenue Master plan approved by the RDC. With jurisdiction synchronization of actions of urban local bodies and revenue authorities' scope of slum development and rehabilitation can be explored in a phased manner

3	1	2	Restrictions on urban land use (disaster risk) effectively serve public policy objectives.
			B: There are a series of regulations that are for the most part serve public purpose but that are not enforced.

Master Plan/ Development Plan- Long range development plan are not reviewed periodically and not updated. There is no proper coordination among different functionaries. There is absence of Zonal Development Plans and provisions of infrastructural facilities are not synchronized.

In order to promote public health, safety and the general social welfare of the community, it is necessary to apply reasonable limitation on the use of land and buildings. This is to ensure that the most appropriate economical and healthy development of the city takes place in accordance with the land use plan. For this purpose the city is divided into a number of use zones, such as residential, commercial, industrial, public and semi-public etc. The zoning regulations and their enforcement are a major tool in keeping the land uses pattern of the comprehensive development plan. In the Bhubaneswar Development Planning Area various use zones viz. residential, retail and business, wholesale commercial, industrial, public and semi-public, open spaces, forest, water bodies, special heritage and environmentally sensitive areas are regulated under zoning regulation. The zoning regulation through which the land uses permitted, permitted under special consideration, and prohibited in different use is clearly delineated.

There are examples of lack of adhering to restriction by other authorities. Revenue Authorities, sometime within urban area, allot Government land and decide on acquired private land for the purposes other than earmarked in the Master /Development Plans prepared by the Planning and Development Authorities. At Sambalpur acquisition of private land for Railway Division office was done which did not consider the alignment of proposed arterial road within erstwhile Master Plan of Sambalpur.

Planning and building standards Regulations of Development Authorities regulate the development and conciliation activities. Zoning Regulations provide different proposed land uses while Building Standards Regulations provide yardsticks, specifications for construction activities within specific size of plots with require infrastructural facilities. The prescription in respect of land uses being enforceable, provisions of infrastructural facilities like road, drainage, sewerage, electricity and other facilities are sometimes not fully ascertained and provided to be available for the proposed construction at a time. Contribution of

private developer and related public authority providing such infrastructural facilities and maintaining them are not very clear and enforceable. Such procedure in future is lead to development with inadequate infrastructural facilities which is creating environmental problems

Indicator 2 Transparency of land use restrictions: changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific groups

3	2	1	Process of urban expansion/infrastructure development process is transparent and respects existing rights.
Both C & D			C: Information on planned urban expansion and infrastructure development is publicly available with sufficient anticipation but the way in which land rights by those affected are dealt with is largely ad hoc.
			D: Information on planned urban expansion and infrastructure development is not publicly available.

Master Plans as per OTP & IT Act 1956 and Development Plans as per ODA Act 1982 are prepared after extension of the aforesaid Acts over delineated areas of urban centres which usually comprise of the areas under the jurisdiction of the urban local body/ies and some rural component around them as their hinterland/influence area. Such areas are delineated considering density of population, economic activities, innate working population, literacy, accessibility of other urban amenities. In Odisha no regional planning exercises comprising of larger rural component involving rural growth centres have been undertaken.

For preparation of Master Plan/Development Plans existing land use surveys are undertaken and present status of physical and social infrastructure are studied through primary surveys and collection of data and information from secondary sources. On analysing the present status shortages of utility services and community facilities are worked out. After projection of population and economic activities future requirement of all urban amenities are worked out along with magnitude of proposed land uses during the plan period. The Master Plans/ Development Plans drawn over revenue Cadastral sheets are statutorily notified inviting objections and suggestions from general public. Such publication facilitates public accessibility about the plan proposals and provides scope for offering views, suggestions by the stakeholders for effecting in the final plan. For implementation of a development scheme there are provisions in OTP & IT Act 1956 and in ODA Act 1982/Rule 1983 for publication of notice regarding the scheme inviting objections, suggestions from the general public. In order to cover more planning areas of larger magnitude, speed up preparation of Master Plan/ Development Plan effecting greater flexibility in operation and making more accessible to the stakeholders. GIS based Master Plan/ Development Plans are being prepared using satellite imageries and digitised Revenue cadastral sheets.

The Master Plan/ Development Plans prepared became obsolete. Plan proposals contain broad land uses and provisions of infrastructures in general. Convergence of various functions and availability of land, finance, and institutional mechanism may not be possible. It was also observed that Information on planned urban expansion and infrastructure development is not always simultaneously publicly available. There is clear provision for information on urban expansion but such provision has not been made for infrastructure development.

3	2	2	Changes in urban land use plans are based on a clear public process and input by all stakeholders.
			B: Public input is sought in preparing and amending land use plans and the official body responsible for finalizing the new plans uses the public responses, but the process for doing this is unclear or the report is not publicly accessible.

Public inputs are considered for finalizing Master Plan/ Development Plans, but the Reports on consideration of objection/suggestions are not publicly accessible. Display of land proposals and explaining it to general public is not explicit and doesn't follow a clearly defined public process.

As per the provisions of Orissa Town Planning and Improvement Trust Act 1956, Rule 1975 and Orissa Development Authorities Act 1982 and Rule 1983 objections and suggestions are invited from general public by publishing the notice of preparation of Master Plan/ Development Plan in Odisha Gazette and also in newspaper giving 90 days of time in case of Development plan. Persons opting for being heard in person are also provided scope to be called for being heard. Objections, suggestions, are tabulated and reports containing views and recommendations of Board of Enquiry are submitted to the Authority for consideration. The Authority after considering the report and such other matters as it thinks fit, finally prepare the development plan and submit it to the State Government for approval.

Thus public input is sought in finalising the land use plans but the report containing views and recommendations of Board of Enquiry is not publicly accessible. The Board of Enquiry consists of some members of the Authority and has power to co opt not more than three members of the Advisory Council, constituted by the State Government as per Section 5 of the Orissa Development Authority Act, thus making it broad based to consider reasonably views and suggestions of the stakeholders.

3	2	3	Approved changes in land uses swiftly updated in the notified Master Plan/Development Plan
A and B			A: It is done simultaneously at the time of change.
			B: Some time before the revision of Master Plan/Development Plan.

Full revision of Master Plan/ Development Plan takes more time. Modifications effected as per provisions of law⁸⁸ in parts of the plan become a necessity and are workable. Any modification statutorily made in the land use proposals is incorporated immediately in the plan to be applied and effective in the specific case of according approval for development/construction. All related modification in the broad land use proposals of the Master Plan/ Development Plan, and in the contents of the report etc. of the notified plan takes time and may only be materialized before full revision of the plan in a composite manner.

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⁸⁸ Revision /modification of Master plan are done as per Section 32 (A) of Orissa Town Planning and Improvement Trusts Act 1956 while modifications to the Development plan are carried out as per the Section 14 of Orissa Development Authority Act, 1982.

There is visible difference in land use between year 2000 and 2005 plans of Bhubaneswar Development Authority (BDA). Land use changes from vegetation to other use and from agriculture to other category during year 2000- 2005 is also visible in Bhubaneswar Development Authority area.

Indicator 3 Efficiency in the urban land use planning process: land use plans are current, implemented and do not drive people into informality and cope with urban growth.

3	3	1	Policy to ensure delivery of low-cost housing and services exists and is progressively implemented.
			A: A policy for low cost housing and services and effective instruments to implement it exists so that there is a clear trajectory to provide adequate shelter for all.
			C: There is a policy for low cost housing and services but implementation has major gaps so that the number of those with inadequate shelter actually increases.

There have been some composite housing schemes undertaken by Improvement Trusts, Development Authorities, and Housing Board for construction of Low Income Group (LIG) and EWS houses by cross subsidizing such houses but those were not sufficient to cater to the demand.

Policy for provision of affordable housing for urban poor is available but in practice, it is not being effective adequately. Scope of private developers to provide low cost houses are yet to take off in the State. In the Planning and Building Standard Regulation of the Development Authorities there is also provision for shelter funds operated upon by the Development Authorities. However, there are some lapses on the part of Government for effective implementation of the existing policy.

Availability of Government Land being scarce within the urban centres, it has been difficult to frame sufficient schemes for providing low cost houses to the urban poor. Policy for slum rehabilitation and development of the state would provide scope for making low cost houses available for the slum dwellers if slum housing under Rajiv Awas Yojana will be implemented properly.

In spite of the remarkable economic development achieved recently, over 1/5th of Orissa’s urban population still lives in slums. In some industrialized areas like Rourkela, slum populations are over 1/3rd of the total urban population. Needless to say, the quality of life in slums is abysmal, and over 90% of slum dwellers are without access to housing and adequate basic services like water supply and sanitation.

But the situation seems to improve gradually and the Government is somewhat keen towards this. RAY are being implemented now in the cities of Bhubaneswar, Puri, Cuttack, Berhampur, Rourkela and Sambalpur

3	3	2	Land use planning effectively guides urban spatial expansion in the largest city.
			C: In the largest city, while law specifies a hierarchy of regional/detailed land use plans, in practice urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization.

Infrastructure provisions in the master plan of Bhubaneswar are not synchronized with the expansion of land uses. Agencies responsible for provision, operation and maintenance of utilities, services and

community facilities do not practice the land use plans during physical planning process. Financial resources and institutional mechanism of local bodies and government agencies are not closely linked with the developmental proposals.

Revised and monitoring of development proposals as per master plan/ development plans do not take place at the appropriate level where all such stakeholders of local bodies and government functionaries participate and streamline their action plans to accommodate the objectives of the master plans/development plans.

3	3	3	Land use planning effectively guides urban development in the four next largest cities.
			C: In the four major cities in the State_ while a hierarchy of regional/detailed land use plans is specified by law, in practice urban development occurs in an ad hoc manner with infrastructure provided some time after urbanization.

Infrastructure provisions in the master plans are not synchronized with the expansion of land uses. Agencies do not practice the land use plans during physical planning process. Financial resources and institutional mechanism of local bodies and government agencies are not closely linked with the developmental proposals.

The Orissa Development Authorities Act, 1982 and the Orissa Town Planning & Improvement Trusts Act are categorically stated about the preparation of comprehensive development plan by considering the expansion, land use that is for proper development of the area.

3	3	4	Planning processes are able to cope with urban growth.
			C: In the largest city, the urban planning process/authority is struggling to cope with the increasing demand for serviced units/land as evidenced by the fact that most new dwellings are informal.

With increasing demand for houses/ house sites within the urban centres the organised centres the organised sectors of government and concerned local authorities have not been able to provide dwelling units along with suitable infrastructure. The availability of Government or public land with the disposal of such authorities are not sufficient and scope of acquiring land within a time frame and implementing schemes for providing houses/ house sites for a vast numbers of aspirants is limited. Without proper mechanism of assuring required developmental infrastructure, the owners of private land are helpless and are not able to be organised to construct houses for residential accommodation and avail decent urban amenities simultaneously. Construction of houses have come up in informal way without being processed through the competent authorities thereby attracting actions against violation of law and deprivation of proper maintenance by the local bodies. In planning authorities, development authorities and in urban local bodies there have been more cases of unauthorised construction leading to unmanageable situations.

Indicator 4 Speed and predictability of enforcement of restricted land uses: development permits are granted promptly and based on reasonable requirements

3	4	1	Provisions for residential building permits are appropriate, affordable and complied with.
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B: Requirements to obtain a building permit are technically justified and affordable but only partly complied with.

The permission/license as per OTP and IT Act 1956 and permission as per ODA Act, 1982 are granted for development of land/construction of building. Planning and building standards regulations followed by planning authorities/ development authorities provide for detailed procedures of applications for obtaining permission and issuing thereof by the Authority. The charges for granting permission include scrutiny fees and as per provisions of some Development Authorities also charge sanction fees. Such charges are affordable. The applicants usually abide the technical requirements of application for granting permission with the assistance of authorized/ empanelled technical person.

For construction of small dwelling units where the scope of technical requirements are limited, compliances in respect of availing competent technical person for all purposes of plan preparation and supervision become difficult and thus are sometimes not complied with. Some Development Authorities have incorporated some relaxation of procedures in respect of such constructions of lower order to facilitate the applicants. Otherwise compliances become difficult on the part of such applicants. BDA Bhubaneswar has attempted to adopt the procedure of outsourcing such cases as per the provisions of Regulations to attract more applicants to comply with the requirements of building permit.

In exercise of the powers conferred by section 124 of the Orissa Development Authorities Act, the Bhubaneswar Development Authority, with the previous approval of the State Government has formulated the Bhubaneswar Development Authority (Planning and Building Standards) Regulations – 2008.

3	4	2	A building permit for a residential dwelling can be obtained quickly and at a low cost.
			A: All applications for building permits receive a decision within 3 months.

Development Authorities are usually liable to abide by the provisions of ODA Act 1982 that say that the decisions in respect of approval for development/ construction may have to be made within 3 months. Time taken for issuing permission in BDA, Bhubaneswar, S.D.A Sambalpur, J.R.I.T. Jharsuguda confirmed this fact.

Indicator 5 Tenure regularization schemes in urban areas

3	5	1	Formalization of urban residential housing is feasible and affordable.
			C: The requirements for formalizing housing in urban areas are neither clear, straightforward, nor affordable but many applicants from informal areas are managing to satisfy the requirements.

Housing schemes implemented by the public agencies, which follow formal standards, are not adequate to cater to the demand. Private developments coming up in informal way do not have concern for the uncertainty of availing municipal services in time. There are no strict restrictions in terms of depriving of municipality services to the concerned areas where other buildings might have come up without observing formalities of obtaining permission. Thus unauthorised buildings do avail such services without even being properly penalised.

Due to nature and magnitude of requirements of operations against unauthorised buildings, Authorities have sometimes adopted amnesty schemes to regularise such constructions to recognise those constructions as bonafide for collection of revenue and provide formal municipal services. Such schemes of BDA Bhubaneswar and CDA Cuttack have been one time and are not contemplated to be continuing as such. Amnesty Scheme for regularising constructions made in deviation of the approved plan on legal land in Bhubaneswar. The scheme was announced as per the Section 72 (2) of Planning and Building Regulation-2001, but this clause was done away with in the BDA Regulation–2008. Under the Scheme people can regularise construction-violating norms, but the deviation should not be more than 10 per cent. In amnesty scheme, BDA had provided ample scope to legalise deviations amounting even more than 50 per cent. Under the Amnesty Scheme, the compounding fee was fixed at a flat Rs. 25 per square feet space whereas compounding in the present scheme varied keeping in mind of the gravity of violation below 10 per cent.

Regularisations of tenureship of slum dwellers have not been taken up in a massive way and have not yet been properly institutionalised. Through RAY (Rajiv Awas Yojana) such regularisation will be possible in future. Scope of provisions of OGLS Rules 1983 and subsequent amendments may be explored for ensuring secured tenureship for the deserving slum dwellers for the cities/towns of the State where implementation of such schemes have been commenced. In all other urban centres where slum pockets have been identified and notified such regularisation of houses of deserving slum dwellers can be taken up in phased manner along with preparation of Revenue Master Plan by the concerned Revenue Authorities in consultation with the Planning and Development Authorities of the District.

B.D.A. had implemented the Regularisation Scheme formulated by Government of Odisha under the name & style of “Regularization of unauthorized/deviated construction through compounding”. The scheme was in force from December’2007 to June 2009.

3	5	2	In cities with informal tenure, a viable strategy exists for tenure security, infrastructure, and housing.
			C: Strategies to deal with urban informality exist but focus only on either land or services but not both.

In different schemes of urban poverty alleviation programme involving shelter upgradation and provision of basic services, no concrete steps for ensuring secure tenureship have been taken up. Thus through various services like water supply, sanitation, drainage, health facilities etc. have been conceived land tenureship in its fullest extent have not yet been provided for such informal occupants. In some cases housing for urban poor like EWS have been taken up and formal houses/house sites have been provided with proper tenureship. But such provisions are inadequate considering requirement of vast such population. Allotment of government leasehold properties to EWS/ LIG at the level of State Government does not take into account provision of services, which sometimes become liabilities of the urban local bodies. Allottees find difficulties in availing required municipal services in time.

RAY being taken up in the cities like Bhubaneswar, Cuttack, Puri, Rourkele, Berhampur and Sambalpur, provision of secured tenureship along with minimum basic services may be ensured for such informal occupants. RAY envisages reforms in urban governance by way of improving capacities, bringing in fiscal prudence, creation of land bank, simplified processes and procedures for creation of affordable housing stock, bringing in inclusive planning and providing security of tenure.

Govt leasehold house-sites do not ensure civic services simultaneously. Private developers till now have not exhibited sufficient interest in providing low cost houses.

3	5	3	A condominium regime allows effective management and recording of urban property.
			C: Common property under condominiums is recognized but the law lacks clear (or regulations) for management and publicity of relevant records.

The Orissa Apartment Ownership Act, 1982 provides for common area and facilities which includes the land and the buildings, structural parts, installation of common services and facilities and such other parts necessary or convenient to its existence, maintenance and safety or normally in common use, as detailed in the aforesaid Act.

Orissa Apartment Ownership Act, 1982 provides for common area and services handed over by the developer to the association/ society of the apartment owners. Association/ Society may not be absolute owner of such common areas due to absence of proper legal formalities of registration and record of rights unlike other states. In the present legal framework, there is no provision for obligatory transfer of common open spaces within lay out plan area of housing sites in favour of the society of flat owners. Most of the times it remain with the builder/real estate developer for ever, being prone to unauthorized use and /or transfer.

6.3 Summary of Issues around Urban Land

- a) Public access to updated information on land use change/restrictions/ planned-urban expansion
 - i. The present restrictions on urban land use, ownership and transferability are not effective in practice due to lack of proper enforcement on the part of government to meet their objectives.
 - ii. The system to make provisions for immediate updates of land use change in Master plan/ Development Plan has now been improved.
 - iii. Information on planned urban expansion and infrastructure development are not always publicly available, largely due to deficiencies in institutional mechanism related to infrastructure development.
- b) Legal-Institutional framework/ Effective implementation of Policy
 - i. Separate institutions for planning and development of urban centres and rural areas exhibit disjointed efforts.
 - ii. District Planning Committees have been constituted for consolidating plans of urban and rural local bodies without technical support to perceive spatial plans and regional development programme.
 - iii. Public inputs in finalizing proposals of master plans/ Development Plans being mandatory, public participation from inception and during planning process are not adequate.
 - iv. Transfer of private lands to individuals as per Revenue Laws does not follow norms and guidelines of suitable physical development envisaged in the statutory Regulations of Planning/Development authorities for sub-divisional layout.
 - v. A policy of affordable housing for urban poor is in place and in the Building Regulations of the concerned authorities there is a clear provision of shelter fund. There are some

lapses on the part of government for effective implementation of the existing policy. The situation is gradually improving and the Government is keen to implement the policy. There is need of secured tenureship of slum dwellers in urban poverty alleviation programme.

- vi. While law specifies a hierarchy of regional/ detailed land use plans, in practice urban spatial expansion occurs in an adhoc manner with infrastructure provided some time after urbanization.
- vii. Provision of infrastructure development does not synchronize with the urban expansion. There are deficiencies in institutional mechanism to cope with the increasing demand of service units/land. This builds pressure on the functionaries of government responsible for infrastructure development and provision of services for the burgeoning city population of the state.
- viii. While there exist laws and systems in place for formalization of urban housing the process is too complex due to several reasons. There is inadequate supply of houses in formal way by the organized sector and informal private developments do not have concern about the uncertainties of availing civic services.
- ix. There are provisions in law to provide common area and services by the developer to the association/societies of the apartment owners. The common open spaces within layout plan area of having sites however are not always registered in the name of local bodies or local authorities, thus being prone to unauthorized use and/or transfer.
- x. Continued attention for effecting urban reforms in the spirit of 74th constitution amendment is called for to transform the urban local bodies to be more effective in planning and development of urban centres.

Best Practice

- Preparation of G I S based Master Plans / Development Plans of Towns / Cities of Odisha using satellite imageries and digitized revenue cadastral sheets.
 - Image derived maps can be utilized for Utility mapping and Property tax assessment.
 - Land use maps are accessible to all stakeholders.
- Concept of Vending Zones -- Addressing vendors' right by Bhubaneswar Municipal Corporation

6.4 Analysis and Recommendation

There is a strong need to appreciate dynamism of urban centers. Urban areas grow spontaneously and continuously in the direction of least resistance. Growth of urban centers, therefore required to be envisaged within the framework of regional development plan / program for a delineated region, which may be a District. Spatial planning at local level, sub-regional level and regional level has to be emphasized for both urban and rural areas simultaneously with institutional transformation. Planning/ Development Authorities constituted at the district level will chalk out regional development programme along with spatial development plans for the region/ district as a whole for guiding all other urban and rural local bodies to prepare Master Plan/ Development Plans along with detailed plans for their respective local areas. Any planning exercise for preparation of spatial development plan must

bring out long term development strategies for 20 to 25 years, prepare medium term development plan for 5 years, annual action plan and then frame detailed schemes for execution.

Devolution of powers to the local bodies as per 74th Amendment 1992 is required to be effected in preparation of development plans prescribing future uses of rural and urban land within a District on priority basis involving the Agency at district level. Regulatory functions of development involving environment protection, preservation & conservation of heritage buildings / sites and similar attributes are to be operated upon by the local bodies by way of well-equipping them for avoiding complexities involved in multiplicity of authorities.

Classification of land in Revenue Law is to be treated as prevailing at the time of related surveys while future suitable uses of land are to be prescribed by the statutory Institutions set up by the State Govt. Amendment in Revenue Law incorporating provisions of planning standard regulation of sub-divisional layout operated upon by the Planning/ Development Authorities is necessary in case of sub division of land and transfer thereof for individual uses.

Planning & Coordination Department, GOO may coordinate synchronizing the exercises of both the Department of Housing and Urban Development and Department of Rural Development with suitable amendments in relevant Acts/Rules and issuing necessary executive instructions from time to time. Framing of planning and building standard regulations at the State level by H & UD Department and notifying the same with formal concurrence of Rural Development Department to be operated upon by respective Planning/ Development Authorities- urban and rural local bodies

There should be uniform provision of law for all urban centres adopting UDPFI guidelines (Urban Development Planning Formulation and Implementation). Provision of adequate trained man power for GIS operations along with interpreters of image derived maps is to be ensured in each of the Planning / Development Authorities.

Specific Recommendations

- a) Bring in Institutional Reform in Urban Governance by revisiting the institutional framework for urban planning and development and focusing on ensuring public participation
 - i. Consolidating and enhancing devolution of powers to urban local bodies as per 74th Constitutional Amendment.
 - ii. Reviewing scope of functioning of district planning committees in consolidating urban/ municipal plans and rural/ panchayat plans.
 - iii. Public participation in the process of planning, devolution of power to urban local bodies and strengthening of District Planning Committees to consolidate urban and rural plans.

- b) Enforcement of Planning Process and appropriate Plan-implementation
 - i. Empanelment of technical personnel for preparation of plan and supervision of execution at the state level
 - ii. Streamlining the process of scrutiny and approval of cases for plan-approval, centralizing and outsourcing some cases.

- iii. Implementation of more Town Planning schemes (TPS) as per Odisha Development Authorities Act.
 - iv. Encouraging private developers with sufficient incentives to provide more houses/ house sites to economical weaker sections
 - v. Legal support for registration of ownership of common areas in the name of the residential welfare societies and synchronization of maintenance by Association/Society and urban local bodies of related services.
- c) Enhancing effectiveness and transparency through technology
- i. Modification in plans prior to full revision of Master Plans/ Development Plans quickly and properly by using modern technology of GIS based plan.
 - ii. Executing scope for online submission of application of building plans and communication on approval.
- d) Ensuring equity in addressing the housing needs of poor/ slum dwellers
- i. Execution of more EWS and LIG schemes by public agencies and enhancing implementation of Rajiv Awas Yojana by covering more urban centres. Ensuring secured tenureship to the deserving slum dwellers.
 - ii. Monitoring effective deliveries of projects executed by private developers providing low cost houses.

7. Panel 4 – Public Land Management

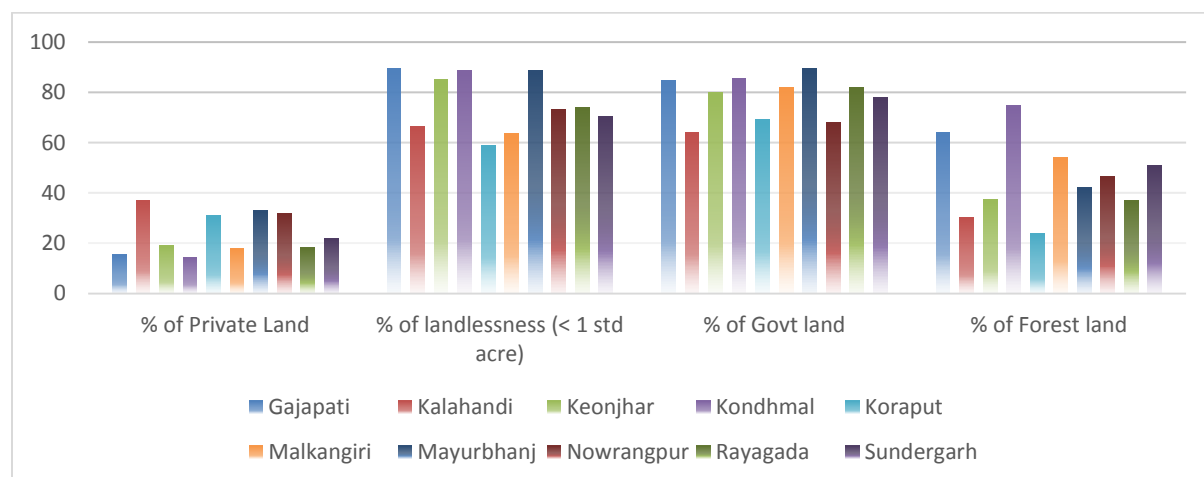
7.1 Context Analysis

7.1.1 Public Lands in Odisha: Legacy of topography and Land Governance?

Basing upon physical features and agro-economic conditions, Odisha can be broadly divided into Coastal Plains (18% of its area) and Highland Region (82%). The highland region consists of three physiological set ups – northern plateaus (23% of total area), central flood plain table lands (23%) and the eastern ghat mountains in the south (36%). The state has Scheduled Areas (with higher concentration of tribal people) that occupy about 45% of its geographical territory. Besides, Odisha is the home to 62 different tribal communities and has a relatively high concentration of tribal population, constituting 22.34% of its total population and 7.76% of the country's total tribal population.

Most of the high land regions and scheduled areas of the state are hilly and have got higher slopes, which are under the ownership of Government due to different geo-political, socio-cultural and historical reasons. An analysis of the Agriculture Census data of 1995-96 in the tribal districts⁸⁹ shows that the percentage of tribal landholders having less than one standard acre⁹⁰ of land ranges from 41% in Malkangiri to 77% in Gajapati, whereas 62% to 86% of the land in these districts is state owned (Figure 4.1). At an average 74% of the land in these districts is categorized as state (read public) land, with forest land at 47% and non-forest land⁹¹ at 27% Gajapati has only 14.82% of its total area under private landholding, with the rest of the land belonging to the government including its 46% categorized as forest land. Kondhmal is another district where almost 86% of the land is owned by the State, with 75 % of the land categorized as forests. (Kumar, et al., 2005)

Figure 8 PUBLIC land and LANDLESSNESS in Schedule Area of Odisha



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⁸⁹ These districts are Koraput, Nabarangpur, Malkangiri, Rayagada, Sundargarh, Mayurbhanj (wholly under Schedule V), Kondhmal (mostly under Schedule V) and Gajapati (partially under Schedule V)

⁹⁰ The landholdings in standard acre were calculated on basis of the extent of irrigated and un-irrigated holdings. The irrigated holdings were assumed to be having two irrigated crops of paddy each year (Class I land- one acre equals one standard acre) whereas 4.5 acres of un-irrigated uplands categorized as Class IV land is equivalent to one standard acre.

⁹¹ Non-forest state land was calculated by subtracting the Forestland area and the total operational landholdings in the district from the total area of the district. This could therefore be on higher side and include areas under reservoirs etc.

Kumar, et al. (2005) attribute one of the main reasons for state ownership of majority of the land in these districts to the erstwhile policy of not recognizing customary landholding systems, includes communal or individual ownership on swidden land (used for shifting cultivation).

In many of the tribal areas, the Survey and Settlement process didn't formalize the ownership of the hilly lands occupied by the tribal communities for agriculture. All over the state, land over 10% slopes was categorized as state owned land, because those lands could not be surveyed due to want of instruments, even though it was often used for shifting cultivation and in many cases even for permanent terraced cultivation. In undivided Koraput, during the first Survey and Settlement operations (1938-1964), the Board of Revenue ruled that since shifting cultivators are not in continuous possession of land for 12 years, they can't be treated as ryots as per Madras Estate Land Act, 1908, and therefore these lands were not to be settled in their names (Behuria, 1965).

7.1.2 Public Lands in Odisha: Driver of Investment?

As per the Reserve Bank of India Odisha has emerged as the hottest investment destination for new projects during 2012-13, attracting a commitment of about 10 billion USD, a 27% share of all-India investments. This is attributed to its mineral resource, as bulk of the investments is proposed in coal mining, steel and a few port projects. Cumulative investment commitments received by the state stands at over 2.3 trillion USD since the turn of the century around land-intensive industries.

State has about two thirds of land under state ownership, either with revenue or forest departments. Most of these lands easily get requisitioned through application of principles of eminent domain and public purpose notwithstanding the age-old livelihoods-links. Tribal population bears the brunt of displacement to the maximum; more than 40% of the displaced families due to developmental projects in Orissa (GOI, 2002: 466) are tribal and they lost control over their source of livelihood. Mohanty (1997) shows that, Koraput district has 18 large projects occupying 50,000 acres of land (or 7.42% of the total area) depriving thereby 10% of the tribal population of their livelihood.

The reactions to land acquisition have been alarming and unfavourable for both investors and the communities. While the commitments of compensation and resettlement and rehabilitation are treated with great deal of mistrust, social movements and political unrest are quite commonly noticed reactions in the investment destinations across the state

Government Land Categories in the state as per ownership

Lands other than forest land, classified as Government land, based on ownership

- Land treated as the property of Government, including the land owned, controlled or managed by any State Government Department or Undertaking, land acquired under Land Acquisition Act, 1894, Coal Bearing Areas Acquisition and Development Act 1957 or Mines and Minerals (Development and Regulation) Act 1957 etc. and land treated as public premises under Orissa Public Premises (Eviction of Unauthorized Occupants) Act, 1972.
- Government Land Types owned by Revenue Department

Different revenue laws in the state, provide different definitions of Government land basing upon the criterion of ownership. The Section 2 of Orissa Prevention of Land Encroachment Act 1972 mentions a large class of lands as property of Government for the purposes of the said Act, while the Section 2(b) of Orissa Govt Land Settlement Act 1962 says, "Government land means any waste land belonging to Government, whether cultivable or not, recorded as House-site, Anabadi, Chot Jungle, Puratan Patit, Nutan Patit, Parityakta Bedakhali, Gochar or by any other description, whatsoever." Section 2(f) of Orissa Public Premises (Eviction of Unauthorized Occupants) Act, 1972 defines the public premises to

include all premises situated in an urban area, belonging to or taken on lease by the Government, Company or Board, or requisitioned by the Government. Thus, there are both commonalities and differences between the definitions of Government Land or Public Land in different revenue laws. The largest extent of Government land is held by the Revenue Department in the state (30% of all village lands)⁹², which falls under four sub-categories. Each Revenue Village in the state maintains five types of khatas/khatiyans under which the plots/parcels are grouped. While the four types as mentioned below constitute the Govt/Public lands (Chakraborty, 2007), other one type deals with private lands.

- i. *Abad Jogya Anabadi* (inhabitable/culturable wastelands)
- ii. *Abad ajogya Anabadi* (un-inhabitable/unculturable wastelands)
- iii. *Rakshita* (reserved Lands)
- iv. *Sarbasadharan* (communal land)

Abad Ajogya Anabadi lands include “ un-inhabitable/unculturable wastelands” such as water bodies (including rivers, lakes and sea), hillocks, mountain, hilly areas and sandy areas. This category often forms the most important category of non-forest government land in tribal areas where hills and sloping areas have been categorized as abad ajogya anabadi. This category is also treated as “objectionable” for settlement as it is presumed to be uncultivable/un-inhabitable.

Abad Jogya anabadi (inhabitable/Culturable wastelands) include inhabitable/culturable land within village boundaries not settled with raiyats, such as abandoned holdings, surrendered holdings, land reserved for Panchayats and armed forces personnel. These lands are “unobjectionable” for regularization, and can be settled with raiyats⁹³.

Rakshit (Reserved) lands include lands acquired (under Land Acquisition Act, 1894) but not transferred to the proposed use, irrigation works, lands transferred to Gram Panchayats, Gochar lands (grazing land)⁹⁴, land for village settlement, poramboke land, Gramya jungle⁹⁵ etc. Sarbasadharan land is defined in section 2(b) of the Orissa Government Land Settlement Rules, 1983⁹⁶, as communal land used by

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⁹² As per bhulekh (<http://bhulekh.ori.nic.in>) data of all Tehsils provided by NIC in February 2014 to LGAF team

⁹³ As per OLR Act, 1960 Section 4 (1), Raiyat means persons holding lands immediately before the commencement of this Act or at any time thereafter with rights of occupancy under or within the meaning of any law for the time being in force.

⁹⁴ As per OGLS Rules 4 (2) (i) in every surveyed village which is not included within the limits of an urban area, five per cent of the effective area of the village shall be set apart for pasturage (Gochar) subject to availability of suitable Government land; (ii) in every un-surveyed village, land for pasturage shall be set apart at the rate of one acre for every fourteen inhabitants of the village, and if the village is un-inhabited; reservation for pasturage, shall be made at the rate of one acre for every three persons having land in the village, subject to availability of suitable Government land

⁹⁵ Gramya Jungle (Village Forest) is owned by the Revenue Department, but the provisions of Forest Conservation Act (FCA), 1980, apply on these lands, prohibiting their diversion for non-forestry purpose. According to a State Government Order in 1966 (Government of Orissa Instructions for Reservation of Government Land for Specific Purposes in Rural Areas dated 28 Jan, 1966) for reservation of land for various purposes, 10% of the effective village area is reserved as village forest (Gramya Jungle) for the exercise of the rights and privileges of the villagers and for other development works.

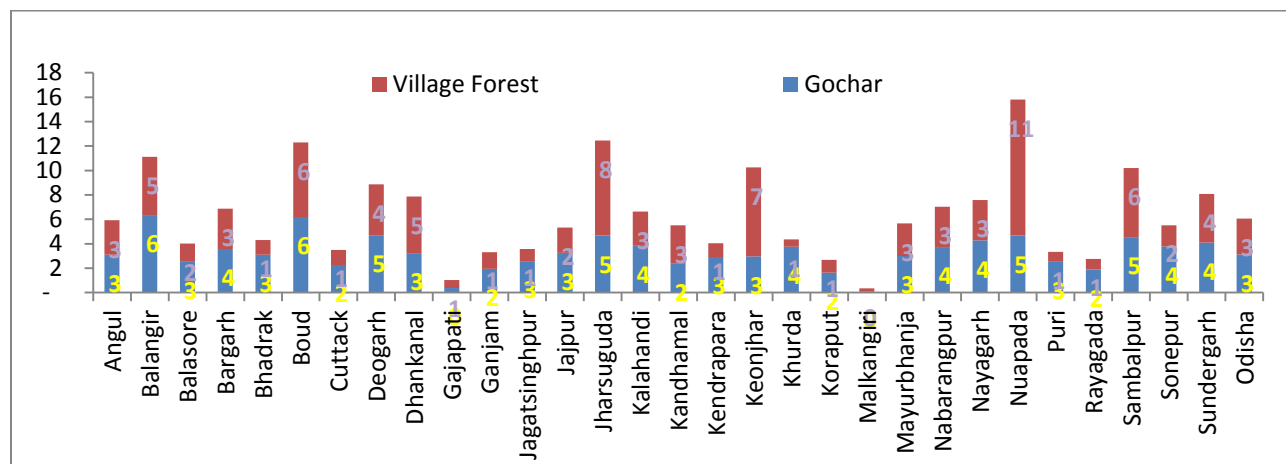
Protected forests also come within the village boundary, which are managed by Forest Department, though owned and controlled by the revenue department. These are recorded in the revenue records as reserved land (village forest/gramya jungle), cultivable or uncultivable wastelands – patra jungle (scrub forests), jhati jungle (forest with minor crops), pahad and so on (Mallik bb (2004) Social Ecology of Forest Resources: A Study of a Tribal Region of Orissa, 375 pages, Gyan Books, Orissa, 2004)

⁹⁶ Section 2(b) of OGLS Rules, 1983: Communal with respect to a land means a land which is used by any village community or any section thereof for a communal purpose like burying or cremating dead bodies, celebrating

village for community purpose such as graveyards or cremation ground, places where festivals or melas are held, playgrounds, temples, mosques and other religious places of worship, village roads and other land reserved for public purposes. In tribal areas these include Dhangada or DhangidiGhar (common dormitories for boys or girls)

All four categories fall within village boundaries and are also known as village lands.

Figure 9 Percentages of Gochar and Village Forest to Total Village Land



As per analysis of Bhulekh (<http://bhulekh.ori.nic.in>) data maintained under NLRMP of Revenue and Disaster Management Department of 30 districts (317 Tehsils as per entries in Feb 2014)⁹⁷, the average % of land under Gochar and village forest are 3% each in Odisha overall. However, there is visible variation across districts as mentioned in the Chart above.

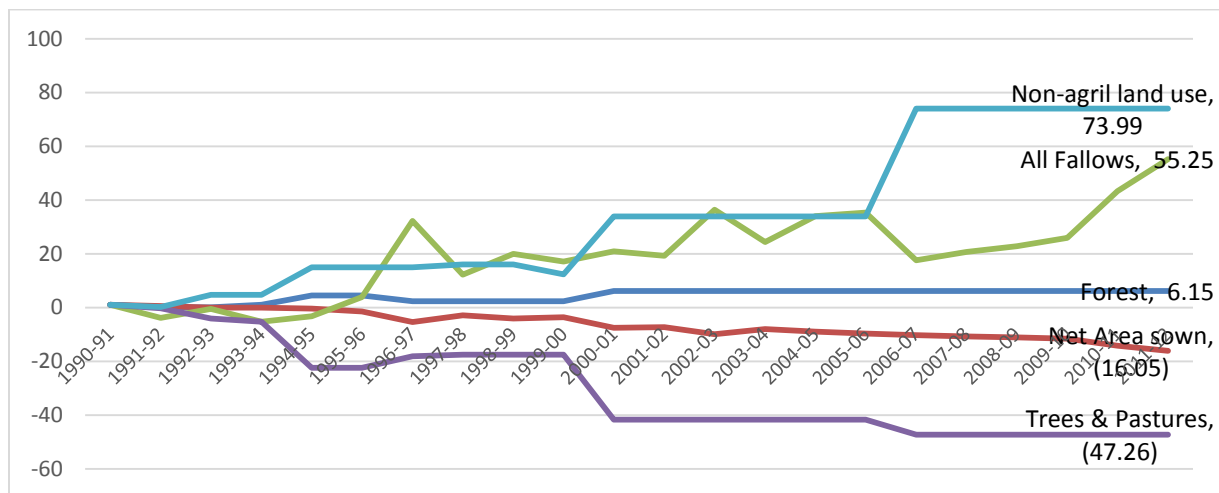
7.1.3 Land Use and Land Use Change in Odisha and Public Land

A perusal of land use change between 1990 and 2013 reveals reduction of public lands under tree crops and groves, pastures and culturable wasteland, which are productive public lands usually under common property regime. However, there has been an increase in the barren and un-culturable wasteland.

public festivals, holding melas or common worship and the like without any Interference from anybody or paying any fees for the purpose;

⁹⁷ The data are as per the entries made in the bhulekh website and may include some errors in entry and the entries may not be complete in terms of uploading all RoRs.

Figure 10 Land Use Change (1990-2012) (In %)



7.1.4 Legal frameworks around Public Land Management in the State

Major Acts and Rules Governing Public lands in Odisha and their specific provisions

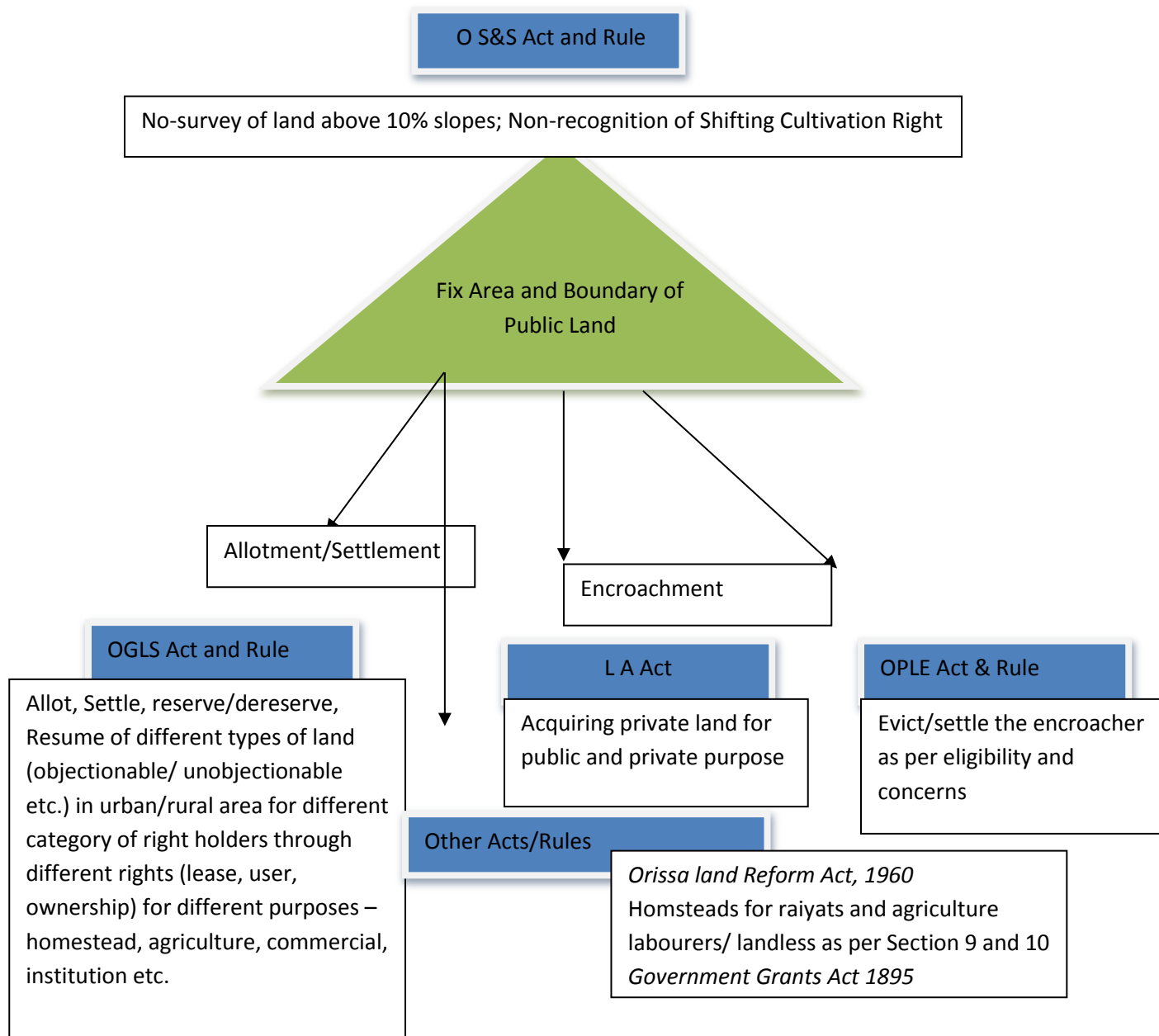
1. The Orissa Survey and Settlement Act, 1958 and Rules, 1959.
2. The Orissa Land Reforms Act, 1960 and Rules, 1965.
3. The Orissa Government Land Settlement Act, 1962 and Rules, 1963.
4. The Orissa Prevention of Land Encroachment Act, 1972 and Rules 1973.
5. The Orissa Consolidation of Holdings and Prevention of Fragmentation of Lands Act, 1972 and Rules 1973.
6. The Orissa Government Lands Bar to Acquisition of the Right of Occupancy Act, 1950⁹⁸
7. Orissa Public Premises (Eviction of Unauthorized Occupants) Act, 1972
8. Orissa Grama Panchayat Act 1964 and Rules 1968
9. Orissa Forest Act 1972
10. Orissa Hindu Religious Endowments Act, 1951
11. Orissa Government Grants Act 1895⁹⁹
12. 73rd and 74th Constitution Amendment Acts 1992
13. The Orissa Scheduled Areas Transfer of Immovable Property-OSATIP (By Scheduled Tribes) Regulation, 1956
14. The Provisions of Panchayats (Extension To Scheduled Areas) Act, 1996
15. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006
16. Land Acquisition Act 1894 and amendment 1984; Land Acquisition (Orissa Amendment) Act, 1948– applicable mostly to private lands
17. Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act 2013 – applicable mostly to private lands

C_____

⁹⁸ An act to bar the acquisition of the right of Occupancy in certain government lands in the State of Orissa (brought in to allow cultivation on acquired land till the reservoir fills in to contribute to food production without allowing accrual of occupancy right as per Orissa Tenancy Act)

⁹⁹ Applicable largely to Bhubaneswar, Rourkela and Sunabeda cities

Figure 11 Legal Framework around Public Land Management



7.1.5 Legal frameworks around Land Acquisition in the State

State usually provides land to the investor after acquiring it through century old Land Acquisition Act (LAA) 1894 using principles of *eminent domain and public purpose*. In addition to the LAA, 1894 there are 16 more Central Acts, which deal with land acquisition and displacement. As a part of its reformist agenda, the national government during last and this decade have brought in legislations to address these issues and are in the process of developing new land policies through consultative processes. While the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 seeks to address the issues of ownership over common lands by undoing the historical injustice meted out to the land rights of the scheduled tribes, the Right to Fair Compensation and Transparency in Land Acquisition and Resettlement & Rehabilitation Act, 2013 strives to ensure right to fair compensation and transparency in the land acquisition and rehabilitation processes. The Draft National Land Reforms Policy and the Draft National Land Utilization Policy have also been disseminated for discussion at various levels.

Land Acquisition and the accompanying displacement issues in Odisha are governed by National Land Acquisition Act, 1894/1984, the Land Acquisition (Orissa Amendment) Act, 1948 and the Land Acquisition (Orissa Amendment and Validation) Act, 1959. The Industrial Infrastructure Development Corporation of Orissa Act, 1980, is also invoked in cases where Industrial Infrastructure Development Corporation (IDCO) acquires land for companies. In Odisha, the Revenue and Disaster Management Department is the nodal department for acquisition and allotment of land for different purposes including for setting up of industries. Orissa Resettlement & Rehabilitation Policy, 2006 has broadened the definition of a family with a major focus on livelihood analysis and planning, perspective infrastructure planning in the resettlement areas, socio-cultural and socio-economic survey to give recognition to wide-ranging livelihood options in the affected areas.

In Industrial Policy Resolution (IPR) 2007, Government of Odisha had also committed itself to formulating a ‘Land Policy’ to address all issues concerning identification, acquisition and allotment of land for industrial and allied purposes, including creation of associated social infrastructure.

7.2 Land Governance Indicators: EI Report and Scoring

Panel	LGI	Dim.	<i>Land Governance Indicator 10</i> <i>Identification of public land and clear management: public land ownership is clearly defined, effectively serves the public purpose, is inventoried, under clear management responsibilities, and relevant information is publicly accessible.</i>
4	1	1	Criteria for public land ownership are clearly defined and assigned to the right level of government.
			C: Public land ownership is justified by provision of public goods but management responsibility is often at the wrong level of government.

In the state of Odisha, no land is directly defined as public land. Government Land and communal lands are the terms, which have been defined as per different acts/rules viz. Orissa Government Land Settlement Act and Rules, Orissa Prevention of Land Encroachment Act and Rules and Orissa Survey and Settlement Act and Rules. In Section 2(b) of The Orissa Government Land Settlement Act, 1962’ a seemingly comprehensive definition of ‘Government land’ is provided as being “any waste land

belonging to Government, whether cultivable or not, recorded as House-site, Anabadi, Chot Jungle, Puratan Patit, Nutan Patit, Parityakta Bedakhali, Gochar or by any other description, whatsoever". As per OGLS, Rule, 1983 Effective area of a village means the total extent of private agricultural land plus arable Government lands consisting of Gochar, village forests and waste land in the village, multiplied by 20/23. In Orissa Prevention of Land Encroachment Act 1972, the concept of public land reflected as 'Property of the Government', has been elaborated under its Section 2, captioned 'Property of the Government'

Government lands held by the Revenue Department in the state are classified in four categories, each to serve a distinct public purpose as determined by the state policy on public land.

Table 10 Public land for Public Interest

Public land Type	Explanation /Scope/Universe	Public Interest/ Public Goods
Abad Jogya Anabadi (culturable wastelands)	Cultivable land within village boundaries not settled with raiyats, abandoned holdings, surrendered holdings, land reserved for Panchayats and armed forces personnel.	"Unobjectionable" for regularization, and can be settled with raiyats Land settlement process prescribed for these lands under OGLS are based on social justice and equity
Abad ajogya anabadi (unculturable wastelands)	Water bodies (including rivers, lakes and sea), hillocks, mountain, hilly areas and sandy areas Forms the most important category of non-forest government land in tribal areas where hills and sloping areas have been categorized as abad ajogya anabadi	Treated as "objectionable" for settlement, as it is presumed to be uncultivable. Objective seems to maintain these lands for ecological balance, and for being used as commons for some useful produce viz. biomass under open access
Rakshita (reserved Lands)	Acquired lands (under Land Acquisition Act, 1894) but not transferred, irrigation works, lands transferred to Gram Panchayats, Gochar lands (grazing land) ¹⁰⁰ , land for village settlement, poramboke land, Gramya jungle ¹⁰¹	Primarily these lands are reserved for meeting the needs of local community for fodder (gochar) and fuel/NTFP (from village forest etc.) or for future development and for possible use by some Government agencies. These categories seem to serve the public interest/goods more specifically

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¹⁰⁰ As per OGLS Rules 4 (2) (i) in every surveyed village which is not included within the limits of an urban area, five per cent of the effective area of the village shall be set apart for pasturage (Gochar) subject to availability of suitable Government land ; (ii) in every un-surveyed village, land for pasturage shall be set apart at the rate of one acre for every fourteen inhabitants of the village, and if the village is un-inhabited ; reservation for pasturage, shall be made at the rate of one acre for every three persons having land in the village, subject to availability of suitable Government land.

¹⁰¹ Gramya Jungle (Village Forest) is owned by the Revenue Department, but the provisions of Forest Conservation Act (FCA), 1980, apply on these lands, prohibiting their diversion for non-forestry purpose. According to a State Government Order in 1966 (Government of Orissa Instructions for Reservation of Government Land for Specific Purposes in Rural Areas dated 28 Jan, 1966) for reservation of land for various purposes, 10% of the effective village area is reserved as village forest (Gramya Jungle) for the exercise of the rights and privileges of the villagers and for other development works.

Protected forests also come within the village boundary, which are managed by Forest Department, though owned and controlled by the revenue department. These are recorded in the revenue records as reserved land (village

Sarba-sadharan (communal land)	Graveyards or cremation ground, places where festivals or melas are held, playgrounds, temples, mosques and other religious places of worship, village roads and other land reserved for public purposes. In tribal areas these include Dhangada or Dhangidi Ghar (common dormitories for boys and for girls)	Defined in Section 2(b) of the Orissa Government Land Settlement Rules, 1983, as communal land used by village for community purpose These lands are mostly for public amenities/ facilities and are aimed to serve public goods/ public interest
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Public land is transparently managed at the appropriate level of government

As per the existing laws the ownership of the public land is vested with the state, specifically with the Revenue Department and these laws also define how the officials at different levels can take decisions concerning administration/management of public lands. For management of certain types of communal land (viz. burial/cremation grounds, celebration of festivals, site of common worship etc.) with involvement of community is prescribed under Rule 2(1)(b) of Orissa Govt Land Settlement Rules 1983.

Alongside of these State revenue laws, another group of Central laws (Viz. Seventy-third and Seventy-fourth Constitution Amendment Acts of 1992, PESA Act 1996 and Forest Rights Act 2006) co-exist in Odisha bearing inter alia on the issues of ownership, control and management of public land with involvement of and/or ownership of the units of local self-Government. But there has not been any actual devolution of powers to the bodies of local self-government vis-à-vis the constitutional mandate and legal compliance in the context of management of public land in both rural and urban areas. Though there have been certain amendments to Orissa Gram Panchayat Act 1964 for the sake of legal compliance to the constitutional mandates and to the statutory provisions made at Central level, so far the involvement of community in the shape of Grama Sabha or Grama Panchayat has not been given effect to at ground level.

The Government of Odisha in order to make a formal compliance to the 73rd and 74th Amendments did in fact amend its **Odisha Gram Panchayat Act 1964 and Odisha Municipal Act 1950** respectively by way of inserting the relevant items into the texts of these laws. But, the crucial matters relating to the ownership and control of public land in legal sense have continued to stay with the revenue authorities starting from Tahsildar upto Member Board of Revenue.

Again, in order to make a formal compliance to the overriding Central Act **Panchayats (Extension to Scheduled Areas) Act 1996, briefly called PESA Act** the Government of Orissa amended its principal Panchayat laws within one year of its enactment, by inserting provision at Section 5(6) of OGP Act 1964, which reads, *“In the Scheduled Areas, the Gram Sabha shall be competent to safeguard and preserve the tradition and customs of the people, their cultural identity, community resources and customary mode of dispute resolution consistent with the relevant laws in force and in harmony with basic tenets of the Constitution and human rights”*.

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 or briefly called Forest Rights Act, in tandem with PESA Act 1996 (vide Section 13 of FRA), has also entrusted the authority to Gram Sabha for vesting of the ownership and management of forest land to both individuals and communities along with the power to arbitrate over the disputes arising there from

forest/gramya jungle), cultivable or uncultivable wastelands – patra jungle (scrub forests), jhati jungle (forest with minor crops), pahad and so on (Social Ecology of Forest Resources: A Study of a Tribal Region of Orissa By Bibhuti Bhusan Malik, 375 pages, Gyan Books, Orissa, 2004)

(vide Section 6-1 of FRA). While the state has done fairly well in terms of distribution forest land (including forest kissams on Government lands) Pattas to individual households and issuing instructions for corrections of Record of Rights and Maps, albeit with some gaps and limitations, the allotment of community rights (CFR) over forest land and over forest resources is yet to materialize on a visible scale.

The management of change in land use/ titling is not transparent and is often discretionary. The utilization of public land serves mostly the national public goods rather than the local public goods and market-based 'cost-effective' rationale is found to dominate the social, political and cultural discourse on public goods.

4	1	2	<i>There is a complete recording of public land.</i>
			C: Between 30% and 60% of public land is clearly identified on the ground and on maps.

Public lands are identified during Survey and Settlement Processes within the village boundary and are recorded in the maps. Though their boundaries are not maintained in the ground, cadastral maps help in their identification during the detection of encroachment, land allotment/settlement/distribution, or reservation/de-reservation processes.

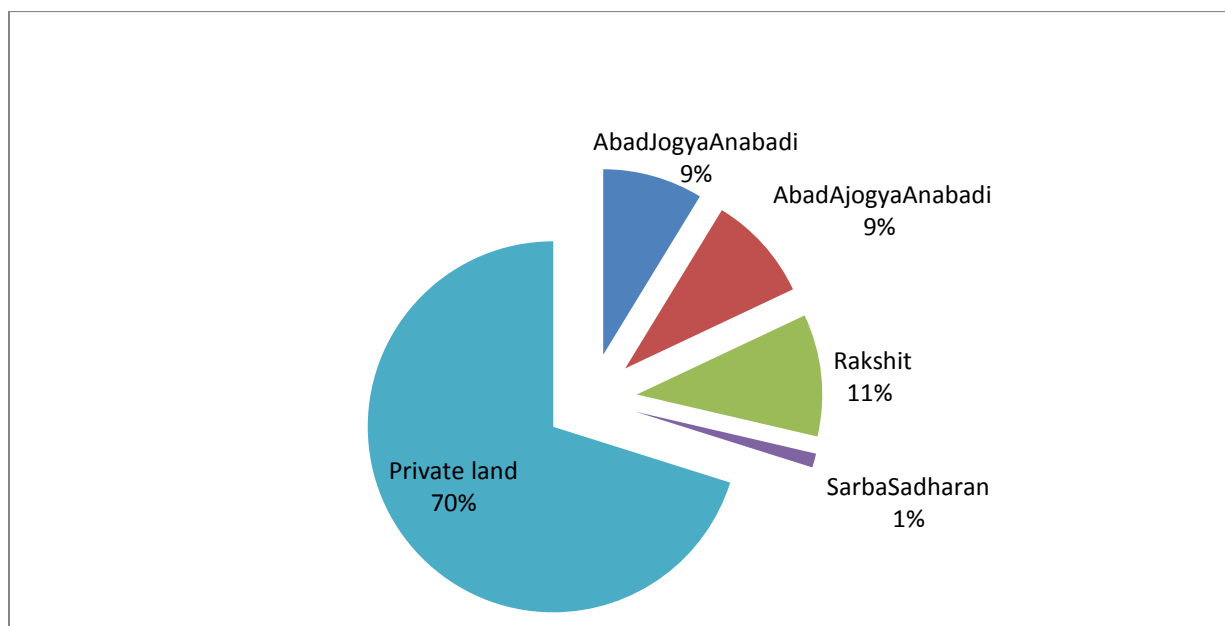
The survey and settlement process actually takes place once in 20-60 years, though periodic, revisional surveys ideally should be conducted every 25-30 years or so (Mearns and Sinha, 1999) hardly there has taken place any revisional survey in any area, post-independence. The Survey and Settlement Process has not been able to completely capture the actual land use and ownership of the land classified as Governments lands, especially in schedule areas due to various reasons (Kumar et al, 2005). Many of the lands, particularly on hilly slopes have been recorded as Govt lands; though have been under cultivation and customary ownership before and after Survey and Settlement process. Similarly, in other parts of the state, the public lands have been regularly encroached upon. As per Mearns and Sinha (1999), land in Orissa may be purchased, inherited or rented (leased), but in the case of public land and the commons these are encroached upon.

During the Survey and Settlements operations held in the past, the shifting cultivation lands on hill slopes were categorized as government land, with no recognition of tribal rights over it, either individual or collective (Kumar et al 2005) and in many cases the next generation of tribal cultivators continue to use the land for some or other purposes. Survey and Settlement processes in undivided Koraput district were stopped at 10% slope line. The extent to which such land was being cultivated by the tribals is illustrated by the fact that in just two tribal blocks in neighboring Kalahandi district, 125,000 acres of sloping shifting cultivation lands were included under Dongara Khasra during the Survey and Settlements i.e. shown as land cultivated by the tribals. (Kumar et al 2005). In hilly districts, where the availability of plain lands is limited, tribal farmers as an age-old cultural practice do raise rainfed crops or take up horticulture/shifting cultivation even on the land above 10-degree slope. Therefore, though the public lands are identified in maps with the corresponding areas calculated, a clear identification of the public lands is often difficult in tribal/scheduled areas. In case of land above 10-degree slope, only the external boundary has been mapped and rectangular plots are made on the map to calculate the area between the 10-degree slope line and village boundary.

In urban as well as rural areas in coastal plains, they are often encroached. Their boundaries are difficult to locate without the map.

However, public lands are quantified village-wise in Record of Rights and in cadastral maps. As per analysis of Bhulekh (<http://bhulekh.ori.nic.in>) data maintained under NLRMP of Revenue and Disaster Management Department of 30 districts (317 Tehsils as per entries in Feb 2014)¹⁰², it is revealed that the Government land constitutes about 30% of the total land within a village boundary. This distribution excludes land under Forest Department (Reserve Forest) outside the village boundary. Among public lands, Rakshit land constitutes about 11% of the total while both culturable and unculturable waste constitutes 9% each.

Figure 12 Distribution of Government and Private land in Odisha (as % to total Village land)



However, the land distribution across development geographies presents a highly variable picture. The percentage of Government land is found to be higher in Scheduled Districts¹⁰³ (35%) followed by KBK¹⁰⁴ (32%), state as a whole (30%) and Coastal districts¹⁰⁵ (18%).

4	1	3	Information on public land is publicly accessible.
			C: All the information in the public land inventory is only available for a limited set of public property and there is little or no justification why records are not accessible.

Information on public land, viz. type of public land (viz. Culturable waste, unculturable waste etc.), their Khatiyani numbers and details about the parcels under the khatiyani viz. parcel number, kisham area and the location details are available in bhulekh website, which can be accessed by anybody having access to net connection. These information are available khatiyani and plot-wise, and options for consolidated

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¹⁰² The data are as per entry in the bhulekh site and may include some errors in entry and may not be complete

¹⁰³ Tribal area include districts Boudha, Kandhamal, Gajapati, Rayagada, Koraput, Malkangiri, Nabarangpur, Mayurbhanj, Sundergarh and Keonjhar

¹⁰⁴ Include erstwhile undivided Koraput, Bolnagar and Kalahandi districts

¹⁰⁵ Includes Balasore, Bhadrak, Kendrapara, Cuttack, Jajpur, Jagatsinghpur, Puri, Nayagarh, Khurda and Ganjam

information for a block, tehsil or district are not available for public. Bhulekh database has not been linked to digitized cadastral maps, though digitization and geo-referencing has been completed (GOO, 2013). As a result maps of public land are not accessible.

Particulars of lease of public land sanctioned under OGLS Act 1962, or that of the encroachment of public land punishable under OPLE Act 1972 are not accessible to the public. However, one may ask for such information under RTI Act 2005. But all information in respect of latest map of public land and its present status of possession/encroachment/use etc. are difficult to get as the maps present the situation as recorded during survey and settlement.

In the audit report ¹⁰⁶of “Allotment of Government land by GA (General Administration) Department in Bhubaneswar City for various purposes” CAG has observed that that though the Department is the custodian of Government (read Public) land in BMC (Bhubaneswar Municipal Corporation) area, it had no comprehensive data on total land available, allotted, and encroached upon. Department has a web page based Land Management Information System. However it does not have complete, accurate, reliable and updated database in respect of actual availability of Government land and its status to the extent of land alienated/ leased out or encroached upon, the audit observed. As of January 2013, the Department reported availability 15,525 acres of Government land under BMC area along with a database on availability of land, allotment of land, cases of encroachment of Government land etc., and that steps were being regularly taken to update the existing database as and when necessary. However, the Department could not show the database to Audit.

4	1	4	<i>The management responsibility for different types of public land is unambiguously assigned.</i>
			C: There is ambiguity in the assignment of management responsibility or capability for different types of public land and/or major gaps in the extent to which equity and efficiency are often not attained in practice.

Ownership and management of most public land are ambiguous viz.; public lands under ownership of revenue/forest department and management/ownership (GP in Schedule V area) of community.

Revenue laws vest the ownership of the public land with the state with the Revenue Department and define how officials at different levels can take different decisions concerning public land governance/management. For management of certain type of land (viz. Gochar), involvement of units of Local Self Governance (Gram Panchayat) is prescribed by OGLS. Though there have been certain amendments to Orissa Gram Panchayat Act, so far the involvement of GP has neither been streamlined nor formalized in land matters.

Under civil appeal No. 1132 of 2011 in SLP (C) No. 3109 of 2011 the Honorable Supreme Court has directed to all the State Govts to prepare schemes for speedy eviction of illegal/ unauthorized occupants of Gram Sabha/Gram Panchayat/ Paramboke/Shamlat land with show cause notice and a brief hearing; to restore to the Gram Sabha/Gram Panchayat for the common use of villagers of the village; to regularize exceptional cases e.g. where lease has been granted under some Govt notification to landless labourers or members of SCs /STs, or where there is already a school, dispensary or other public utility

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¹⁰⁶ Report of Comptroller and Auditor on General and Social Sector for the year ended March 2012, Volume 2, Government of Odisha No. 4 of the year 2013

on the land. It had directed the Chief Secretaries to ensure strict and prompt compliance of this order and submit compliance reports to the Court from time to time. The Revenue & Disaster Management Dept, Government of Odisha under letter no. 18898/CS R&DM, Dated 2/5/2011 directed the district Collectors for eviction of unauthorized occupants. However, no Panchayat or Gram sabha in Odisha is made aware about such provisions nor handed over the responsibility to safeguard and preserve the community resources including common land.

As per a CAG report, the policy and procedure for allotment of Government land in Bhubaneswar is not clear. As a result, multiple bodies like Bhubaneswar Development Authority (BDA) and Odisha Industrial Infrastructure Development Corporation (IDCO) and GA Department itself were allotting land for similar purposes. Audit¹⁰⁷ scrutiny revealed that though the GA Department was leasing land to IDCO for industrial purposes and to BDA for residential purposes; they were in turn allotting land to educational institutions, hotels and hospitals, which was done directly by the GA Department as well. Details of land allotment by these bodies to hotels, hospitals and educational institutions are given below. There was no coordination and unified approach among the above three authorities in allotting land which were under their possession and the lands were allotted at the discretion of the authorities concerned, without any stated principles or criteria.

4	1	5	<i>Responsible public institutions have sufficient resources for their land management responsibilities.</i>
			C: There are significant constraints in the financial and/or human resource capacity but the system makes effective use of limited available resources, with limited impact on managing public lands.

Public land management in the state is not with a single agency or Department. While public lands in rural areas are mostly governed by Revenue Department with some minimal role prescribed for Gram Panchayat in management of Gocahr (as per OGLS, 1962), in urban/industrial areas there are multiple agencies involved in the matter such as Urban Local Bodies, Development Authority, General Administration Department (for land in Bhubaneswar, Rourkela and Sunabeda cities, as per provision of Government Grants Act) and Industrial Development Corporation of Odisha (IDCO) etc. In rural areas agencies like IDCO also manages public land, when these are requisitioned for industrial use. Departments like Water Resources Department also manage the surplus land that remains with them. Most of these agencies are involved in land allotment, resumption, reservation/de-reservation, and settlement with individuals (poor, tribal etc.), institutions (Govt/Non Govt) and industries etc. As such there is no effort by these agencies towards development of public lands. Whatever development of the land usually takes place after it is allotted or settled. IDCO usually takes up land development for industries once it gets the public land allotted.

The above departments and agencies have other multiple roles to play and the staff strength of these departments has not been increased since long. Resources and manpower constraints are a huge stumbling block in effective and efficient performance of responsible public institutions in management of lands. Most of them are trying their best to perform notwithstanding the resource constraints but at times the constraints are too big to surmount. Such a gap often results in delay in public land

management decisions and also leads to a kind of situation marked by a syndrome of ‘every one’s responsibility, but no body’s responsibility’.

There has been no addition to the local revenue staff (posts of Revenue Inspectors, Clerks, etc.) to cope with the increase in the volume of work arising from the ongoing increases in population and land transactions., Also no new investments in infrastructure or staff training have been made. Recent years have also witnessed a rapid increase in allied works (viz. relief operations, issue of different certificates, census etc.) apart from the constant pressure from a welfarist government for land distribution etc. Above all, the old rules of business handed down from colonial times (such as Orissa Records Manual 1964, Orissa Secretariat Instructions 1961, Board of Revenue instructions, Mutation Manual 1962 and Orissa Tahsil Account Manual, only to name a few) are still followed in the hierarchical decision-making process which are slow, with conflicting priorities and often having limited or no relevance to present context. Taken together, these factors combine to over-burden the lower levels of the revenue administration and result in an inefficient land record management system fraught by excessive delays and high potential for rent seeking. (Mearns and Sinha, 1999)

A Revenue Inspector allocates about 25% of his time for updating land records and maintenance of other records (Mearns and Sinha, 1999), and only a small fraction of his daily routine is devoted to his responsibility towards public land management. Over the years the scope of RIs’ operations has increased both in terms of the area to cover and the quantum of tasks to perform. On an average, an RI circle in Orissa now covers 20-30 villages with an annual revenue demand which is nearly 10 times the figure prescribed in the 1961 'Manual of Tehsil Accounts' (Tripathy, 1992). The conference of state revenue secretaries in 1985 agreed that ‘the real jurisdiction of the Revenue Inspector should be brought down to a manageable level such as four villages or 3000 khatiyans per [RI]’ (GOI, 1985: 53).

On the other hand, as per stipulation made by 12th Finance Commission the expenditure on salary is to be contained within 35% of net revenue expenditure. Odisha Fiscal Responsibility and Budget Management Act, 2005 mandates the state to contain expenditure on salary within 80% of state’s own revenue¹⁰⁸.

The limitation of staff and the low compensation at field level can be appreciated by the highlights of a Corruption Perception Study conducted in 2006 by the State Vigilance Directorate. The reasons attributed by the service receivers of Tehsil Office, the field level important office for payment of bribe was to get the work done quickly as it was believed that nonpayment may cause delay and even lead to denial of expected services. One third of the nodal officers surveyed in Tehsil accepted the facts about bribe and identified poor staff strength and low salary of staff as primary causes.

In the study by Mearns and Sinha (1999) it was observed that though legislations exist to prevent encroachment on government-owned ‘wastelands’, but these were largely ineffective. There were powerful incentives for revenue inspectors to take bribes from encroachers to permit continued cultivation, rather than to initiate eviction proceedings. More powerful individuals might thereby acquire permanent occupancy rights through ‘adverse possession’.

In rural areas, most of the public lands are managed (development/treatment) by other departments viz. PR Department through MGNREGS, RD Department for water supply and roads etc., Soil Conservation/Horticulture for plantation or Government promoted CBOs (viz. watershed committee, joint forest management committee, SHG etc.) for taking up land development, plantations etc. In the decision making process through these agencies around public land management, many a time the revenue department is not involved, either due to time constraints or lack of awareness/willingness on

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¹⁰⁸<http://www.odisha.gov.in/finance/notifications/2013/3602.pdf>

the part of these agencies. In most cases, wherever the revenue department was approached, mere contacting took place after the planning stage.

Moreover, Revenue department being largely an enforcement department, it has also limited exposure to partnership based collaborative projects that require involvement of multiple stakeholders-and additional financial and human resources.

Ongoing computerization initiatives through NLRMP, once completely rolled out may alleviate the burdens of RI to some extent, but rationalization of the RI's workload and of the procedures of revenue administration are more important matters for squarely addressing the issues of public land management. Also formalization of involvement of Panchayats and formulation of a clear Land Use Policy may make the public land management more effective and efficient.

4	1	6	All essential information on public land allocations to private interests is publicly accessible.
			B: Key information for public land allocations (the locality and area of the land allocations, the parties involved and the financial terms of the allocation) is only partially recorded but is publicly accessible; or the key information is recorded but only partially accessible.

Allocation of forestland for private/public interest after 1980 through Forest Clearance process as per Forest Conservation Act, 1980 is available at <http://forestsclearance.nic.in/search.aspx> and can be accessed by anybody through query based search. Available information are around proposal number, Proposal name, category, name of user agency, area applied for, state, status of proposal etc. The information downloaded indicates more than 800 applications for diversion of a total of 1.42 lakh ha were made *between Aug, 1981 and December 2013* as per the figures below.

Figure 13 Type of projects for which forestland diverted

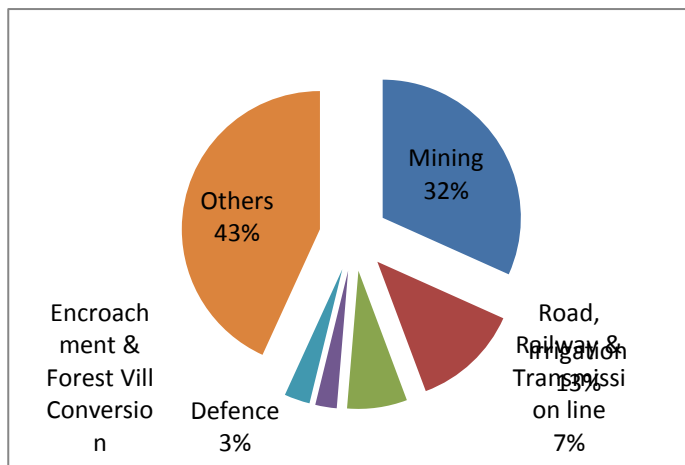
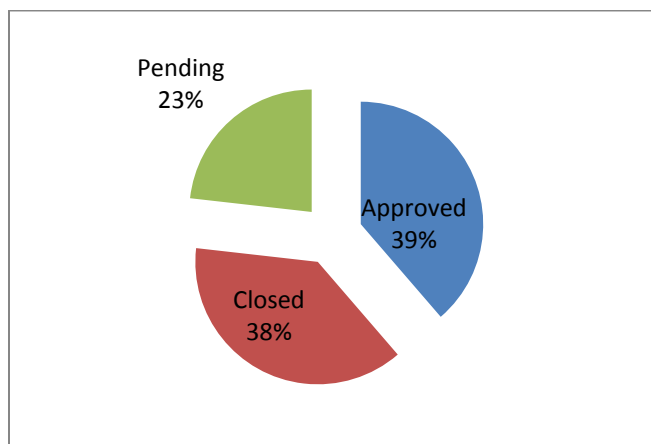


Figure 14 Status of applications of forestland diversion



However, the details regarding location of forests/maps as well as financial terms of the allocation are not publicly accessible in this site.

Similarly information on land alienated for IDCO is available in IDCO website ¹⁰⁹ (<http://www.idco.in/tender/mou.htm> , http://www.idco.in/tender/non_mou.htm) separately for MoU and Non-MoU projects. The information available include name of the district, promoter's name, location (place, Tehsil), requirement of land as per MOU/ IPICOL's appraisal / Govt. (In Acres), extent of land applied In acres), land allotted – private, Govt and total (In Acres), remarks.

Table 11 Data from IDCO site about land public land allocation

	Requirement as per MOU/ IPICOL's appraisal / Govt. (In Acres)	Extent of land applied (In acres)	Land allotted (In Acres)		
			Govt.	Pvt.	Total
MOU	107,589	96,064	13,536	28,725	42,261
Non Mou	59,674	49,631	6,894	9,790	16,684
Total	167,263	145,695	20,430	38,515	58,944

Though details regarding location of the village and Tehsil is provided information about number of plots, kissam of land as well as financial terms of the allocation are not publicly accessible in this site.

CAG audits raising the issue of lack of maintenance of information for public land allocations

In an audit of GA department during 2011-12¹¹⁰, CAG observed that basic data such as allotment of land through alienation/lease indicating serial number of application, date of application, name and address

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¹⁰⁹State Government has authorized the Collectors to alienate any quantum of Government land to IDCO without making any reference to higher Revenue Authorities, IDCO being a statutory Corporation of the Govt.

¹¹⁰Report of Comptroller and Auditor General on Social Sector for the year ended March 2012, Volume 2, Government of Odisha No. 4 of the year 2013

of the lessee, area leased, purpose, terms and conditions of allotment, amount of premium charged and paid and land use status etc., as necessary under OGLS Rules 1983 (Rule 5) were not available in the GA Department

CAG in its Audit of IDCO¹¹¹ in 2012 on Land Acquisition rapped the state government for not maintaining comprehensive and centralized data on acquisition and allotment of land. “In absence of such data, we were unable to assess, if acquisition of private land was at all necessary, assuming that adequate government land was not available at a particular location. In our opinion, management of such scarce natural resource in an unplanned manner poses unacceptable levels of risk considering that the most of the private land acquired was being used for agricultural purposes,” CAG says.

Another CAG Report on POSCO mentions “The state failed to maintain consolidated data on land owned or leased or allotted by it – and so could not provide information on utilization of existing land resources or justification for acquiring private land”. The CAG Report noted: “In the absence of such data, we were unable to assess if acquisition of private land was at all necessary, assuming that adequate Government land was not available at a particular location.”

Panel	LGI	Dim.	<i>Land Governance Indicator 11</i> <i>Justification and time-efficiency of acquisition processes: the state acquires land for public interest only and this is done efficiently</i>
4	2	1	There is minimal transfer of acquired land to private interests. ¹¹²
			A: Less than 10% of land acquired in the past 3 years is used for private purposes.

As per the following table on land alienated for IDCO (from IDCO website at <http://www.idco.in/tender/mou.htm> , http://www.idco.in/tender/non_mou.htm), till November, 2013 (starting data not available), for about 100 MoU and 132 Non-MoU projects, almost 100% of land acquisitions were for private companies (mineral and power-based companies); however the acquisitions were done under 'public purpose'.

CAG report on Land Acquisition¹¹³ tabled in Assembly in 2012 reported that, Revenue and Disaster Management Department allotted 20,346 ha, including 13,498 ha (66 per cent) of acquired private land, to 107 promoters for setting up industries in 16 districts. However, since the lands were acquired by the state by application of ‘public purpose’ to promote industrialization, there was ‘legally’ no transfer of land for private purposes.

Every acquisition under the LA Act is for public purpose. Prior to the LARR Act, 2013, the Collector was empowered to define whether the land acquired was for public or private purpose. Under Section 73(c) of OLR Act the Govt can acquire any land for urban, on-agricultural or industrial development and transfer the same to the companies for public purpose.

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¹¹¹ Report of Comptroller and Auditor General- Civil the year ended March 2011, Volume 2, Government of Odisha

¹¹² In some countries in the process of urban expansion privately held land maybe acquired before land use planning is implemented and then sold/returned to previous owners in a different form. This is not to be considered for ranking this dimension. Transfer of acquired land to private interests is excluded.

¹¹³ Report of Comptroller and Auditor General- Civil the year ended March 2011, Volume 2, Government of Odisha

Table 12 Data from IDCO site about public land allocation

	Requirement as per MOU/ IPICOL's appraisal / Govt. (In Acres)	Extent of land applied (In acres)	Land allotted (In Acres)		
			Govt.	Pvt.	Total
MOU	107,589	96,064	13,536	28,725	42,261
Non Mou	59,674	49,631	6,894	9,790	16,684
Total	167,263	145,695	20,430	38,515	58,944

Similarly, in respect of the forestland diverted under FCA, the website does not indicate the purpose (public/private) of the diversion. By default such diversion is to be treated as transfer for the public purpose.

As per the information furnished by the test checked units referred in the CAG Audit Report (Civil 2010)¹¹⁴, 19981.05 acres of land was allotted by Revenue and Disaster Management Department to different individuals, bodies and companies during 2005-10 which included both Government land (6607.73 acres) and acquired private land (13373.32 Acres).

4	2	2	Acquired land is transferred to destined use in a timely manner.
			B: Between 50% and 70% of the land that has been acquired in the past 3 years has been transferred to its destined use.

In absence of availability of statewide data, we resorted to CAG Audit report available in public domain in this context

- As per *Report of Comptroller and Auditor on General and Social Sector for the year ended March 2012, Volume 2, Government of Odisha No. 4 of the year 2013*, 33 out of 98 (30%) cases of GA allotments are yet to be transferred to destined use. The delay ranged between three and 12 years. Out of these, four allotments remained unutilised for more than ten years. The department, thus, failed to monitor effectively the end use of allotted land. In 23 cases, which have not been utilised so far, the Department stated that 5 allotments have been cancelled.
- As per *Report of Comptroller and Auditor General- Civil the year ended March 2011, Volume 2¹¹⁵, Government of Odisha*, in all cases, the acquired land was not put to use even after one year to six year from the date of notification, though, the Land Acquisition Act stipulates a period of six months for commencement of work. In four projects, land handed over to IDCO for allotment to four industries was not even used fully or partially even after three to 15 years as of March 2011. No time frame for utilisation of land was specified by the concerned Collectors while leasing out Government land to IDCO for transfer to the private promoters excepting in the case of Sipasarubali Samuka Beach project in respect of which the Collector

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¹¹⁴http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/state_audit/recent_report_s/Orissa/2010/Civil/Chapter_2.pdf

¹¹⁵<http://www.indiaenvironmentportal.org.in/files/file/orissa%20civil%20report%202011.pdf>

fixed a six months time limit. However, no action had been taken by Government for resumption of land allotted for these projects, as required under Rule 3(b) of OGLS Rules 1983. CAG observed that there was practically no monitoring of utilisation of land by government after the MoUs are signed and allotments are made.

For micro-irrigation projects, the land was used within 2 years of time but this is not same for all cases.

4	2	3	The threat of land acquisition does not lead to pre-emptive action by private parties.
			C: A lot.

If private parties refer to the landowners or people affected by land acquisition, then there is a lot of preemptive actions that take place due to threat of land acquisition. Recently, a government circular was issued by the Revenue and Disaster Management Department of Odisha for Bhubaneswar, which read that if any middle man has purchased the land prior to declaration for land acquisition, then he would not be entitled to compensation.

Among the prominent protests lodged against threats of land acquisition across India, Odisha has a major share as evident from from agitations at Kashipur, Kalinganagar, Niyamgiri or Posco. While these protests were staged in this century, similar outbursts had cropped up against land acquisition moves of the Government in the last decade of last century in Odisha such as at Baliapal, Gandhamardan and Gopalpur..

Violence, bloodshed and blockades and many of them like the current one against POSCO had continued for more than 7 years also marked these protests.

POSCO Protests (2005-13) – Some Glimpses from Media

- **June 22, 2005:** MoU signed between Orissa Government and POSCO-India a subsidiary of the POSCO Corporation of South Korea.
- As early as August 2005 several “people’s groups” comprising the residents of the affected areas were formed around the POSCO issue.
- **November 29, 2007:** Attack on PPSS Dharna at one entry point with bombs – more than 50 people were injured and Dharna tent demolished.
- In **December 2007**, Prafulla Das, a member of protest group called Posco Pratirodh Samgram Samiti in Erasama of Jagatsinghpur, Orissa, defiantly claimed, "We are committed to fight for our land, lives and livelihoods"¹¹⁶.
- **March 23, 2008:** Gram Sabha of Dinkia passes resolution for electing a Forest Rights Committee and starting the process of implementation of the Forest Rights Act.
- *Orissa police shoot POSCO protesters (MAC on 2010-05-20)*¹¹⁷

Today, Orissa police opened fire on peaceful protesters sitting on Dharna for their lands and livelihoods.

- *Protests against land acquisition for Posco project (The Hindu; BHUBANESWAR, June 3, 2011)*¹¹⁸

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¹¹⁶ : <http://www.minesandcommunities.org/article.php?a=8372>

¹¹⁷ <http://www.minesandcommunities.org/article.php?a=10107>

Tension prevailed in the area chosen for the proposed Posco steel project in Orissa's Jagatsinghpur on Friday after 17 persons opposing land acquisition for the venture were taken into custody.

- *Against all odds, a struggle continues (The Hindu, June 22, 2012)*¹¹⁹
June 22 marks the seventh year of the struggle against the POSCO project in Odisha.
- *Odisha halts land acquisition for Posco steel plant, withdraws police force after protests (NDTV News)*¹²⁰ **February 6, 2013)**
- The Odisha government has put off the land acquisition for Rs 52,000 crore Posco steel plants in Jagatsinghpur district today after protests by local villagers since the process resumed last week.

At least five persons were killed in separate clashes and violence during the entire period of land acquisition between November 29, 2007 and July 4, 2013 with 15 persons injured and 45 jailed, a senior police officer said. (The Hindu, July 31, 2013)¹²¹

Panel	LGI	Dim.	Land Governance Indicator 12 Transparency and fairness of acquisition procedures: acquisition procedures are clear and transparent and fair compensation is paid expeditiously.
4	3	1	Compensation is provided for the acquisition of all rights regardless of their recording status.
			C: Compensation, in kind or in cash, is paid for some unrecorded rights (such as possession, occupation etc.), however those with other unrecorded rights (which may include grazing, access, gathering forest products etc.) are usually not paid.

The *Land Acquisition Act 1894* didn't provide for any compensation to those with unrecorded rights of use or occupancy. The LA Act, 1894 that guided the administration in matters of land acquisition until very recently was only concerned with the monetary compensation to be paid to the families/persons who owned land but had to lose it wholly or partially to a company or a Government agency intending to implement some sort of project or the other in the concerned area. As a result, there was no compulsion on the part of the administration to record the particulars of those families/persons whose source of livelihood might be lost or affected by the proposed project but who didn't own any land in the concerned area.

In addition to the LA Act, 1894 there are 16 more Central Acts, which deal with land acquisition and displacement, but none has any provision to provide compensation for loss of commons.

The *Orissa R&R Policy, 2006* that was based upon the LA Act as its principal legislation, did also refrain from recognizing the unrecorded rights. The Public don't get any compensation against acquisition of

¹¹⁸<http://www.thehindu.com/news/national/other-states/protests-against-land-acquisition-for-posco-project/article2073671.ece>

¹¹⁹<http://www.thehindu.com/opinion/op-ed/against-all-odds-a-struggle-continues/article3555520.ece>

¹²⁰<http://www.ndtv.com/article/india/odisha-halts-land-acquisition-for-posco-steel-plant-withdraws-police-force-after-protests-327180>

¹²¹<http://www.thehindu.com/news/national/other-states/resentment-in-odisha-over-compensation-for-posco-project/article4973955.ece>

the common land they depend upon, against acquisition of forests wherefrom they collect their fuel and NTFP or against acquisition of water bodies which serve the lifeline of people, as their rights over these common property resources are non-recorded. However, the R & R Policy in its Para-10 has a provision for 'Benefit to landless & homesteadless encroachers common to all categories', but the said provision is hemmed in by several conditions and constraints.

The said para reads, "10. **Benefit to landless & homestead-less encroachers common to all categories:**

(a) An encroacher family, who is landless as defined in the Orissa Prevention of Land Encroachment Act, 1972, and is in possession of the encroached land at least for a period of ten years continuously prior to the date of notification under relevant law(s) declaring intention of land acquisition will get *ex gratia* equal to compensation admissible under the Land Acquisition Act, 1894 for a similar category of land to the extent of land under his/her physical possession up to a maximum of one standard acre, if the encroachment is unobjectionable. While determining the extent of land for such compensation the *rayati* land held by him/her is to be taken into account.

(b) An encroacher family, who is homestead less as defined in the Orissa Prevention of Land Encroachment Act, 1972 and is in possession of the encroached land at least for a period of ten years continuously prior to the date of notification under relevant law(s) declaring intention of land acquisition will get *ex gratia*, equal to compensation for the similar category of homestead land, against the encroached homestead land up to a maximum of 1/10th of an acre in rural areas or 1/25th of an acre in urban areas, if the encroachment is unobjectionable. While determining the extent of land for such compensation the homestead land held by him/her is to be taken into account. The *ex gratia* will be in addition to the actual cost of structures thereon. If the encroachment is found to be objectionable, (s)he will be entitled to the cost of structure only".

However, the recently enacted 'Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act, 2013' has clearly defined the categories of affected family to include a family which may not own any land, has worked in the affected area at least for 3 years and whose livelihood stands affected by acquisition of land, vide Section 3(c)(ii). Besides the Social Impact Assessment of the Project envisaged under the Act shall take into account "the extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition Vide Section 4(4(c))."

As of now, since large areas of land cultivated by the scheduled tribes in Odisha are not legally settled in their names, they receive no compensation when such land is taken up for development projects. Ota in his study of displacement in Upper Indravati Project found that on an average, each displaced family had been cultivating 1.50 acres of state owned and 2.34 acres of private land before displacement and that 49% of the sampled family were landless. After displacement, landlessness increased to 85.25%, the average legal landholding declined to 0.62 acres and the average government land cultivated came down to only 0.2 acres. (Ota, 2001)

In case of POSCO, as a measure towards reducing the tension and taking note of loss of livelihoods, the households who lost their betel vines (even on encroached land) and labourers working therein were offered Rs. 4,500 and Rs. 2,250 per month respectively till permanent rehabilitation was made, as stated by the concerned District Collector. (The Hindu, July 31, 2013)¹²². POSCO-India has also announced some R & R packages¹²³ for families of landless labourers as well as encroached betel vine farmers.

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¹²² <http://www.thehindu.com/news/national/other-states/resentment-in-odisha-over-compensation-for-posco-project/article4973955.ece>

¹²³ <http://posco-india.com/website/press-room/news/posco--india-announces-r-&r-benefits.htm>

However such packages are purely discretionary and meant exclusively for POSCO. It is worth mentioning here that in addition to the State R&R Policy 2006, the Govt of Odisha have announced project specific R&R policies such as for POSCO and Kalinganagar (http://www.odisha.gov.in/revenue//R_R_Policies/RandRPolicy.asp?GL=5) which award better and newer benefits to the displaced families than the State Policy. Such project specific policies were designed in response to the demands and strength of the anti-displacement agitations rocking the project area.

Thus, some benefits, in kind or in cash, were only paid for some unrecorded rights (such as possession, occupation etc.) though subject to several conditionality. However those with other unrecorded rights (which may include grazing, access, gathering forest products etc.) were usually not paid.

4	3	2	Land use change resulting in selective loss of rights there is compensated for.
			D: Where people lose rights as a result of land use change outside the acquisition process, compensation is not paid.

At present there is no law or policy in Odisha to compensate the loss due to change in land use, incurred by the persons other than the land owner, who are dependent on the land used in a particular way. The LA Act 1894 as amended in 1984 doesn't provide for compensation outside the acquisition process.

The Odisha Land Reforms Act 1960 has no provision for identification or registration of the persons dependent on the land in use, other than the recorded holders of rights. Except in the Odisha Resettlement and Rehabilitation Policy 2006 and that too marginally and tangentially, there is no legal provision for payment of compensation for lands, which get affected due to acquisition of lands in adjacent areas.

4	3	3	Acquired owners are compensated promptly.
			B: Between 70% and 90% of acquired landowners receive compensation within one year.

Updated data on the proceedings of land acquisition including the disbursement of compensation and R&R benefits to the owners or dependents of the land acquired are not available in public domain. However interaction with senior revenue officials and panel members indicate that most the land owners get compensation within one year of land acquisition as per the provisions of LA Act, 1894.

As per CAG Report (based on Spot audits covering a period of 5 years during 2005-10), whereas the state acquired and allocated a little over 50,000 acres of land to 107 promoters / companies for setting up of industries in 16 districts, the state consistently delayed the proceedings, under-valued the private land, and then delayed paying even the lowered compensation. In case of POSCO, CAG observed that 437.86 acres of land was acquired under emergency provisions in seven villages, but even two years after the said acquisition, the landowners had not been awarded any compensation. Even the Hirakud oustees

have not received compensation 6 decades after of acquisition of their land for the dam. (Civil Audit, 2011)¹²⁴

In 387 out of 389 LA cases test checked in course of audit, there was delay in finalization of LA cases beyond the prescribed period of one year and delay was more than two years in 149 LA cases. In two LA cases (0.51 per cent), the process was finalized within one year while in the case of remaining 99.49 per cent LA cases, the LA proceedings spilled beyond one year and in some cases it took as long as nine years four months to be finalized. The cascading effect of delays occurring at various stages not only delayed the commissioning of the project but also deprived the public of the intended benefits. (Civil Audit, 2011)

4	3	4	There are independent and accessible avenues for appeal against acquisition.
			B: Independent avenues to lodge a complaint against acquisition exist but there are access restrictions (i.e. only accessible by mid-income and wealthy).

In LA Act, 1894 as amended in 1984, one can complain against the quantity of compensation, but one cannot complain against the acquisition itself when the land is acquired for public purpose. Under this Act, the government is empowered to acquire land in case of urgency, invoking provisions prescribed under Section 17 (4), without allowing the landowners the opportunity to contest the acquisition or to be heard. Though, such acquisitions are to be made for a specific purpose with certain conditions and are to be completed within six months, the CAG audit found several cases where emergency provisions of Section 17 (4) were misused and applied arbitrarily even without indicating the detailed justification for the same and without fulfillment of prescribed conditions.

Under the LA Act 1894, there existed no independent avenue for lodging complaint against the acquisition of land by the Government, since the concerned landowner is required to lodge his complaint before the very revenue authorities including the District Collector who are themselves responsible for acquisition of land for so-called public purposes.

However, writ petition under article 226 of the Constitution of India to issue an order or direction in the nature of a writ of declaration, can be filed against the Land Acquisition Proceedings. However this provision is not easily accessible on the part of the general members of public.

Besides the Odisha R&R Policy 2006 has also declared the Revenue Department, which is the land acquiring authority itself, as the final arbiter in respect of any dispute around matters relating to R&R Policy (Vide Para 23).

However, the new law 'Right to Fair compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act, 2013' provides for at least a semblance of an independent authority called 'the Land Acquisition, Rehabilitation and Resettlement Authority' for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement (Chapter VIII) As per Section 74 (l) of the Act, the Requiring Body or any person aggrieved by the Award passed by an Authority under Section 69 may file an appeal to the High Court within sixty days from the date of Award: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient

cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. Then the Section 74(2) says, every appeal referred to under sub-section (1) shall be heard as expeditiously as possible and endeavor shall be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court.

4	3	5	Timely decisions are made regarding complaints about acquisition.
B & D			B: A first instance decision has been reached for between 50% and 80% of the complaints about acquisition lodged during the last 3 years.
			D: A first instance decision has been reached for less than 30% of the complaints about acquisition lodged during the last 3 years

Dispute Resolution channels are complicated in LA Act, 1894 and Orissa R & R Policy 2006.

A sample check at <http://courtnic.nic.in/orissa/content.asp> of 20 Land Acquisition appeal cases lodged in 2010 (case no 1 to 100 at interval of 5, e.g. 5, 10, 15...100) showed disposal of 4 number of cases and pending of 16. Therefore, in about 20% cases, decision in the first instance appeal (in High Court at Cuttack) has been reached.

However, in most cases the first instance decision is taken by the District Collector and as per the LA Act, 1894 he has the mandate to take a decision within 2 years. Panel members were of the opinion that in most cases the Collector takes the decision within this time line.

7.3 Summary of Issues

- a) Government land in the state can be interpreted as Public land. It has been defined through different legislations.
- b) Higher percentage of public land (almost 2/3rd of the land under the ownership of either Revenue or Forest Department) in the state is attributed to
 - i. Multiple land governance legacies that the state inherited,
 - ii. State policy towards shifting cultivation,
 - iii. Nature of state's topography,
 - iv. Limitations of survey and settlements and
 - v. The process of forest reservation.
- c) A majority of the public lands are common resources either de facto or de jure and their share go above 80% of total land in the Schedule V areas.
- d) There is also a high incidence of Landlessness and and Small and Marginal Farmers.
- e) As per Bhulekh data in Feb 2014, almost 30% of total rural area in the state was public land under revenue department; however the % varies from 35% in Schedule V districts to 18% in non-Scheduled districts.
- f) Definition of Government lands (Culturable waste, Unculturable waste, Community/sarbasadharan, reserved/rakshit) as per the Orissa Government Land Settlement

Act, 1962, implies their use for public interest and as public goods.

- g) Public lands are not managed by the rural and urban local self-government bodies (Panchayats and Municipalities) as directed by the Constitution (73rd and 74th Amendment Acts and PESA Act); there is also involvement of multiple agencies in the management of even the same stretch of land with limited coordination between them.
- h) Public lands are not easy to identify on the ground as updated maps are not available, no survey of land above 10 degree slope has been conducted; and the information on public land are also not easily accessible to the public at large.
- i) Resources available for public land management are not adequate.
- j) Legal provisions exist for acquisition of public lands for public interest and private purpose as well, which are largely followed. However the process is hardly not always transparent or, participatory, in addition to with instances the exercise of discretion by the officials. and all information are not publicly available.
- k) The State mostly acquires private land for public purposes, though the nature and rationale of public purpose is not always consistent and mostly contested. Besides There are also a lot of instances of preemptive actions by private parties having vested interests.
- l) Compensation is not paid for all non-recorded rights and also for loss of rights resulting from land use change outside the acquisition process.
- m) Transfer of acquired land to the destined use is delayed in many cases.
- n) Revenue department is the key player in the decision, execution and arbitration in respect of land acquisition matters, though as per the Constitution it is always open to the aggrieved parties to file writ petitions in the High Court contesting the actions of land acquiring authorities.

7.4 Analysis and Recommendations

Keeping in mind the gaps and analysis of issues provided above, the panel members of this panel have made following recommendations for the state government to act upon

- a) Development of an equitable and sustainable State Land Use Policy and Plan through integration of stakeholders' concern and latest tools and technologies
- b) Bringing in Legal-reforms
 - i. Synchronizing the old-time Revenue Legislations with the recent reformist legislations like PESA, FRA, 73rd and 74th Amendments and LARR 2013
 - ii. Devolving management of public land to Gram Panchayat/Grama Sabha as per existing legal provisions
 - Sec 71 (Vesting of Public Properties to Grama Sasan) of OGP Act, 1964 in its Sub-section (4)(d) provides for vesting of all wasteland and communal land in a village with the Grama Sasan, or for that matter with Grama Panchayat (GP)
 - As per the 11th Schedule of Constitution the subjects relating to land

improvement, implementation of land reforms, land consolidation etc¹²⁵. need to devolve upon the Panchayats in non-Scheduled areas

- As per Section 4(d) of the PESA Act 1996 the Grama Sabha in Scheduled Areas is the competent authority in respect of all community resources, which include public land and other common property resources.
 - Following of principle of Free, Prior and Informed Consent of Grama Sabha preceding any land acquisition in the Scheduled Areas in line with the expression 'Consultation with Grama Sabha or Panchayats at appropriate level' as found in Section 4(i) of PESA Act
- iii. State needs to make a separate law providing for higher entitlements to the affected people as permissible under Section 107 and the State needs to make appropriate Rules as required under Section 109 of LARR Act 2013.
 - iv. Enactment of a law for Odisha in line with Andhra Pradesh Land Grabbing (Prohibition) Act 1982 to address encroachments of public land more effectively
 - v. Re-drawal of reservation proceedings as per Section 3 of OGLS Act 1962 and to ensure that the 'effective area of the village' as defined in Rule 2 (c) of OGLS Rules 1983 should be altered from present 20/23 to 20/25 ratio.
 - vi. Reopening of dropped ceiling cases on the motion made in that behalf under Sec 59 (2) of OLR Act 1960 and under Proviso to Section 38(2) of Orissa Estates Abolition Act 1951 before Board of Revenue, to undo the injustice done in the past
 - vii. Resuming of leased agricultural land in peri-urban areas in line with Andhra Pradesh (Please make it more explicit by reference to the exact provision made in)
- c) Institutional reform/restructuring
- i. Restoration of Govt lands fraudulently settled with private persons by way of putting in place a State Litigation Management Mechanism.
 - ii. Establishment of an independent ombudsman like forum, easily accessible to the public for a time-bound and proper redress of their grievances relating to Land Acquisition and Resettlement and Rehabilitation in accordance with the multi-layer procedure as laid down in Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act 2013.
 - iii. Appointment of the Commissioner for Rehabilitation and Resettlement, for supervising the formulation and proper implementation of Rehabilitation and Resettlement schemes or plans and also for ensuring post-implementation social audit in consultation with Gram Sabha in rural area and Municipality in urban area as per Section 44 of the above referred Act of LARR 2013
 - iv. Constitution of RR Committee at each Project level comprising the representatives of affected families, SC and STs, Voluntary Organizations and MLAs/MPs among others as per the Section 45 of the above referred Act of LARR 2013.

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¹²⁵ and soil conservation, water management, roads, culverts, bridges, waterways, social forestry, minor forest produce, markets and fairs, maintenance of community assets etc.

- v. Establishment of State Monitoring Committee for R&R for reviewing and monitoring the implementation of RR Schemes/Plans as per Section 50 of the above referred Act of LARR 2013.
 - vi. Establishment of LA, R&R Authority with a jurist in the rank of District Judge as its Presiding Officer, as per Chapter VIII of the LARR 2013.
- d) Land Commission to be reconstituted (defunct since 1999), and District Executive Committee and Local Committees to be constituted to exercise their powers and functions as provided in Sections 53, 54, 55 and 56 of OLR, 1960;
 - e) Increasing Investment in Human/ Material resources as required for better delivery of public goods and services.
 - i. Capacity building at different levels to ensure land-fraud (related to public land encroachment) prevention measures.
 - f) Strategically using Information Technology (IT) and Geographic Information System (GIS) to ensure that land-based investments are responsible socially and ecologically
 - i. Using IT-GIS tools to develop Land use map with provision for Zonation of land for investment (super-impose Cadastral map, Wasteland atlas, road and other infrastructure along with geo-political and socio-cultural information to arrive at areas with lesser probability of conflict).
 - g) Addressing the concerns for equity and self-governance along side of development efforts to be the focus of State interventions in the Scheduled areas.
 - i. Land upto 30 degree slope should be surveyed and settled in all Scheduled/Hilly areas in line with Kashipur done through International Fund for Agriculture Development (IFAD) funded Orissa Tribal Development Project implemented in late nineties following a Govt order, which indicates its replicability to other Scheduled/Hilly areas
 - h) Synchronization of Legal-Institutional Framework
 - i. Instituting a single nodal agency for coordination of public land management (similar to Public Land Board in Karnataka) in the state with clearly defined role of Local Self Government in both rural and urban areas in line with OGP Act, 1964 and provisions of PESA
 - i) Enhancing effectiveness and transparency through use of Technology
 - i. Making public land database easily accessible and interpretable by using GIS tools and also enabling syncing of public land information across spatial and textual records along with ground situation.

8. Panel 5 – Transfer of large tracts of land to private investors

8.1 Context Analysis

Government of Odisha is in pursuit of economic development through industrialization. To promote industrialization, investor friendly government policies, institutional support and stable political leadership are necessary. To this effect, GoO (Government of Odisha) proactively instituted “Team Odisha” engaged in industrial facilitation and investment promotion. The Chief Minister is the Captain of Team Odisha and the principal goal of the “Team” is to provide necessary synergies and convergence of all Government efforts to ensure Odisha's position at the vanguard of economic and social prosperity.¹²⁶

To attract investments and accelerate process of industrialization, government introduced ‘Odisha Industries (Facilitation) Act 2004’ for providing single window clearance to reduce transaction costs and time for investors. Industrial Promotion and Investment Corporation of Orissa Limited (IPICOL) and Industrial Development Corporation of Odisha (IDCO) have been entrusted with multi-faceted roles for investor support.

IDCO was established in 1981 with specific objective of creating infrastructure facilities in the identified Industrial Estate/Areas for rapid and orderly establishment and growth of Industries, trade and commerce in the State. It is designated as the nodal agency for the provision of land and infrastructure with the mandate for identification, procurement and allotment of land for industrial and allied purposes, including creation of associated and peripheral infrastructure. IDCO being the nodal agency for provision of land for sponsored projects files acquisition and alienation proposals before the appropriate authorities in respect of private land and government land respectively and pursues the proposals for the requisitioned land until the land is finally delivered to the user agencies. While private land is obtained through the process of acquisition as per the provisions laid down in the Land Acquisition Act 1894, IDCO gets government land on lease from the government observing due process as per the provisions of ORISSA GOVERNMENT LAND SETTLEMENT (OGLS) Act 1962.

During the period 1995 to 2013, a total of 54,777.193 acres of land was allotted to 107 promoters of industries throughout the State for setting up various industries. Of the total land allotted, 38016.301 acres of land were allotted to 53 MOU based industries. An additional 16760.892 acres of land were allotted to 54 non-MOU based industries. Of the total land allotted, 18173.658 acres is government land and 36603.535 acres private land¹²⁷

8.2 Land Governance Indicators: Expert Investigator Background Report and Score

Panel 5 deals with ‘Transfer of large tracts of public land to private investors’. It has four indicators and each indicator with its various dimensions has been discussed rationally and scored aptly.

The scores and dimensions are discussed below:

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¹²⁶<http://www.teamorissa.org/>

¹²⁷ Data collected from IDCO office

Land Governance Indicator 13: Transfer of public land to private use follows a clear, transparent, and competitive process and payments are collected and audited (with the exception of transfers to improve equity such as land distribution and land for social housing)

5	1	1	Public land transactions are conducted in an open transparent manner.
			D: The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is less than 50%. (Except for equity transfers).

Orissa Industrial Infrastructure Development Corporation Act 1980 in its Chapter VI (Acquisition and Disposal of Land) deals with 'Disposal of land by the Corporation'. Section 33 (1) of the Act states, – “Subject to any directions given by the State Government the Corporation may dispose of (a) Any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon; Or

(b) Any such land after undertaking or carrying out such development as it thinks fit to such person in such manner and subject to such terms and conditions, as it considers expedient for securing the purposes of this Act”.

Section 33(3) mentions, “Nothing in this Act shall be construed as enabling the Corporation to dispose of land by way of gift, but subject as aforesaid; reference in this Act to the disposal of land shall be construed as reference to the **disposal thereof in any manner whether by way of sale, mortgage, exchange, or lease or by the creation, of any easement, right or privilege or otherwise**”.

The Orissa Industrial Policy Resolution (IPR) 2007 in its Para 9 (11) mentions that the Development of Industrial Areas and Industrial Estate by private developers shall be encouraged. It further states, **“The land shall be given strictly on lease basis after careful assessment of the area of land required.”**

The panel noted that in some cases of land disposal by IDCO, the provision of open tender process is there in the law. Tender process is carried out only for land to be used for commercial purpose (specified in IPR 2007). But in majority of cases, the process of land disposal has not been transparent in the state and does not follow auction or open tender process.

5	1	2	Payments for public leases are collected.
			A: More than 90% of the total agreed payments are collected from private parties on the lease of public lands.

ORISSA GOVERNMENT LAND SETTLEMENT Rules 1983 in its Rule 5 states that no settlement in favour of the applicant for land shall be made, “unless the premium fixed for the land is paid. It further states that the Government may exempt the premium payable in any case or class of cases for settlement of land”.

Some discrepancies have been brought to fore regarding lease of land where collection of premium amount was not made, but that is only found in 2-3% cases.

5	1	3	Public land is transacted at market prices unless guided by equity objectives.
			C: Only some types of public land are generally divested at market prices in a transparent process irrespective of the investor’s status (e.g. domestic or foreign)

	or the purpose for which the land is assigned.
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Industrial Policy Resolution 2007 in its Para 9(11) mentions that Development of Industrial Areas and Industrial Estate by private developers shall be encouraged. The private developers shall be eligible to apply for Government or IDCO land for development of such industrial estates and industrial areas. *While Government land shall be made available at the applicable industrial rate as specified in this policy, IDCO land will be available at the price determined by IDCO.*

Para 16 of IPR 2007 further highlights the concessional rates for lands to be provided in *Thrust Sector* and exclusion of new industrial units from municipal/local authorities' tax regime.

The Government has fixed Zone wise concessional rates in respect of 4 industrial Zones mentioned in Para-16(2) of the said policy. Among the 4 Zones the Zone A comprises the Urban Areas while Zone B, Zone C and Zone D are revenue subdivisions. For Zone A (Areas under jurisdiction of Bhubaneswar Municipal Corporation, Cuttack Municipal Corporation, Rourkela Municipality, Berhampur Municipality, Sambalpur Municipality and Paradeep NAC) the concessional Rates are to be fixed by Revenue/GA Departments in consultation with Industries Department.

Market rates are applied in Zone A usually.

5	1	4	The public captures benefits arising from changes in permitted land use.
			C: Mechanisms to allow the public to capture significant share of the gains from changing land use are rarely used and applied in a discretionary manner.

There are no specified mechanisms where public can capture significant share of gains from changing land use.

MoUs and other contracts mention employment opportunities for the landholders and R&R policy states mandatory peripheral development of the region, although there are no credible studies made yet to ascertain the extent of such benefits that might have accrued to the public resulting from land use.

It was noted that any change in land use pattern brings in many benefits for the local people such as creation of additional jobs for unskilled and skilled labor, increase in the price of land of that area etc. although the accrual of such benefits has taken place randomly and those are yet to be documented by way of a credible evaluation study.

5	1	5	Policy to improve equity in asset access and use by the poor exists, is implemented effectively and monitored.
			B: Policy is in place to improve access to and productive use of assets by poor and marginalized groups, is applied in practice, but is not effective

Some of the industries create assets as hospitals, schools etc. for the local people, which is used by the poor and marginalized in the area. For example at Damanjodi (NALCO project area) hospital facilities are provided to peripheral villagers and educational institutions/schemes are established for local villagers. But as mentioned, these are not effective either due to implementation and monitoring lapses or due to lack of enabling infrastructure and processes.

A conscious, concentrated and continuous effort towards facilitating poor and marginalized groups is missing. Element of equity is not prime or inbuilt; rather it is one of the facet of creating some assets.

Land Governance Indicator 14 - Private investment strategy

5	2	1	Land to be made available to investors is identified transparently and publicly, in agreement with right holders.
			C: A policy to identify land that can be made available to investors exists, based on ad hoc assessment of land potential and limited consultation with communities and is applied in more than 90% of identified cases.

IPR 2007 in Para 9.3 it is assured that the State Government shall announce a comprehensive Land Policy to address all issues concerning identification, procurement and allotment of land for industrial and allied purposes, including creation of associated social infrastructure.

As a matter of fact, the promised Land Policy has not been drafted as yet and the promised Land Bank Scheme is also in its infancy.

It was noted that as per Section 5A (Hearing of Objections) of Land Acquisition Act, 1894, one month time from the date of notification under Section 4 (Publication of Preliminary Notification) disclosing the need for acquiring a piece of land for public purpose or for a company, is given to the affected persons to raise any objection to the notification so made and the Collector is legally bound to hear the objections before making a report in this regard to the appropriate Government. Besides, the Para 4(g) of Orissa R&R Policy 2006 also requires the holding of consultation with Gram Sabha or Panchayat in the Scheduled Areas before initiation of the proposal for land acquisition. The PESA Act 1996 in Section 4(i) also speaks in the same vein. But in practice, the consultation with local communities was found to be limited or not effective.

A very strong criticism to this came from Comptroller and Auditor General Report (CAG Report) which stated that the land to be acquired was usually identified by the investors themselves and then regularized through application to IPICOL or IDCO¹²⁸.

5	2	2	Investments are selected based on economic, socio-cultural and environmental impacts in an open process.
			A: Process is in place that properly considers both national and local benefits and is adhered to. Benefit sharing mechanisms are in place

The Orissa Industries (Facilitation) Act 2004 directs the concerned Departments or Authorities to issue the required clearances within the specified time limit subject to compliance by the concerned Industrial Unit in respect of the provisions of the applicable Acts and Rules or orders and instructions in force. It is further stipulated that the members of the Authority shall personally attend the meetings and in case of exigencies may depute a senior level official with written authorization to take appropriate decisions in the meetings. Then, the concerned Authority shall - (a) meet at such times and places and shall adopt such procedures to transact its business as may be prescribed

(b) Examine the proposals brought before it, for setting up Industrial Units; and

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¹²⁸ Audit Report (Odisha), 2010-11

(c) Take decisions and communicates its decisions to the entrepreneurs and the departments or the Authorities concerned within the prescribed time limit.

The panel noted that there is a well-defined benefit sharing mechanism existing under the state policies. However it mostly focuses on benefit sharing at local level.

5	2	3	Public institutions transferring land to investors are clearly identified and regularly audited.
			B: Institutions to make decisions are clearly identified and have the necessary capacity (incl. resources for field verification) and strong incentives in ensuring socially beneficial outcomes but processes may be complex and difficult for investors.

Institutions such as IPICOL and IDCO are entrusted with industrial promotion in the state. IDCO is the nodal agency for identifying and acquiring land both from Government and private parties at strategic locations. These institutions are regularly audited.

Besides, Odisha Government Rules of Business empower the General Administration (GA) Department to control, administer, manage and protect Government land within the geographical limits of capital city of Bhubaneswar i.e. Bhubaneswar Municipal Corporation (BMC) area. Although the GA Department was entrusted with the management of such lands since 1952, yet no rules, regulations and manuals for allotment of land were ever framed by the Department since then.

Despite these institutions, the processes for benefit sharing and issues of equity in access and social commitment as expected from companies make the whole matter a complex web and hence it becomes difficult for implementation by the investors.

5	2	4	Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (including sub-soil).
			A: A policy is in place for effective inter-ministerial coordination to ensure that decisions on land use and land rights are well coordinated across sectors, and are applied effectively.

The OIFA 2004 in its Chapter II (Constitutions and Functions of Different Clearance Authorities) speaks of setting up a High level Clearance Authority under the chairmanship of Chief Minister for projects with investment of Rupees fifty crore or more and also a State Level Single Window Clearance Authority under the chairmanship of Chief Secretary for the projects with investment between Rupees 3 Crores to 50 Crores. These Authorities are comprised of members (secretaries) from other departments to look into feasibility and viability of projects for approval. The said Authorities, who are the final authorities in respect of granting approvals to the proposed projects, shall have the power to direct concerned departments or Authorities to issue the required clearances within the specified time limit subject to compliance by the Industrial Unit of the provisions of the applicable Acts and rules or orders and instructions in force. Similarly at District Level District Industry Centre (DIC) is present and functioning under the chairmanship of District Collector for the projects with investment of less than Rupees 3 Crores and these institutions have power to direct all departments and authorities within its jurisdiction and be the final authority in respect of granting approvals to the concerned projects.

Thus Odisha has a process in place for coordinating and deciding land use and land rights issues arising from the proposals for land acquisition for industrial purposes.

5	2	5	Compliance with contractual obligations is regularly monitored and remedial action taken if needed.
			B: There is regular monitoring of compliance, results are publicly available but remedial action is taken only in some cases.

As per Rule 8 (Rationalization of the Inspection) of OIF (Orissa Industries Facilitation) Rules 2005, - the competent authority shall decide the modalities of joint inspection to be conducted under Section 12 of the Act. If no such instruction is issued, the competent authority shall decide the modalities for joint inspection and procedure for random selection of the industrial unit for the purpose of inspection under Section 12. The Inspecting officers after inspection shall report the result of inspection to the nodal agency as well as to the concerned industrial unit.

The constituted panel commented that strong remedial action has been taken in some cases. In the past, some industries were denied the permission to run their plant due to non-compliance with the contractual obligations.

It was also noted that there was regular monitoring by the competent authority to check compliance by the industrial units for contractual obligations. After the enactment of RTI Act, the results of monitoring are publicly available on application made under the said Act.

5	2	6	Safeguards effectively reduce the risk of negative effects from large scale land-related investments.
			B: Substantive application of safeguards (EIA, SIA, etc.) is in line with global best practice but only part of the information is disclosed.

The National R&R Policy 2006 in its Para 4 recognizes the need to carry out Social Impact Assessment (SIA) as part of the resettlement planning and implementation process.

Similarly EIA is mandatory for corporations prior to obtaining Consent to Establish and Consent to Operate (CTE & CTO) from State Pollution Control Board and Ministry of Environment & Forests (MoEF). Financial institutions as Banks also require a detailed report on EIA (Environment Impact Assessment) and SIA prior to giving financial assistance to investors. Banks have certain standards as 'Equator Principle' to which investors have to adhere.

The general process of EIA or SIA in India is to ensure that development projects are designed and implemented with due consideration for the environment including bio-physical and socio-economic issues. Under the Environmental Protection Act 1986 and its amendments, the EIA is conducted as per the EIA Notification dated 14th September 2006 in respect of development projects so as to ensure that the development complies with the existing environmental regulations and best practice standards.

EIA and SIA are conducted by specialized and professional organizations such as ERM; Mecon etc. on behalf of the corporations and discrepancies occurring therein have often surfaced to the public knowledge and become targets of hot controversies.

5	2	7	The scope for resettlement is clearly circumscribed and procedures exist to deal with it in line with best practice.
A & B			A: Substantive application of resettlement and rehabilitation policy that is in line

	with global best practice.
	B: Applied resettlement policy is partly in line with global best practice, and in most cases applied.

Applied resettlement policy is partly in line with global best practice, and in most cases applied

(Panel decided to give score A for R&R policy to be in line with best practice and B in case of implementation of policy)

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 or briefly called LARR 2013, which on being enacted by Parliament had received the Presidential assent on 27th September, came into force by the Central Government w.e.f. 1st January 2014. The Act ensures to empower local self-government such as Panchayats and Gram Sabha and provides for a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with least detriment to the owners of the land. It seeks to provide just and fair compensation to the affected families whose land has been acquired or is proposed to be acquired. The Act has made adequate provisions for rehabilitation and resettlement so that the cumulative outcome of compulsory acquisition should make the affected persons partners in development.

Land Governance Indicator 15: Policy implementation is effective, consistent and transparent and involves local stakeholders.

5	3	1	Investors provide sufficient information to allow rigorous evaluation of proposed investments.
			B: Investors' business plans (application materials) require some evidence of technical viability, community consultation, and availability of resources but this is only sufficient to identify project risk ex ante.

Techno Economic Feasibility Report is prepared and submitted by the investors for approval by the concerned departments.

As per Investors' Guide (GoO), at the Entry Stage/Pre-implementation Stage (Stage I) the investors have to discuss with IPICOL or DIC (*District Industries Centre*) about the project identification, suitable location, research requirement, approvals/clearances, procedures and time involved etc. It is very important for an entrepreneur to select that project which is feasible. Though the ultimate responsibility to analyze the feasibility/viability of project lies with entrepreneur but he can seek help of IPICOL, DIC or other private consultants to know about advantage of a place, resource availability and other factors, which are crucial in arriving at the decision to invest.

On the issue of community consultation, panel mentioned that if at the moment there is resistance from the local community, the investors fear to consult with the people and resolve the dispute amicably. So, in practice, the consultation process is not adequately addressed by the investors, which sometimes lead to disputes.

The panel also noted that for government projects the consultation is effective, but in case of private projects, the consultation process is beset with so many limitations as against their expectations. The

panel recorded that the Detail Project Report (DPR) and Business Development Plans contain the details of community consultation.

One of the panel members commented that consultation is not same as consent. The Consultation may take any form. So the word 'Consultation' should be replaced by the expression 'prior informed consent' to meet the social objectives.

5	3	2	Approval of investment plans follows a clear process with reasonable timelines.
			A: All investment application related documents are reviewed according to a uniform process and receive a response within 3 months from the date of submission.

OIF Rules 2005, Rule 5 talks about Processing and Monitoring of applications and its Sub-rule (1) states, "The State Level Single Window Clearance Authority will process and scrutinize the applications submitted to High Level Authority for clearance on behalf of the High Level Authority". The Sub-rule (5) states, –"Concerned authority shall process the application and communicate its decision to the nodal agency within the time limit specified in Schedule VI".

In considering this dimension, the panel noted that the processing time is reasonable and the response to the proposed investment comes within 3 months. The final approval may take more time depending on the area where the project is to be started. In case of mineral rich areas, no fixed time period can be adhered to. Generally within 15 days of application, the government citing the views there in issues a circular.

The panel commented that a project gets scrutinized at initial level by all the line departments and then cleared through the single window system at the state level.

5	3	3	Right holders and investors negotiate freely and directly with full access to relevant information.
			A: Those holding rights to land with potential for investment have incentives and opportunities to obtain truthful information on the extent of their rights (and the most effective ways to utilize them), and the true potential of their resources.

A 1991 Government Order specifically states about the approval from right holders on common land. In such cases the investors and right holders negotiate in case of common land and no land can be acquired without proper information to the public. The panel cited that the 2006 R&R Policy under Para-6 clearly states that the investor first should go for direct purchase of land from the concerned persons in the proposed project area. Thus there is a scope for direct discussion and negotiation between investors and right holders.

5	3	4	Contractual provisions regarding benefit sharing are publicly disclosed.
			B: Modalities for benefit sharing are routinely included in relevant contractual arrangements, but there is limited public disclosure.

As per the contractual arrangements employment opportunities for the land holders and R&R and periphery development are mentioned in the contractual agreements. Through RTI these documents are publicly available.

Some of the MoUs are also publicly available on 'Department of Industries' website.

Land Governance Indicator 16: Contracts involving public land are made public with agreements monitored and enforced.

5	4	1	Information on spatial extent and duration of approved concessions is publicly available.
			A: Comprehensive and consolidated information on spatial extent, duration, and parties involved in concessions/leases is available publicly.

The information on spatial extent, duration and parties involved is available on IDCO website, which can be accessed publicly (Though this information is not available on IPICOL website). The website provides information on the extent of land (categorized as private and government land), the name of the investor and the duration of lease.

5	4	2	Compliance with safeguards on concessions is monitored and enforced effectively and consistently.
			B: Third party monitoring of investors' (and the state's) compliance with safeguards is practiced in some cases, but mechanisms to quickly and effectively reach adherence in case of problems exist.

State Pollution Control Board, Ministry of Environment & Forests, CAG and Judiciary all are empowered to monitor the investors on compliance parameters.

But the implementation of monitoring schedule and adhering to the mechanisms exists. Monitoring is not regular or periodic. Not all the projects are effectively monitored and in case of aberrations in implementation and land utilization, there is a need to take quick remedial decisions.

5	4	3	Avenues to deal with non-compliance and obtain timely and fair decisions exist.
			A: Third party monitoring of investors' (and the state's) compliance with contractual provisions is routine and mechanisms to quickly and effectively reach arbitration in case of problems exist.

It is mentioned in IPR 2007, section 12.3 that 'A system of joint inspection by various regulatory agencies such as Orissa State Pollution Control Board (OSPCB), Labour Inspector, Chief Inspector of Factories & Boilers, Regional Provident Fund Commissioner, and Regional Director, Employees State Insurance Corporation shall be devised and implemented in a time bound manner

Based on this, third party monitoring is routine. State Pollution Control Board assesses 6 monthly self-monitoring on environmental and technical issues. Similarly Ministry of Industry also monitors contractual arrangements.

State government is empowered by law to cancel the proposal or the license to run the plant in case of non-compliance with the contracts. In Sundergarh, the state government canceled the license of one company due to non-compliance to the agreements or contracts

It is further noted that in any agreement, the arbitration clause is there. The investors can go to court of law against any decision of Government.

8.3 Summary of Issues

- a) The process of land disposal is not transparent. The land is neither auctioned nor allotted in open tender process, but leased out as per the requirement of the investor and within the discretion of the concerned competent authority. Only 10% of land required for commercial purpose is auctioned.
- b) As per state policy of industrialization, land is leased at concessional rates, which are much below the market value of land.
- c) Land allocation under GA Department and IDCO do not follow uniformity and equity in providing concessions.
- d) There is no specific policy stating benefit sharing in the process of transfer of public land.
- e) Policy to improve equity in asset access and use by the poor exists in the law of the state. But the mechanism to look into its effective implementation and monitoring is lacking.
- f) There is limited consultation with community concerning decisions on change of land use and negotiation between the community and private investors is also to a limited extent.
- g) Though the procedures for resettlement exist in the policy, its actual scope is clearly circumscribed, since the implementation is not effective in line with best practice.
- h) The response to investor's application is prompt (within 3 months) but final approval takes more than a year.
- i) No specific benchmarks for investors for submission of DPR (Detailed Project Report) or Techno-economic feasibility report.

8.4 Analysis and Recommendations

For uplifting economy of Odisha, government has proactively taken steps in form of Acts and policies as OIIDCA 1980, OIFA 1984, IPR 2001 and 2007 for industrial development vis-à-vis socio-economic development. In this bid many good practices have been adopted for facilitating land transfer to investors. The practices followed for land transfer are transparent to certain extent, but require more open processes and participation of stakeholders. The public bodies like IPICOL and IDCO dealing with assessment of investment projects and facilitating land transfer and infrastructure development publish partial data on their websites for information sharing and for the benefit of involved parties.

Highlighting some of the good practices it is worth mentioning the Single Window Clearance System (SWCS) as one of the most enabling mechanism for expeditious approval of projects. Secondly, IDCO has started developing GIS based land information system and thereby allotting land through land bank scheme.

Though the whole process of land transfer is non-competitive and some of the mechanisms as benefit sharing are not inbuilt, a lot can be done to better the process of land transfer. This non-competitive process has lead to loss to exchequer and compromises with the quality of projects, ensuing distress for the communities. Process of benefit sharing is limited to employing some skilled people and providing benefits of R&R, which may not be applicable in case of transfer of public land.

For improving the process of land transfer, steps need to be taken from the very beginning i.e. identification of suitable land for an industry and the viability of projects. A strict criterion based on scientific and economical parameters should be followed in selection of feasible projects. This criterion should be standardized and should be at par with global parameters. Secondly, quantity of land

assessment should remain constant for a particular type of investment. This again calls for logical and technical assessment and standardization.

Another important shift requires greater participation of stakeholders during negotiations, making them more aware and decisive. Mechanisms need to be introduced and followed in ensuring gain for local communities in case of land use change and access and utilization of assets created thereon.

Apart from above issues, some other issues, which need immediate attention, are Land use policy and zoning. A comprehensive land use policy and zoning should be developed to make rational decisions for identifying land for a particular type of industry. Consistency in monitoring of projects and participation of stakeholders in monitoring and land allocation are recommended.

In the long run, measures to upgrade land zoning, benefit sharing, incorporating transparency and monitoring mechanisms need to be strengthened with effective policies and equally effective and efficient implementations.

Recommendation

a) Policy Reform

- i. Land use policy and zoning should be prioritized for identifying viable land for a particular kind of industry.

b) Enabling responsible and sustainable investment

- i. The major industries in the state are mineral and power based. These categories of industries utilize large tracts of land, but provide few employment opportunities. In such a scenario it is important that government adequately addresses issues of benefit sharing with community.
- ii. Upgrading compliance parameters to global best practices and strengthening the process of monitoring.

c) The tools for monitoring should be strengthened and strict adherence to modalities is required.

d) Enhancing stakeholder participation

- i. Local bodies should be involved in planning and monitoring process of large-scale transfer of public lands.
- ii. Involving expert agencies in the process of project development.

e) Institutional Reform

- iii. The contract conditions should be flexible in nature. In the process of implementation, these are to be strictly adhered to.
- iv. There can be an institutional mechanism, which can be a common platform to look into issues around benefit sharing.
- v. Provision for Cumulative Environmental Impact Assessment (CEIA).
- vi. Mechanisms to be developed to make people aware of RTI and transparency.

f) Enhancing efficiency and transparency through use of IT/GIS

- vii. Preparation of GIS based land use plans.
- viii. Zoning of Industrial areas

9. Panel 6: Provision of Land Information: Registry and Cadastre

9.1 Context Analysis

9.1.1 Survey and Settlement Process in the State

An preliminary but essential step in settlement of land revenue in Odisha, like many other states in India, is the preparation of a cadastral map of the village. First, tri-junctions of survey fields are demarcated with stones, which are used for theodolite traverses. The owners are notified and asked to prove their claims on the land to the Amin. In the event of a boundary dispute, the disputed portion of the plot is shown as representing a new, discrete plot, and remains legally registered in name of the original owner. Fields are then measured by means of chaining and orthogonal offsetting.

A separate sketch is made for each survey field. Plot boundaries within the survey field are also surveyed. After the map has been completed, the survey fields are numbered and the individual plots given sub-numbers. In the past, changes in plot boundaries were physically marked on the ground, but this practice gave rise to so much litigation that plot areas and boundaries are now simply compared with those shown on the previous map. This is possible because most areas have been surveyed at least once and so previous maps exist.

For plotting the maps the Amins follow 'The Technical Rules of the Settlement Department of Bihar and Orissa, 1927'. The rules specify the instruments to be used and procedures to be followed in the field.

The survey and settlement operations go through certain stages such as preparation of village polygon, field survey, plotting with plot numbers (it is called "kistwa"), distribution of "parcha" (khatian or khata wise) amongst the land holders (it is called khanapuri), hearing of objections from the landholders or tenants (it is called bujarat or attestation) and then the final stage i.e. the rent settlement which is done taking into consideration factors like productivity of land and marketability of the produce.

After the completion of the survey and settlement operations, simultaneously the survey maps are printed and RORs handwritten in 3 neat volumes containing fair copies. These 3 volumes along with village maps are supplied, one copies each to the collector, tehesildar and the RI. The fourth copy is preserved in the settlement office.

Since the start of computerization of land records through NLRMP, all these records in textual (RoR) and spatial (map) are being made on-line. While Bhulekh (<http://bhulekh.ori.nic.in>) website hosts and updates the textual records, a new website bhunaxa is in pipeline for maps.

Though settlement operations are carried out to record the actual status on the ground (and are not supposed to create or abolish right in land, in practice) is not uncommon for the poor and less influential land holders to lose a portion of their land in the official records, during the survey and settlement operations. Moreover, though supposed to be repeated after certain period (20-25 years as per Mearns and Sinha, 1999), it has not been repeated in many districts and thereby making those records, at least the maps, mostly obsolete.

9.1.2 Registration Process

The Registration Act does not require the Sub-register to verify the ownership of the land, which is proposed to be sold or purchased. This lacuna in the Registration Act has led to proliferation of disputes centring round the possession of and title to a holding because any fraudster can sell any land to any person just by paying stamp duty and registration cost.

However, the state law department notified the Registration (Odisha Amendment) Act, 2013, (on February 22 and the new law came into force from April 25) which has now made land patta compulsory for registration of transaction of immovable properties.

In this decade, through a public-partnership, GOO has introduced computerization of registration process through online registration (at Subregistrar office) at e-dharani. Anywhere registration concept has not been introduced.

9.1.3 Mutation

Records of Rights (RORs) are corrected through a process of mutation for land sale and purchase in between periodic revision surveys. Mutations are a time taking process, though uncontested mutations are to be done at the level of the lowest Revenue functionary, i.e. Revenue Inspector. Though it is prescribed as per Odisha Right to Public Services Act, 2012, to dispose uncontested mutation cases within 90 days for disposal and correction of RoR within 45 days, it is not largely adhered to. Recently (on 14 Jul 2014), RDM department has issued a circular to RDC and collectors to ensure mutation within this period or face penalty.

Many a time the buyer does not care to approach the tahasildar for mutating his name in place of the name of the seller for various reasons. Two of those reasons are the time consumed for completion of the mutation process and correction of the records in the record room and the other is the harassment one has to go through.

It may be noted that the word 'record' does not mean the ROR alone but also the spatial cadastral map. The mere copying out the RoR does not serve the desired purpose. Mutations are now being effected in the record room of the Tahasil before the RoR copies are sent to the computer wing of the Tahasil office.

9.1.4 Land transaction processes

There are five types of land transaction that take place within the state. It may be leased or allocated to eligible persons, or it may be purchased or inherited or rented (leased) from a private owner. The changes in land ownership also occur for reasons like bequeath, endowment, escheat, land acquisition, resettlement, afforestation or those occurring under the provision of OEA Act, OLR Act, OGLS Act, Government Grants Act and results of appeals and revisions etc. How well the state implements laws relating to these processes determines the ease or otherwise of having access to land.

Land fragmentation takes place, primarily as individual plots are subdivided among the heirs of a person. Since fragmentation of landholding is considered to have a negative effect on agricultural productivity, the Government of Odisha implemented a land consolidation programme since 1974. In course of time the consolidation programme lost acceptability, as it was perceived to be causing unequal gain and losses. The consolidation process subsumed the process of survey and settlement. Government decided not to carry out the consolidation programme after preparation of RoRs in villages where people did not want consolidation of holdings. In many villages even where consolidation of holdings has been done, landholders are known to be in possession of their earlier holdings. Thus, there is mismatch between the RORs and actual position on the ground. It is to be verified if possession of land has been regularized under the Forest Rights Act and is reflected in the ROR and whether the same is available on Internet. (Bhulekh), though there has been a circular issued to this effect by the RDM department, GOO (SM-139/09 43974/R & DM dated 29th October 2010)

9.1.5 Availability of and access to Land Information

The recent land centric controversies in Odisha rage around the opposition of the small and marginal farmers to the conversion of vast tracts of land with a view to commercial mono cropping, large infrastructure development and commercial projects. There is non-availability of accurate village wise data throughout the state in respect of landless and homesteadless people. Though land particulars can be obtained from website 'Bhulekh', accurate digitized maps are not available on line. It's not always easy to get the copy of a village map showing the details of the plots, from the *Tahasil* office. Though village wise land use data may be available, land use data for the state as a whole is not easily available.

9.1.6 Multiplicity in legal and institutional framework

The Land Records in different forms are maintained by two different organizations under Revenue & DM Department i.e. Settlement/ Consolidation and Tahasils. Registration department is also involved in the process, though it creates a temporary record of land transaction.

The Record of Rights is prepared under the Odisha Survey & Settlement Act, 1958 and Odisha Consolidation of Holding and Prevention of Fragmentation of Land Act 1972. After final publication of Record of Rights under the provisions of the above two acts the same are continually updated at Tahasil level by the process of mutation as per the Odisha Mutation Manual, only for the purpose of collection of rent by the Tahasildar. The updated land records at Tahasil level become the base data for preparation of Record of Rights in the subsequent settlement/consolidation operations. All the transactions of immovable properties under Registration Act, 1908 take place in the Registration Offices and hence, the records of such transactions are maintained in the Registration Offices.

These organizations maintain land records pertaining to the activities legally assigned to each of them and have separate hierarchies.

9.1.7 The National Land Records Modernization Programme (NLRMP)

NLRMP, a program of Department of Land Resources, Gol, supports the computerization of records and networking of offices to improve the efficiency and transparency in land record management. As per the Odisha Special Survey & Settlement Act, 2012, Hi-tech survey operations will be conducted across the State and would be completed within a period of two years. The Government in principle has decided to merge the existing settlement and consolidation organizations with the Tahasil administration. New mutation application software has been developed by the Revenue & DM Department in association with NIC, Odisha to link the registration offices with Tahasil offices in keeping with the objective of automatic and automated mutation after registration. The same is under trial and will soon be put to use across the state.

9.2 Land Governance Indicators: EI Report and Scoring

6	1	1	Land possession by the poor can be formalized in line with local norms in an efficient and transparent process.
			B: There is a clear, practical process for the formal recognition of possession but this process is not implemented effectively, consistently or transparently.

There is a clear process for the formal recognition of possession in the state. This process is cumbersome in practice. Several progressive and pro-poor land laws were enacted in the post independence decades and some of them, which directly or indirectly address formalization of land possessions by poor, are as follows.

1. Land Distribution/Regularization of Possession

- a. As per Orissa Government Land Settlement Act, 1962 and Rules, 1983, Reservation and settlement of Government Wastelands for Landless agricultural labourers for agricultural purposes up to one standard acre or to the extent to which the land already owned falls short of one standard acre (as defined the O.L.R. Act.1960); And for individual homesteadless persons for homestead purposes through VASUNDHARA (Distribution of House-sites to Homestead-less Persons)¹²⁹ and Mo Jami Mo Diha¹³⁰ Scheme; and Settlement of house-sites in urban areas is done as per income group.
 - b. As per Orissa Government Land Settlement (Amendment) Rules, 2010, all persons lawfully occupying Gramakantha Paramboke, Abadi (Basti), Khasmahal and Nazul lands for homestead purposes for a period of at least 3 years to 26.2.2009 are allowed settlement of such lands on permanent basis with heritable and transferable rights vide Rule 1 of Amended Schedule-V..
2. Settling rights of tenant over cultivated land under *Orissa Land Reform Act, 1960* (Sections 30 and 36) and homsteads for raiyats and agriculture labourers/ landless (Sections 9 and 10).
 3. Recording of title and possession under Orissa Survey and Settlement Act, 1958, Orissa Survey & Settlement Rules, 1962 and Orissa Mutation Manual, 1962.
 4. Allotment of Government land through Government Grants Act 1895 in some cities.
 5. Regularization of Possession/Encroachment is possible under Orissa Prevention of Land Encroachment (OPLE) Act, 1972 (1982 amendment) and the Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act 2006 as per eligibility prescribed therein.

Table 13 Status of regularization of Land possession by the poor (direct and indirect)¹³¹

Relevant Acts/ Rules	Statistics
Orissa Prevention of Land Encroachment (OPLE) Act 1972	Data not available at state level, maintained at Tehsil level.
FRA	328,580 titles have been granted in Odisha till end of Dec 2013 ¹³² . Till 31 st Sep 2013 ¹³³ , 3,24,130 (60% of the filed claims) claims were settled out of which 3,21,499 –(61%) were individual and 2,631 (23%) were

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¹²⁹ This is a programme of allotting four decimals (raised recently to 8 decimals) to a homesteadless family for the purpose of house-site formally continuing since the year 1974-75. Since 2005-06 the year of launching Vasundhara this programme is being implemented in a mission mode

¹³⁰ State Government launched a campaign named as “Mo Jami Mo Diha” during 2007 to protect the land rights of the poor. The objective is to protect and ensure the land rights of the poor who were allotted lease of government lands earlier or to restore their lost land (b) to assist the poor with emphasis on those belonging to ST and SC communities to retain their land and homestead within the existing legal framework; all the claims as per records will be seen suo moto and the data from the case records will be verified on the ground

¹³¹ Annual Reports (2006-07 to 2012-13) of Revenue and Disaster Management Department, Govt of Odisha

¹³² <http://www.fra.org.in/new/document/State-wise%20FRA%20Implementation%20Status%20up%20to%2030th%20Sept%202013.pdf>

	community claims involving a total of 6,62,089.11 acres (5,10,925.00 acre to individuals and 1,51,164.11 acres to community) as per the statistics in the website of Ministry of Tribal Affairs, GoI
VASUNDHARA (Distribution of House-sites to Homesteadless Persons)	The scheme was initiated to provide homestead plots to the 300,000 landless families in the state. 2,49,334 homesteadless families were identified in the State. (GOO, 2012) As per Annual Reports of Revenue and Disaster Management Department, GOO, however till 2012-13, 199,904 families were covered including SCs (25%) and STs (45%)- (GOO, 2013)
Mo Jami Mo diha	As of 2012-13, a total of 2,130,410 no. of cases were instituted out of which 73% (1,553,253) cases were disposed off. ¹³⁴
Orissa Government Land Settlement (Amendment) Rules, 2010	5.3 lakh families benefited (average about 2 decimal per family as per Annual Report 2010-11 of RDM Department Under OGLS, 82891 homesteadless and 22634 landless families were provided homestead lands till Dec 2012 (GOO, 2013)
Distribution of Government Wasteland for Agricultural Purpose	As of 2011-12, 7.45 lakh acres (24% to SC and 52% to ST) of agricultural lands were distributed to 4.88 lakh farmers (including 22% SC and 48% ST farmers) as reported in the Annual Reports (2006-07 to 2012-13) of Revenue and Disaster Management Department, Odisha.

The above figures in comparison to the magnitude of landless poor and availability of govt. land indicate non-realization of the goal of land distribution to the poor in spite of strong legal mandate for the same. Estimated Landless households are about 43% or 33.82 lakhs (GOI, 2006). Number of poor households is about 27.6 lakh (32.59%) (GOI, 2001) and poverty estimate of planning commission in 2011-12¹³⁵. About 63 lakh acres of Govt waste land under Abad Jogya and Abada Ajogya Anabadi (Culturable and Unculturable waste lands), which is 18% of total rural land as per Bhulekh (Feb -2014).

Best Practices

- **The Community Resource Persons (CRP)**¹³⁶ assists the revenue department field staff to provide land titles to poor families occupying homestead land without title. Local youth are selected to work as “barefoot revenue (land) official’.
- **District Pilot Centers for Women:** There is limited awareness on the part of women about the potential to receive formalized rights through Forest Rights Act. Joint titling of government allocated land did not always occur. Women are rarely directly involved in land dispute resolution.

¹³³ <http://www.fra.org.in/new/document/State-wise%20FRA%20Implementation%20Status%20up%20to%2030th%20Sept%202013.pdf> (accessed on 26th Feb 2014) out of 5,41,800 (5,30,849 individual and 10,951 community) claims

¹³⁴ Annual Reports (2006-07 to 2012-13) of Revenue and Disaster Management Department, Govt of Odisha

¹³⁵ http://planningcommission.nic.in/news/pre_pov2307.pdf

¹³⁶ Annual World Bank Conference on Land and Poverty 2013, A SYSTEMS APPROACH FOR PROVIDING LEGAL AID FOR LAND

6	1	2	Non-documentary evidence is effectively used to help establish rights.
			C: Non-documentary forms of evidence are used to obtain recognition of a claim to property along with other documents (e.g. tax receipts or informal purchase notes) when other forms of evidence are not available. They have less strength than the strength as provided by the documents.

Orissa Survey and Settlement Rule, 1962 in Rule 62 (d) vests with Settlement Officers, Assistant Settlement Officers, and Tahasildars' general powers to take down evidence with their own hand in the English language in proceedings under the Act or rules in accordance with the procedure laid down in the Code of Civil Procedure, 1908 for trial of suits. While recording the rights in the RoR, the Assistant Settlement Officer mentions the status as collected through oral evidence in the remark column.

While regularizing or evicting encroachment under Orissa Prevention of Land Encroachment Act, 1972 and Rule, 1985, non-documentary evidences are used.

The Forest Rights Act, 2006 provides for preexisting (often customary) rights, which were not recognized during the illegitimate processes of state appropriation of forested landscapes, and finally be recognized, (even through non-documentary evidences). Various categories of non-documentary evidences viz. physical attributes, traditional structures, Oral traditions, references to genealogy and ancestry and Statement of elders in support of forest land rights are described in Rule 13 (Evidence for determining of forest rights)¹³⁷ under Forest Rights Rules 2007 amended 2012.

However, as per Indian Evidence Act, 1872, non-documentary/oral evidence is treated as secondary to Documentary evidence, which is treated as a primary source of evidence.

6.1.3 Long-term unchallenged possessions is formally recognized

6	1	3	Long-term unchallenged possession is formally recognized.
			C: Legislation exists to formally recognize long-term, unchallenged possession but due to the way in which this legislation is implemented, formal recognition is granted to very few or no applicants for recognition on either public or private land.

No Substantive/statutory¹³⁸ legislation exists in the state of Odisha, but procedural laws (viz. Indian Limitation Act, 1963) are there for specific type of lands viz. public land (OPLE Act, 1972). The different types of laws through which adverse possession can be recognized are as follows-

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¹³⁷As per Rule 13, oral evidence will be one of the permissible kinds of evidence. The Gram Sabha is required to see that at least one of the other evidences like physical attributes of a house, permanent improvements made to land including levelling, bunds etc., encroachment case records, traditional structures establishing antiquity like burial grounds, wells, sacred places, genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier point of time etc.

¹³⁸ Substantive law is a statutory law that deals with the legal relationship between people or the people and the state. Therefore, substantive law defines the rights and duties of the people, but procedural law lays down the rules with the help of which they are enforced.

1. Indian Limitation Act, 1963: As per Section 65 continuous occupation over a period of at least 12 years is treated as 'adverse possession' and land rights may pass to any cultivator who can demonstrate this. (Mearns and Sinha, 1999)
2. Though tenancy has been officially abolished, concealed tenancy is a wide spread phenomenon in Odisha. As per *Section 23-B (2) of the OLR Act, 1960* the period of limitation for acquiring title by adverse possession in respect of land of a scheduled caste/tribal person has to be thirty years.
3. As per Para 54 of *Orissa Mutation Manual, 1962*¹³⁹, mutation may be granted in favour of persons having no document of title, but found in course of an enquiry to have been in possession of any **private property** as owners for a period of 12 years or more. As per Para 55 If the period of undisputed possession is less than twelve years, a note of adverse possession is entered in the remarks column of the Khatian along with the date from which the possession commences.
4. There is legislation to prevent encroachment on government-owned 'wastelands' or public land. Transfer/settlement up to a standard acre of 'unobjectionable' public land to legally landless families is allowed as per Section 7 of OPLE, 1972.
5. Odisha, like many other states has enacted legislations to abolish tenancy (Land leasing) and regularize possession of tenant by making them *raiyat*, except in the case of the persons under disability, the definition of which includes widows, divorcees, unmarried women etc. in Section 2(21) of OLR Act, 1960
6. The recognition of rights was not there in the Orissa Consolidation of Holdings Act 1972 and it was amended in 1988 by the order of Hon'ble High Court of Odisha to accommodate the right

Critique

- *In practice, more powerful individuals can acquire permanent occupancy rights through 'adverse possession' by colluding with corrupt and unscrupulous revenue officials. However the rural poor who acquire **de facto** rights over revenue wastelands through encroachment, are often unable to convert them to the **de jure** rights, since the act of encroachment is regarded as illegal in the first instance as per OPLE Act. (Mearns and Sinha, 1999)*

6	1	4	First-time recording of rights on demand includes proper safeguards and high fees do not restrict access.
			A: On-demand recording of rights includes proper safeguards to prevent abuse and costs do not exceed 0.5% of the property value.

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¹³⁹ Record-of-rights and map finally published or deemed to be published under the Survey and Settlement Act, 1958 requires maintenance to keep it up-to-date for various reasons. These changes are done through Mutation proceedings and the Tahasildars including Additional Tahasildars have been empowered for the purpose. Sec. 16 of the Survey and Settlement Act read with Chapter IV of the Survey and Settlement Rules provide grounds and manners for correction of the record-of-rights and map and exhaustive procedures have been provided in the Orissa Mutation Manual. The Orissa Survey and Settlement Rules, 1962 is a statutory provision whereas the instructions contained in the Mutation Manual are executive in nature. The provisions contained in the Mutation Manual cannot override the provisions contained in the Orissa Survey and Settlement Rules, 1962. The Mutation Manual only seeks to amplify the provisions in addition to laying down detailed instructions for regulating the administrative aspect of the work.

As per Orissa Survey and Settlement Rule, 1962, the cost of preparation of copies of the record or of extracts there from for supply to landlords, tenants or occupants shall be included in the cost of the preparation of record-of-rights and no separate charges shall be levied on the landlords, tenants or occupants in respect of such copies. Fees towards application, process and measurement are nominal..

During Survey and Settlement Operation one Asst. Settlement Officer is kept in-charge of the camp for proper implementation of Survey and Settlement work. During demarcation stage, the raiyats identify the boundary of their raiyati land before the Amins deputed for the purpose. Similarly, during kistiwar stage the raiyats identify their raiyati plots before the Amins for preparation of maps. During khanapuri stage the raiyats identify their recorded plots for preparation of record, and sign on the body of Amin report. During the attestation, draft publication and objection hearing the prepared rayati records and maps are kept open for perusal of raiyats for 60 days to ascertain the correctness.

After the completion of the survey and settlement operations, simultaneously, the survey maps as per corrections made during attestation and rent settlement stage are printed and RORs are handwritten in 3 neat volumes. These 3 fair copies of the volumes along with village maps are supplied, one copy each to the Collector, Tehesildar and the RI. The fourth copy is preserved in the settlement office as per the circular of the Board of Revenue.

6.2.1 Total cost of recording a property transfer is low

6	2	1	Total cost of recording a property transfer is low.
			D: The total cost for recording a property transfer is equal to or greater than 5% of the property value.

The expenses involved during registration include

1. Stamp Duty: Under Section 23 (***Please check the Section 23 doesn't seem to deal with the provision***), of the Stamp Act stamp duties chargeable for instruments of both movable and immovable property by way of sale are Rs.42/- per thousand (4.2 percent), Rs.21/- for every five hundred and part thereof in excess to Rs.1000/-(4.2 percent).
2. Registration fees: The registration fees chargeable are Rs.20/- per thousand (2 percent) () and Rs.10/- for every five hundred (2 percent) or part thereof in excess to Rs.1000/-.
3. Document writers/ lawyer's fees
4. Computer service charges/E-registration fees (Annexure 6.2.1a)

Thus Minimum Cost of transfer as per above is more than 5 percent.

2 percent (Registration Fee) + 4.2 percent (Stamp duty) + **2-3 percent (additional stamp duty)** + Document writing fee + e-registration fee

Critique:

There are some hidden/informal costs at different levels. According to a Corruption Perception Study conducted in 2006 by the State Vigilance Directorate in Odisha, more than 60 percent of those who interacted with the Sub-registrar office, paid bribe. 44 percent of the bribes giver rated the corruption as high and 37 percent as medium. Villagers reported payment of bribe for land registration (69 percent).

The bribe amount was above Rs 500 in 19 percent of the cases. Higher amount was paid for land registration.

6	2	2	Information held in records is linked to maps that reflect current reality.
			C: Between 50% and 70% of records for privately held land recorded in the registry are readily identifiable in maps (spatial records).

The Record of Rights is prepared under the Odisha Survey & Settlement Act, 1958 and Odisha Consolidation of Holding and Prevention of Fragmentation of Land 1972. After final publication of Record of Rights under the provisions of above two Acts, the same are updated at Tahasil level by the process of mutation as per the Odisha Mutation Manual. The updated land records at Tahasil level become the base data for preparation of Record of Rights in the subsequent settlement/consolidation operation. Updating of records and their linkage to map require close and effective coordination among these agencies, which has not been adequately institutionalized¹⁴⁰. To address these issues GoO has gone for computerization of land records, digitization of maps and e-registration process etc. However as of now, there are a lot of institutional and technical issues to be taken care of, for obtaining the desired objectives.

Table 14 Sample data from NIC¹⁴¹ showing difference between registry (computerized data base online at bhulekh.nic.in) and digitized cadastral map

Sample Tehsil	No of Parcels in RoR	No of Parcels in Map	% of parcels in Bhulekh identifiable in the map	% of Parcels in Map but not in bhulekh	% of Parcels in Bhulekh but not in map
Baragarh	11142	9882	72	6	17
Cuttack	14492	12226	67	2	18
Khurda	8778	8430	90	2	6

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¹⁴⁰ The above-mentioned three organizations maintain land records pertaining to the activities legally assigned to each of them and have separate hierarchy totally unrelated with each other. This type of situation nearly presents the disjunction among this organization under the same umbrella of Revenue & DM Department. Only the final output of one organization becomes the base for subsequent activities of other organization. For example the final RoR published by settlement/ consolidation authorities becomes the base data for subsequent RoR updation and their maintenance at Tahasil level. Similarly the updated RoR status becomes the base for transaction of immovable properties at Registration Offices and the transactions of immovable properties becomes the base for updation of RoR data of Tahasil level. There are some legal provisions in Acts like Odisha Land Reforms Act, 1960 (Section-11, Section-19 and Section-31) and Odisha Survey & Settlement Act, 1958 (Section-16) and Indian Registration Act, 1908 which provides thin lines of communication between these three organizations.

¹⁴¹ 6 villages from one each Tehsil in 4 representative districts (1 coastal, 1 urban, 1 tribal and 1 irrigated)

Koraput	2411	1715	37	8	34
Grand Total	32253	32253	72	4	16

As per the data presented in the above table, percentage of records (parcels/plots) of all land (including privately and publicly held) recorded in the register (computerized data base online at bhulekh.nic.in), which can be readily identified in maps and this is about 72 percent.

There are other errors, for example 4 percent of Parcels which are in the Map but not in Bhulekh and about 16 percent Parcels which are in Bhulekh but not in the map.

6	2	3	All relevant private encumbrances are recorded.
			C: Relevant private encumbrances are recorded but this is not done in a consistent and reliable manner.

An **encumbrance, as per dictionary meaning**, is a right to, interest in, or legal liability on property that does not prohibit the passing of title to the property but that diminishes its value. Encumbrances can be classified in several ways. They may be financial (ex: liens) or non-financial (ex: easements, private restrictions). Alternatively, they may be divided into those that affect title (ex: lien, legal or equitable charge) or those that affect the use or physical condition of the encumbered property (ex: restrictions, easements, encroachments). Encumbrances include security interests, liens, servitudes (e.g. easements, way leaves, real covenants, leases, restrictions, encroachments, and subsurface rights).

General public often use encumbrance certificates in property dealings as the only evidence for checking out free title / ownership. In Odisha, Encumbrance Certificates are issued either in Form No.15 or Form No.16. The Encumbrance Certificate in Form No.15 records and reflects all the transactions that occurred in respect of an immovable property be it a sale, lease, mortgage, gift, partition, release, etc., which have been registered before the registration authorities and recorded in Book –I.

Apart from the transactions generally recorded in an Encumbrance Certificate, there are certain other transactions relating to immovable properties and other matters which do not find place in an encumbrance certificate, mainly because, such documents are not compulsorily registrable under the Registration Act, 1908. The various kinds of transactions and matters, which do not appear in an EC, are mentioned below:

- Prior Unregistered Agreements / Oral Partition / Family Arrangement
- Oral gift under Mohammedan Law
- Unregistered Will / Rights and Interests held through Partnership Firms, Association of Persons, Societies including Co-operative Societies, Companies etc.
- Unregistered Agreements, M.O.Us, General Power of Attorney/ Rights of Third Parties not directly recorded in documents.
- Orders and Decrees of Courts, Statutory and Tax Authorities.
- Rights through possession, Part Performance and Equitable Title.

- Leases: Any lease for a period of less than a year does not require to be registered. In any transaction of sale or buying of property.
- Equitable mortgage details: This is a mortgage by depositing title deeds in which the customer has to deposit the original documents relating to the property with the bank and does not get it registered at the registrar's office.
- Other transaction: Oral tenancy/Litigation in courts, tax liabilities, prior unregistered agreements, family arrangement, unregistered Will and other unregistered agreements do not need to be registered.

6	2	4	All relevant public restrictions or charges are recorded.
			C: Relevant public restrictions or charges are recorded but this is not done in a consistent and reliable manner.

Different kinds of public restrictions, which are recorded as per different Acts/Rules, are as follows

1. Orissa Government Land Settlement Act, 1962 and Rules, 1983: Reservation and settlement of Government Wastelands for Landless agricultural labourers for agricultural purposes can only be up to one standard acre or to the extent to which the land already owned falls short of one standard acre as defined in Section 2(30) of O.L.R. Act.1960. There are restrictions regarding further transfer of such land.
2. As per Orissa Land Reforms Act, 1960,
 - a. A raiyat, except the one who is a person under disability or is a privileged raiyat, cannot lease out any land to a tenant;
 - b. A raiyat cannot transfer land settled with him for agricultural purposes under a permanent lease from Government within a period of ten years from the date of such settlement without obtaining the previous permission in writing of the Revenue Officer.
 - c. The rights of a tenant in any land held by him as such shall be heritable, but shall not be transferable.
 - a. A raiyat shall be liable to eviction only if he (a) has used the land comprised in his holding in a manner which renders it unfit for the purposes of agriculture; or (b) has leased out the land in contravention of the provisions of Section 6 (Rights of raiyats and prohibition of letting) or has failed to cultivate the land personally; or (c) has used the land for any purpose other than agriculture.¹⁴²
 - b. Restriction on alienation of land by Scheduled Tribes as per section 22
2. Individual Right holders under Forest Right Act, 2006 get a heritable but not alienable or transferable rights; duties of holder of rights are prescribed in Section 5.
3. Lessee of Govt land (Govt Grant Act, 1895)- mostly recorded in allotment order, not in the patta.

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¹⁴² Explanation - The construction of a house for the residence of the raiyat and his family members together with all necessary out-houses shall be deemed to be for agricultural purposes. This restriction will not be applicable in urban areas where agriculture land can be converted to non-agriculture with payment of premium as per amendment to OLR Act in 2006

4. As per Para- 3(1)(iii) of *The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956*, a member of a Scheduled Tribe shall not transfer any land if the total extent of his land remaining after the transfer will be reduced to less than two acres in case of irrigated land or five acres in case of un-irrigated land .
5. As per Orissa Survey and Settlement Act, the special conditions or incidents, if any, of the tenancy are to be recorded in RoR in the Remark column.
6. Charges (like bank loan, mortgage etc.) against property are required to be recorded but it is not done consistently due to laxity from both sides (i.e mortgager and registering office.). The reasons are obvious, as evident from experience.

Most of these restriction/conditions are recorded in the RoR (in the back page in remark column). However, many of them are not recorded consistently in a reliable fashion, nor is it easy to verify them if these have not been recorded in the RoR, though the cost of accessing them as per prescription of revenue department or through RTI is not high.

6	2	5	There is a timely response to requests for accessing registry records.
			C: It generally takes more than 1 week after request to produce a copy or extract of documents recording rights in property.

As per Rule 30 of Orissa Survey and Settlement Rule, 1962(Distribution of copies of record-of-rights)

- (1) A copy of or a relevant extract from the record-of-rights as finally published bearing a certificate under the Assistant Settlement Officer's signature or facsimile signature and seal shall be made over to the landlord, tenant or occupant concerned, if such landlord, tenant or occupant, as the case may be, attends the camp to receive it on the date and at the place notified by the Assistant Settlement Officer in this behalf in Form No.7 at least **7 days before such date**.

As per Rule 31, the cost of preparation of copies of the record or of extracts there from for supply to landlords, tenants or occupants under Rule 30 shall be included in the cost of the preparation of record-of-rights and no separate charges shall be levied on the landlords, tenants or occupants in respect of such copies.

Following Resolution S-88/2005-39463 dated September 28, 2005, the fees for obtaining the Record of Right have been reduced to INR 20. Records have been computerized from the year 2003 onwards.

As per Odisha Right to Public Services Act 2012 the following service standards the time limit specified for delivery of each service are prescribed for the Revenue offices at various levels with respect to land related services. The Table below mentions only a few sample services, and is not an exhaustive list of services of revenue authorities covered under the ORPS Act and Rules.

Table 15 Public Services Delivery Provisions related to land Governance under Right to Public Services Act

S.No.	Services	Time Limit	Designated Officer	Appellate Authority	Revisional Authority
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1	Issue of certified copy of RoR	3 days	Tahasildar / Addl. Tahasildar	Sub-Collector	Collector
2	Issue of Encumbrance Certificate	7 days	DSR / SR	DR-cum-ADM	IGR
3	Issue of certified copy of previously registered documents	7 days	DSR / SR	DR-cum-ADM	IGR

Recently, Revenue and Disaster Management Department has issued a circular to IG, Registration to issue Encumbrance Certificate online through odishaonline.gov.in¹⁴³. Fees for EC is INR 26 for the first year of search + INR 15 for each additional year.

The time period varies from Tehsil to Tehsil. While in urban or semi urban areas of Odisha except Bhubaneswar, it can be done within a week, in tribal areas the situation is very pathetic and it takes more than 2 to 3 months. Further, the panel noted that in case of non-compliance, the concerned Tehsildar has to give an explanation citing the reason.

Critique:

Recording of Records of rights can be accessed through Govt. portal "Bhulekh" in Oriya script, and also the map, which has been digitized in most of cases. Hard copies in hard copy can be obtained within a week for records of rights and for registration documents. It would be easier to obtain these copies as the same are being uploaded in the portal. However, the print outs from Bhulekh site is not accepted as a legal documents and often it has been noted that the RIs have refused to stamp and authenticate the document.

6	2	6	The registry is searchable.
			A: The records in the registry can be searched by both right holder's name and parcel of land.

The Land Records Web Portal of Odisha (<http://bhulekh.ori.nic.in>) or Bhulekh has options to access all the details of the property. One can access the land records by searching Khatiayan, plot (parcel) or tenant (right holder)'s name, once the village is selected by narrowing down from the district and Tehsil. The language in Bhulekh site is Odia and has been operational since early 2000.

Through e-dhaRani portal of Department of Revenue and Disaster Management all 187 registration offices across the state have been computerized and networked. E-dhaRani was launched on 4th January 2010 with option of accessing property valuation based on benchmark valuation configuration.

6.2.7. Land information records are easily accessed

¹⁴³ Vide letter no Stamp99/2013-25972 R & DM dated 5/7/2013 of Principal Secretary, Revenue

6	2	7	Land information records are easily accessed.
			A: Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, if any.

Anybody, with access to internet, can access Bhulekh records (computerized RoRs organized District-Subdistrict-Tehsil-Village wise online at bhulekh.nic.in) and take a print out of the patta (RoR), but as of now, it is not formally accepted as an authentic by the field level officials of Revenue Department.

Encumbrance certificate from the Office of Sub-registrar can be accessed by anybody on payment of a formal fee.

Anybody can obtain copy of extracts of RoR from Tehsil office on payment of requisite fee. RoR and EC are Public documents as per the Indian Evidence Act and general public can access extracts by the complying with the procedure.

Critique:

No system is in place in the registration offices to check and eliminate potentially fraudulent transactions. Registration Act 1908 does not stipulate anything for ascertaining the ownership of land under transaction. Of late, Govt of Odisha made an amendment to Section 22 A of the Act (vide Law Department Notification dated 22nd February 2014) whereby the transferor is bound to satisfy the registering officer that he has right, title and interest over the property' to be transferred. Besides a web-link has been given to each Sub Registrar to access the "Bhulekh" to ascertain the ownership position of the concerned property.

6	3	1	Information in public registries is synchronized to ensure integrity of rights and reduce transaction cost.
			C: Links are in place for some types of land information and checks are insufficient to eliminate a significant number of potentially fraudulent transactions.

In spite of legal provisions to have linkage between the concerned organizations, seldom there is smooth co-ordination due to practical problems as enumerated below.

- Settlement operations, which should be taken up ideally after a gap of 20 years, seldom takes place as such in a regular manner.
- Form No.3, Form No.4 and Form No.5a as provided in Odisha Land Reforms Rules, 1965 which form the base document for Tahasil Offices for initiation of mutation proceeding do not reach the Tahasil Office from the concerned Registration Office in a regular manner and in most cases reach in bunches after a lapse of days together. The above situation occurs due to heavy workload and depending on manual system of communication.
- Cadastral maps are an integral part of Record of Rights. It is found that cadastral maps are not updated during mutation proceedings at Tahasil level. This situation exists in all Tahasils across the State creating a situation of disjunction between the textual data and spatial data. Litigations often arise due to non-updation of cadastral maps.

- In supersession of the Instructions contained in the letter of 25th June, 1990, Government had empowered the Tahasildars to effect mutation in the RORs, and maps on any of the grounds contained in Rule 34 of the Orissa Government Land Settlement Rules 1983.
- The records maintained in e-registry (bhulekh.nic.in) have many errors due to the format (ISCII-7.0, which needs to be converted to UNICODE), typological errors, updating layers and processes. As a result, print outs of ROR from Bhulekh are not acceptable by officials of Revenue Department.
- The Bhulekh data base meant for record of rights is maintained both in client servers in each Tahasil office and centrally in the State Data Center at NIC, State Unit, Bhubaneswar. Due to the absence of horizontal and vertical connectivity between the Tahasil offices and the State Data Center, the updated RoR data are transported from client servers to the State Data Centers periodically. In many cases, it is observed that there are variations in periodicity of Bhulekh updation ranging from one week to more than a month. This situation obviously creates a gap between the field reality and in Bhulekh website.
- All digitized cadastral maps however, have not been uploaded. These maps are the old maps prepared during S & S process, which may be 20-60 years old. They are now proposed to be updated through Hi-tech survey following Odisha Special Survey and Settlement Act, 2012

There are procedural difficulties in synchronizing registry due to the following factors-

- Mortgages with banks, except for the State Bank of India, are not recorded always.
- Certain cases like death of landowner, mutual and informal partition between the landowners and provision of power of attorney do not ordinarily come to the knowledge of Tahasil Administration for the purpose of land records updation.

6	3	2	Registry information is up-to-date and reflects ground reality.
			C: Between 50% and 70% of the ownership information in registry/cadaster is up-to-date and reflects ground reality.

Bhulekh data for rural areas are being updated regularly every month based on information obtained from Tehsils. However, Bhulekh database is still incomplete, as it has not covered all the villages of the state. There is no mechanism of updating the Bhulekh unless mutation takes place at the Tehsil, though registration might have taken place long back.

Cadastre information is only updated during survey and settlement process, which takes place at an interval of 20-60 years. Though the Tehsildar is empowered to update maps these are hardly updated. In Orissa, there is a provision to submit a trace map of the plot during registration, which is recorded, but the concerned map is not further integrated into registry/cadastre process and records at Tehsil.

6	4	1	The registry is financially sustainable through fee collection to finance its operations.
			A: The total fees collected by the registry exceed the total registry operating costs. [Total operating costs include all non-capital investment costs (i.e. salaries and wages, materials, transportation, etc.) associated with registry operating costs.

Levy and collection of Land Revenue (LR) is regulated under the Orissa Government Land Settlement (OGLS) Act, 1962, the Orissa Prevention of Land Encroachment (OPLE) Act, 1972, the Orissa Land Reforms (OLR) Act, 1960 and respective Rules made there under. The Board of Revenue (BOR) administers the above Acts and Rules being assisted by field functionaries like Collectors, Sub Collectors and Tahasildars under the overall control of the Revenue and Disaster Management (R&DM) Department.

The levy and collection of Stamp Duty (SD) and Registration Fee (RF) are regulated under the Indian Stamp (IS) Act, 1899, the Indian Registration Act, 1908 and respective Rules made there under. The Inspector General of Registration (IGR) under the overall control of the Government in Revenue and Disaster Management Department administers the above Acts and Rules being assisted by a Joint Inspector General (JIG), three Deputy Inspectors General (DIGs) and 30 District Sub Registrars (DSRs) at the district level and Sub Registrars (SRs) at the unit level.

In 2011-12, the collection of taxes from land revenue increased by 12.14 per cent (to Rs 521.46 Crore) as compared to the Budget Estimates (BE) for the year and by 33.48 per cent over the previous year which was attributed by the Department to the increase in conversion of land under Section 8A of the OLR Act, 1960, alienation of Government land to the different agencies, collection of premium thereof and collection of more royalty etc. The collection of stamp duty and registration fee during 2011-12 was increased by 19.8 per cent over the previous year.

The gross collection under Stamp duty and Registration fees, expenditure incurred on their collection and the percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the All India average percentage of expenditure for collection to gross collection in last few years are mentioned below.

Table 16 Revenue Collection (Stamp Duty & Registration fee) and Expenditure (Rupees in crore)¹⁴⁴

Year	Gross Collection	Expenditure on Collection	% Expenditure to Gross Collection	All India Avg % of Previous Year
2009-10	359.96	15.91	4.42	2.77
2010-11	415.82	17.09	4.11	2.47
2011-12	498.15	23.87	4.79	1.6

The percentage of the cost of collection was always higher than the all India average percentage during the above years. During the year 2011-12, it was almost three (2.99) times the all India average percentage of previous year (1.60).

6	4	2	Investment in land admin. is sufficient to cope with demand for high quality services.
			C: Human and physical capital investment is sufficient to maintain medium service

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¹⁴⁴ CAG Audit Report of Odisha State 2013 - CHAPTER-IV: LAND REVENUE, STAMP DUTY AND REGISTRATION FEE

	standards but does not allow to proactively adapt to new developments.
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In the 1st phase i.e. in the year, 2009-10, 4 districts namely Ganjam, Keonjhar, Cuttack and Khurda have been taken up under the programme of NLRMP and a sum of Rs.1613.606 lakh has been provided for the purpose. During the year 2010-11, 3 districts namely Mayurbhanj, Balasore and Bhadrak have been identified wherein the said programme was to be implemented with an estimated cost of Rs. 2478.606 lakh out of which a sum of Rs.1537.1412 lakh has already been released meanwhile. (GOO, 2013)

Hi-tech cadastral resurvey is being taken up in 8 districts (High Resolution Satellite Imagery + Ground Truthing by DGPS- Differential Global Positioning System and ETS- Electronic Total Station in 4 districts and using Aerial Photography followed by Ground Truthing by DGPS and ETS in another 4 districts). (GOO, 2013)

Scanning of cadastral maps of the whole state has been completed and its digitization, georegencing and validation is in progress.

Establishment of modern record rooms is in progress 183 Tehsils. There is plan to securely connect all land record offices at Tehsil and Sub-registrar level through Local Area Network and State Wide Area Network (SWAN). Till SWAN is in place Virtual Private Network (VPN) connectivity is to provide to Tehsils. Data Centres are being established at Tehsil and state level, and all registration offices and services are now computerized and a state level NLRMP cell being constructed. (GOO, 2013)

Average Annual Plan budget for the Department comes to about Rs 1000 million with about another Rs 1000 million under NLRMP. However considering the spread of the organization (317 Tehsil office, 58 Sub collector office, 30 District Sub-Registrars and 147 Sub-divisional registration offices, 2113 revenue circles, 51,202 villages etc.) and quantum of work involved in collection of land revenue, registration fee, land protection and extension of rights, survey and settlement, record keeping, updating and issuing etc., modernization/restructuring of department with higher investment in physical infrastructure and human resource development is required. (GOO, 2013)

There is shortage of manpower at the grassroots level. Skilled personnel need to be recruited for implementing the current Acts and Rules. For computerization and survey and settlement as per the digitalized maps there needs to be human resources in place, who have ability to handle technology and able to help in implementation of the new plans. Huge investment is required in terms of Human resource, institutional-coordination, and supervision and monitoring mechanism.

6	5	1	Fees have a clear rationale, their schedule is public, and all payments are accounted for.
			B: A clear rationale and schedule of fees for different services is not publicly accessible, but receipts are issued for all transactions.

Different types of fees charged are land revenue, registration fee, fees for providing different services etc. Fees are decided based on reciprocity – Quid Pro Quo; to meet the cost of service provision. All payments are accounted for, but rationale is not publicly accessible and updated. However receipts are provided for each transaction and prescribed fees for different services are adequately displayed at strategic locations in the respective offices. However, as per the public perception, every revenue office at district and sub-district level is afflicted with rampant corruption in the form of bribes to be paid to the officials by the clientele against any small or big transaction.

6	5	2	Informal payments are discouraged.
			B: Mechanisms to detect and deal with illegal staff behavior exist in all registry offices but cases are not systematically or promptly dealt with.

According to a survey by TII-CMS, 2005 (quoted in Corruption Perception Study conducted in 2006 by the State Vigilance Directorate), land administration is relatively high e.g. next to police, which stands high in terms of corruption index.

This Report of Study by Odisha State Vigilance Directorate entitled 'A Report on Corruption Perception Survey 2006' has analyzed the corruption in different departments in the State. The summarized observations with respect to two important offices of land governance are provided below.

- Sub-registrar's Office: Majority of respondent visited the office for land registration and more than 60% who interacted with the office, paid bribe. 44% of the bribes payers rated the corruption as high and 37% as medium. Villagers reported payment of bribe for land registration (69%), and for getting the certified copy of land records (21%) etc. The bribe amount was above Rs 500 in 19% of the cases. Higher amount was paid for land registration. Majority (84%) of the nodal officers surveyed indeed denied the facts about bribe and identified lack of adequate staff strength, low salary of staff and lack of clear guidelines and protocols, as primary causes. Whereas 7% of the respondents felt that some measures have been taken to address corruption, 50% felt that measures were effective and 64% were of the opinion that corruption can be eliminated from Sub-registrar office.
- Tehsil Office: maximum of the villagers reported payment of bribe to settle land related issues including mutation, grant of patta and registration. Payment of bribe is made to get the work done quickly as it is believed that nonpayment may cause delay or may even lead to denial of expected services. One third of the nodal officers surveyed in Tehsils accepted the fact about bribe and identified poor staff strength, culture of demanding and paying bribe and low salary of staff as primary causes. Whereas 17% of the respondents felt that some measures have been taken to address corruption, 55% felt that measures were effective and 51% were of opinion that corruption can be eliminated from Tehsil office.

To address corruption, as per the instructions of the Central Vigilance Commission, a Notice Board has been displayed at a conspicuous point at the Reception area of all offices, advising people not to pay any bribe so as to catch the attention of the public in three languages i.e. Odia, Hindi and English.

6.5.3. Service standards are published and regularly monitored.

6	5	3	Service standards are published and regularly monitored.
			B: There are published service standards, but the registry does not actively monitor its performance against these standards.

As per Odisha Right to Public Service Act 2012 the following service standards are prescribed for Revenue and Disaster Management Department with respect to land related services.

Table 17 Service Standards prescribed under Odisha Right to Public Services Act

S.No.	Services	Time Limit	Designated Officer	Appellate Authority	Revisional Authority
1	Issue of certified copy of RoR	3 days	Tahasildar / Addl. Tahasildar	Sub-Collector	Collector
2	Disposal of uncontested mutation cases	90 days for disposal & 45 days for correction of RoR	Tahasildar / Addl. Tahasildar	Sub-Collector	Collector
3	Disposal of cases u/s 8 (A) of OLR Act	60 Days for disposal (excluding the time taken for payment of premium)	Tahasildar / Addl. Tahasildar concerned	Sub-Collector	Collector
4	Partition of land on mutual agreement of all co-sharers u/s 19 (1) (C) of OLR Act	180 Days	Tahasildar / Addl. Tahasildar	Sub-Collector	Collector
5	Registration of documents	3 days	DSR / SR	DR-cum-ADM	IGR
6	Issue of Encumbrance Certificate	7 days	DSR / SR	DR-cum-ADM	IGR
7	Issue of certified copy of previously registered documents	7 days	DSR / SR	DR-cum-ADM	IGR

For the sake of illustration, the above table lists out only a small fraction of the large gamut of revenue services that are already covered under the Notifications made in 3 phases under ORPS Act 2012.

A brief note on salient provisions of the Act are mentioned here under

- In case a citizen is unable to get the said services within the prescribed time limit or otherwise aggrieved by the service provided to him/her by the Designated Officer, he/she may file an appeal before an Appellate Authority within 30 days from the date by which he/she should have got the proper delivery of the service applied for. (Section 5-1).
- The Appellate Authority on receipt of the appeal may pass within 30 days from the date of appeal an order directing the Designated Officer to deliver the concerned service to the applicant within a time limit (Section 5-2).

- Any citizen aggrieved with the order of the Appellate Authority or in case of delay in disposal of the appeal, may file a revision petition before the Revisional Authority within 30 days from the date of the defective order or from the due date for the receipt of such order (Section 6).
- If the Revisional Authority found that the Designated Officer has failed to provide the service without sufficient and reasonable cause, he may impose a penalty against the Designated Officer not exceeding Rs.5000/-. (Section 8-1-a).
- If the Revisional Authority is of the opinion that there was delay on the part of the Designated Officer in providing the service beyond the stipulated time, he may also impose a penalty not exceeding Rs.250/- against delay for each day hism. *(Section 8-1-b).
- Besides, the Revisional Authority may also impose a penalty not exceeding Rs.5000/-against the Appellate Authority for the latter's failure to dispose the appeal within the prescribed time-limit. (Section 8-2).
- Moreover, non-compliance of the orders of the Revisional Authority shall amount to misconduct and shall make the concerned person liable for disciplinary action under the Service Rules applicable to him, if so recommended by the Revisional Authority. (Section 9).

But on a close scrutiny of the provisions made under ORPS Act 2012 and Rules made there under it is revealed that there is a critical loophole in the whole legislation, that is, absence of a time limit within which the Revisional Authority is to pass his order on the appeal against the Appellate Authority. On account of this loophole, the common people in general don't use this legislation to avail various services including the revenue records from the concerned public authorities, and in its place they continue to avail the services through the age-old, conventional routes that involve delay, hassles and above all bribes to the officials.

Under the circumstances, in order that the multifarious services from the revenue authorities are made available properly, smoothly and timely, the ORPS Act 2012 needs to be amended to make it foolproof and citizen-friendly by providing a time limit for disposal of appeals by the Revisional Authority, and the way ahead before the concerned citizen if he/she feels aggrieved by the failure of the Revisional Authority to decide on the appeal against the Appellate Authority in the timelimit to be prescribed.

9.3 Summary of Issues

- a) The Registration Act 1908 does not provide for or empower the sub-register to verify the ownership of the land to be transacted. This lacuna in the Act gives rise to a lot of otherwise avoidable disputes around the possession and title of the land. Of late, Govt of Odisha made an amendment to Section 22 A of the Act (vide Law Department Notification dated 22nd February 2014; Registration (Odisha Amendment) Act, 2013) whereby the transferor is bound to satisfy the registering officer that he has right, title and interest over the property' to be transferred. Besides a web-link has been given to each Sub Registrar to access the "Bhulekh" to ascertain the ownership position of the concerned property.
- b) Updating of RoR (Record of Rights) following registration (recording the change in ownership) at the Registrar's office, takes place through process of mutation at Tehsil office, which hardly happens in time, is usually fraught with long-delays and involves unhealthy practices. As per ORPS Act, 2012, uncontested mutation should be done within 90 days and within 45 days ROR should be corrected, however the practice is largely different. Recently, GoO has taken an initiative for on-line linkage of registration with mutation.

- c) Updating of spatial records/maps (cadastre) is done mostly during survey and settlement, which takes place almost at a too wide frequency of 20 to 60 years, though it should be carried out in about 25 years or so. GOO has initiated recently Hi Tech survey in 9 districts to update the spatial records as per Odisha Special Survey Act and Rule, 2012, following modern technology like HRSI, DGPS, ETS and aerial survey, along with some institutional restructuring.
- d) Settlement and consolidation operations are quite lengthy and fraught with procedural complexities and malpractices putting the public into various kinds of difficulties. Newly enacted Orissa Special Survey and Settlement Act 2012 and Rules 2012 prescribe hitech survey using IT as well as some elements of public participation, which are required to be followed consistently and transparently.
- e) There are considerable gaps between the records maintained in the form of RoRs (as hard copies in Tehsil), Bhulekh (as soft copies on the website) and cadastral maps (available in Tehsil office or in digitized form) on one hand and the actual position on the ground corresponding to the said records and data on the other. Institutional procedures for syncing and updating on a regular basis are absent as of now.
- f) Bank mortgages of property are not usually recorded except for the case of State Bank of India. Private encumbrances are usually not recorded.
- g) Non-availability of accurate village wise data of landless and homestead less people is a problem found throughout the state. Despite the legislations and schemes being in place to provide land to landless and homesteadless persons along with the availability of public land, landlessness and homesteadlessness still remains a big problem all over, and especially more pronounced in tribal geographies.
- h) The Land Records in different forms are maintained at three different organizations under the Revenue & Disaster Management Department i.e. Settlement/ Consolidation Wing, Tahasils and Registration Offices.

9.4 Analysis and Recommendations

- a) Initiating Legal reforms
 - i. Existing revenue laws and executive instructions need to be relooked into for further delegation of power.
 - ii. Developing a comprehensive and consolidated Revenue Code by merging and harmonizing all land revenue legislations and administrative orders - statutory and non-statutory.
- a) Synchronization of Institutional Framework
 - i. Review of Role/ Position of Member, Board of Revenue and Revenue Divisional Commissioners to rationalize the administrative structure.
 - ii. Mechanisms to reduce discretions at all level and also to reduce institutional/official hierarchies in provisioning of land information and registration
 - iii. Adequate linkage and coordination between Registration and Tehsil office; already a piloting is on for online mutation by linking registry and tehsil in Jatni, Khurdha district. Now, the Government in principle has decided to merge the existing settlement and consolidation organizations with the Tahasil administration as per Odisha Special Survey

and Settlement Act & Rules, 2012. Similar efforts are required to integrate registry with Tahasil.

- iv. Fixing of accountability for timely updating and issue of Record of Rights and operation of Registry – Introduction of Penal provisions may be considered for the purpose.
- v. Regular Publication of Land Use and Ownership Status and Land Revenue Administration Report.
- vi. Revenue institutional framework can be made more participatory for acceptable, equitable and sustainable outcomes through involvement of non-state stakeholders and public at large. Its role as a public service delivery agency needs to be equally emphasized.
- vii. In view of the coverage of most of revenue records within the purview of Odisha Right to Public Services Act 2012 and Rules made there, an Amendment is required to the said Act and Rules so as to make the disposal of appeals before the Revisional Authority time-bound.

b) Synchronization of land records under NLRMP

- i. Through NLRMP, the computerization of land records (RoR in Bhulekh is already operational and map in Bhu-naxa is under process) and hi-tech survey to update records has begun, along with modernization of infrastructure and provision for seamless connectivity. However, there remain many gaps and challenges in software, hardware, and human-interface and as well in institutional mechanisms, to sync records on real time/ regularly and make them easily/proactively accessible, which call for more coherent and concerted efforts and resources. A pilot project towards demonstrating more coordinated institutional mechanism and real-time syncing of records required to be attempted in mission mode.

c) Investments in physical infrastructure and human resources

- i. Capital investment in human resources and Infrastructure; particularly the revenue administration at the grassroots level requires quantitative and qualitative strengthening.
- ii. Compared to other States, one RI in Odisha manages more numbers of villages with deplorable physical infrastructure and absence of human resources support. They also handle many additional works like census, election, relief operations etc. There is scope of restructuring the department to focus only on land, in line with that West Bengal has carried out quite successfully.
- iii. Survey and Settlement Training through use of modern technologies should be made compulsory for Revenue Inspectors.

10. Panel 7: Land Valuation and Taxation

10.1 Context Analysis

Meeting the cost of the land revenue establishment from the land taxes etc. was never the objective of the state government, which views land administration as a service to be rendered to the citizens at a nominal cost. Prior to independence, there was consideration by the administration from time to time to enhance the land revenue, keeping in view the productivity and market price. At times, unreasonable rise in land revenue caused revolts among the peasants. The state government in 1978 abolished the collection of land revenue by an enactment known as the Orissa Land Revenue Abolition Act 1978. Since then, the governments have been collecting cess instead of land revenue. In a few places, Nistar cess is being collected. Immediately after consolidation of land revenue, government collected cess @ 25% of the land revenue, which was enhanced from time to time and at present it is being collected at a rate of 75% of the land revenue. Over time it has been felt that water rate collected from industries / agriculture should cover the maintenance cost of the irrigation / water infrastructure.

- Land valuation is very important and relevant theme. However there is no taxation or land revenue on land (abolished since 1975) except CESS and water rates.
- There is debate around benchmark valuation of all the land parcels and their periodic revision.
- Land valuation has been a contentious issue. Such valuation is required for sale of land-by-land owners and by government for public purpose as well. Prior to 2001, benchmark valuation of land property was done as per the highest sale transaction of a plot in the village for the last three years. This has caused widespread discontentment. For this, in 2001, government had introduced an amendment to Orissa Stamp Rule incorporating procedure for determination of valuation for a parcel of land based on market value, with due approval of District Level Standing Committee, constituted by the Government. Subsequently, it has further been revised in 2009¹⁴⁵ (Please refer detail elaboration under the analysis of score of Section 7.1.1)

Levy and collection of Land Revenue (LR) is regulated under the Orissa Government Land Settlement (OGLS) Act, 1962, the Orissa Prevention of Land Encroachment (OPLE) Act, 1972, the Orissa Land Reforms (OLR) Act, 1960 and Rules made there under. The Board of Revenue (BOR) administers the above Acts and Rules being assisted by field functionaries like Collectors, Sub Collectors and Tahasildars under the overall control of the Revenue and Disaster Management (R&DM) Department. The levy and collection of Stamp Duty (SD) and Registration Fee (RF) are regulated under the Indian Stamp Act, 1899, the Indian Registration Act, 1908 and Rules made there under. The Inspector General of Registration (IGR) under the overall control of the Board of Revenue and the Government in Revenue and Disaster Management Department administers the above Act and Rules being assisted by a Joint Inspector General (JIG), three Deputy Inspectors General (DIGs) and 30 District Sub Registrars (DSRs) at the district level and Sub Registrars (SRs) at the unit level.

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¹⁴⁵ Law Department Gazette Notification No.2367/I-legis dated 12.2.09

10.2 Land Governance Indicators: Expert Investigator Background Report and Score

Panel	LGI	Dim.	Land Governance Indicator 22 Transparency of valuations: valuations are based on clear principles, applied uniformly, updated regularly, and publicly accessible.
7	1	1	There is a clear process of property valuation.
			B: The assessment of land/property for tax or compensation purposes reflects market prices, but there are significant differences between recorded values and market prices across different uses and types of users; valuation rolls are updated regularly.

Holding Tax has got the nomenclature of Property Tax in the Orissa Municipal Corporation Act, 2003 But since Rules and by-laws regulating the property Tax is in the pipeline¹⁴⁶, Holding Tax is being collected for the time being as per Orissa Municipal Act, 1950. Any holding within BMC limits having clear right, title and interest is liable to pay Holding Tax @ of 17.5% of the annual value of the holding depending on the nature of holding, i.e. either residential or commercial (BMC, 2010). However, the process of fixing holding tax is different for Cuttack Municipality Corporation, which is provided in Annexure 7.1.1.

Table 18 Steps for calculating annual value of holding tax among property categories.

A. Residential properties			
Step-I	Step-II	Step-III	Step-IV
Plinth area × Construction cost per sq. ft.	Deduct 15% of The sum obtained in step-I towards repair & maintenance	Add 0.5% of the land cost where the holding is located	Annual value of the holding tax payable per annum (Step I + Step III – Step II)
B. Commercial Properties			

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¹⁴⁶ Urban bodies in Odisha are going to migrate to Unit area based Method (non-discretionary method) for calculation of Property Taxes. The bill was introduced in the assembly, but was referred back by the legislature. The ULBs will be able to migrate to self-assessment system of property taxation after the unit area-based method of taxation is approved by the legislature. The ULB are required to collect and validate records to be digitized for property tax

Add Civil Cost of the building+ the cost of P.H & Electric fitting	Take 7.5% of the value arrived through step I	Add 0.5% of the land cost with Step II	17.5% of the Cost arrived at Step IV is the Holding Tax payable per annum
C.Residential Holding Used On Rent			
Monthly rent of the building x 12	Deduct 15% of The sum obtained in step I toward maintenance cost	Add 0.5% of the Land Cost where the building is located	Hence annual value of th building is (Step I + Step III – Step III)

**For all property categories, the breakup of holding tax is same i.e. holding Tax-10%, latrine Tax- 2.5%, and Street light- 5%.*

As per amended Orissa Stamp Rules, 2001 (Gazette Notification issued on 17.1.02,) Valuation Committees have been constituted both at the district level and Tehsil level to prescribe benchmark value for each plot of land for the convenience of the public. GOO (2010a)

As per Rule-40 (2) of Orissa Stamp (Amendment) Rules, 2001, in the absence of revision of Bench Mark Valuation, Collector-cum Chairman, D.V.C. could have hiked the valuation by 10% in the year 2008 and another 10% in the year 2010 and the resultant cumulative hike is 21%. In 2009, Government amended 47-A of the Indian Stamp Act¹⁴⁷ according to which, if a vendor sets forth value less than the market value fixed for a particular piece of land, the Registering Authority on receipt of the said document and before registering the same shall forward it to Stamp Collector, for determination of market value under intimation to the particular vendor. This has come into force with effect from Feb 2009¹⁴⁸ so that there will be no undervaluation case hereafter.

There are also provisions to fix fair and equitable rent in respect of land situated in any local area by the Assistant Settlement Officer (as per rule 48, Chapter V of Orissa Survey and Settlement Rules, 1962).

Section-3(b) of Orissa Government Land Settlement Act, 1962 read with Land Acquisition Act 1894 stipulated that the premium on leased land was required to be charged based on the market value of the land and some other guiding factors. Further, as per Rule 8 of ORISSA GOVERNMENT LAND SETTLEMENT Rules 1983, the fixation of premium was to be based on the market value in the vicinity and revised every three years with the approval of the Revenue Divisional Commissioner.

Audit scrutiny (CAG 2012) revealed that although the premium was to be revised every three years, the GA Department had not revised the rate of lease premium of Government land under BMC area for a period of 11 years. GA Department stipulated (April 2006) that a consent fee should be charged at 75 *per cent* of the prevailing premium in case of transfer of leasehold land (with building as per approved plan), by way of sale or gift within BMC area with effect from 16 April 2006. However, the same was not charged uniformly, the audit observed. CAG in the audit report of 2011 had also indicated the revenue loss caused due to lesser charge of conversion fee, non-realization of outstanding premium, interest and consent fees.

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¹⁴⁷ as per the Law Department Gazette Notification No.2367/I-legis dated 12.2.09

¹⁴⁸ with the issuance of NotificationNo.10075/R&DM dated 28.2.09

In 2008, High Court¹⁴⁹ quashed the order of IGR, Odisha fixing benchmark valuation of the property, as the IGR was not authorized to amend the statutory provision by issuing directions.

In October 2013, the State Cabinet agreed to end the stamp duty evasion and avoid the intermediaries in land transactions who do not pay stamp duty by using Power of Attorney (PoA) agreements. According to Section 23 of the Stamp Act, a stamp duty chargeable at the rate of 7% of the benchmark value or the market price will be imposed on any immovable asset, when it reaches the sale process or PoA agreement.

The Chapter-8 (Taxation) of OGP Act 1964¹⁵⁰ in its Section 83 says that the Grama Panchayat shall be competent to levy all or any of the taxes, rates or fees, subject to the provisions of this Act and Rules made there under. The state cabinet has approved in June 2012 that Panchayats can collect property taxes.

Data Sources:

1. Holding tax guidelines, Bhubaneswar Municipal Corporation
2. <http://www.newindianexpress.com/states/odisha/article1534496.ece#.Uximzz-SyMA>
3. Court news, April- June, 2009.
4. http://www.telegraphindia.com/1121215/jsp/odisha/story_16318675.jsp#.UximDj-SyMACuttack
5. http://www.business-standard.com/article/economy-policy/odisha-to-offer-land-to-commercial-developers-through-auction-113041200349_1.html
6. Tax Income of Gram Panchayats in Orissa, Manual-5.

7	1	2	Valuation rolls are publicly accessible.
			A: There is a policy that valuation rolls be publicly accessible and this policy is effective for all properties that are considered for taxation.

As per the Rule 52 of Orissa Survey and Settlement Rules, 1962, the Settlement Roll shall comprise the copy of the Record of Rights as finally published and maintained under Sub-Section (2) of Section 16 with the rent fixed under Section 20. Rule 53 of the same rules mentions that the Assistant Settlement Officer shall publish the Settlement Rent Roll and a copy of the map maintained under chapter-IV by placing them for public inspection, free of charge, for a period of sixty days at such convenient place as he may determine.

In order to ensure transparency and provide hassle free registration, the state Government has introduced e-registration under the project “e-dharani” with effect from 4th January 2010. Under the new system, a Vendor/Registrant public has to pay a nominal users fee besides the stamp duty and clix_____

¹⁴⁹In the case of Guru Prasad Mohanty & anr. -v- state & ORS.& Kailash Sahu -v- state of Orissa & ORS.W.P.(C) NOS. 14801 & 18315 OF 2008. (Dt.30.4.2009) on Orissa Stamp Rules, 1952 - rule 23, 24 & 41Registration of document - fixation of market value of land - instructions dt. 05.08.08& 20.08.08

¹⁵⁰ Rules 197, 198 1nd 199 of this Act deal with the collection of taxes in the Gram Panchayat. Different taxes under this category are Vehicle Tax, Latrine or Conservancy Tax, a water-rate, a lighting rate, a drainage tax, a fee on private markets, cart stands and slaughter houses, a fee on animals, fees for regulating the movement of cattle, fees for use of any building or structure, shop, stall, pen or stand in the public markets, fees for use of slaughter houses and cart-stands, Rent from dealers, License fees on brokers, commission agents and weigh men.

registration fee as he used to pay earlier. The Project has completed successful 3 Years of Operations phase. It has received e-World 2011 award for “Best Electronic Delivery of Services” on 2nd August 2011

Anybody by inputting the location details of the plot and plot number can access the benchmark valuation of the plot from this site along with tax and stamp duty applicable for registration.

The valuation rolls in the registration office are available on personal contact since all rolls are not posted in public domain. Besides, the rolls are prepared for sale of land but not for various buildings and other properties.

Data Sources

1. <http://www.hindu.com/2010/01/05/stories/2010010551390300.htm>
2. <http://igrorissa.gov.in/>

Panel	LGI	Dim.	Land Governance Indicator 23 <i>Collection efficiency: land and property taxes are collected and the yield from doing so exceeds collection cost.</i>
7	2	1	Exemptions from property taxes payment are justified and transparent.
			D: It is not clear what rationale is applied in granting an exemption to the payment of land/property taxes and there is considerable discretion in the granting of such exemptions.

Most of the Exemptions are justified and transparent and are usually decided by the Cabinet. Exemption is not always on equity or efficiency ground¹⁵¹ and often is not applied in a transparent and consistent manner.

As per Rule 1[38-A] of Orissa Survey and Settlement rule, 1962 no fees shall be realized under Rules 36 (application fees), 37 (process fees) and 38 (measurement) in respect of lands distributed in accordance with the provisions of the Orissa Bhoodan Yagna Act, 1953 (Orissa Act 16 of 1953).

Govt. buildings, Govt. Hospitals, Govt. educational institutions and Govt. cultural institution only pay 7.5% towards latrine tax and light tax and such institutions are being exempted of paying 10% Holding Tax as per Orissa Municipal Corporation Act, 2003.

As per the Resolution dated 02.03.2007 on Orissa Industrial Policy, 2007, no stamp duty will be required to be paid in respect of land allotted by the Government to IDCO or by Government/IDCO to Private Industrial Estate Developers. Stamp duty (5%) will be exempted for units required to be transferred to a new owner / management under the provisions of the State Financial Corporation Act, 1951 or on the recommendation of the State Level Inter Institutional Committee (SLIIC). In respect of transfer of land / shed by Government, IDCO or Private industrial estate developers to new industrial units and existing industrial units taking up expansion, modernization and diversification, exemptions on Stamp Duty have been prescribed for Micro & Small Sector @ 75 % of applicable Stamp duty, for Medium Sector @ 50 % , Large Sector@ 25 % , Priority Sector@ 50% and thrust Sector @ 100 %.

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¹⁵¹ When a farmer constructs a farmhouse it is linked with conversion and he is expected to pay higher tax where as big industries are allowed exemption indiscriminately.

As per the notification of Revenue Department of Govt of Odisha dated 30/01/2001, S.R.O no- 51/2001, under Sections 78 and 79 fees can be collected at the time of registration which is 2% of the value on consideration of the documents. In cases in which neither the consideration nor the value of the property is given, Rs. 500/- shall be applicable.

The classes of property, which are exempted from payment of registration fees except the allowance under article 1(7) of Stamp Act, are land under Development area programme, university staff quarters, land for construction of schools for the handicapped students, lands under social housing schemes, establishment of small agro based industries, establishment of pharmaceutical industries, establishment of training institutes, construction of school building, establishment of small scale industries, and land to government departments etc. The details of the exemption of registration fees are available in the above said notification.

7	2	2	All property holders liable to pay property tax are listed on the tax roll.
A (Rural Property), D (Urban Property)			A: More than 80% of property holders liable for land/property tax are listed on the tax roll.
			D: Less than 50% of property holders liable for land/property tax are listed on the tax roll.

Property tax, the main source of own income of ULBs in Odisha, has not been able to achieve adequate buoyancy due to constraints like rent control, inefficiency in updating property rolls, resistance to periodic assessment, etc¹⁵². As part of implementation of ULB Level Reforms, property tax coverage of 85% is one of the areas of targeted reforms.

Table 19 Number of Holdings Assessed-BMC (2003-06)¹⁵³

Financial Year	New holdings	Revised holdings	Total holdings
2003-04	4,239	3,701	7,940
2004-05	5,720	4,215	9,935
2005-06	7,707	9,667	17,374

Bhubaneswar Municipal Corporation (BMC) has been pro-actively working towards bringing more properties under the assessment net. As per the estimates, only around 75,000 properties were under the tax net of BMC in 2005-06. BMC's rough current estimates for the year 2006-07 put this figure close to 90,000. However there could be almost the same number of properties, which are till date out of the assessment net. Conservative estimates put this figure at least at another 50,000 properties at least.

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¹⁵² http://www.tiss-uirf.in/documents/ResearchReports/WorkingPapers/SRUR_Orissa%28English%29.pdf

¹⁵³ National Institute of Urban Affairs

As per the data available with BMC, more than 80,000 houses are currently included in the holding tax net and there are as much as 60,000 more houses still outside of its coverage (BMC, 2012). Even many houses are yet to be reassessed as they are paying holding tax as per the old assessment norms. Today the Corporation is providing urban services to about 16 Mouzas on the periphery of the city, but is not collecting any revenue from them. These Mouzas are yet not included in the Corporation limits by legal notification and are still under Tehsils. An estimate projects an additional 20,000 holdings that can be brought within the net through these villages.

As per the report of Cuttack Municipal Corporation, a special drive for assessment of the new holdings for collection of tax was launched and targeted to include 10,000 holdings under the tax net during 2011-2012. Tax collectors had included 2,781 new holdings during collection of tax in 2010-11. The holding tax collection was less than the previous financial year. While it was Rs 2.60 crore against a target of Rs 4.06 crore in 2009-10 the collection was Rs 2.57 crore against the Rs 5.63-crore target in 2010-11. In 2008-09, holding tax collection was Rs 2.09 crore against a target of Rs 3.75 crore. Around 400-500 houses were being constructed every year across the city¹⁵⁴.

Bhulekh website lists all the rural properties (RoR) original copies of which are maintained by the Tehsil and Revenue Inspector who collects land cess every year. At Tehsil level the tax roll is revised every year to include all tenants.

Details of tax collected are also provided in Bhulekh site. As in March 2014, it presents 29,765,987 numbers of tenants, while the rent (net) and cess applicable are Rs 18.24 Crore and Rs 11.26 Crores respectively.

Data Sources

1. http://www.telegraphindia.com/1110524/jsp/orissa/story_14018978.jsp
2. Best Practices on Property Tax Reforms In India, National Institute of Urban Affairs.

7	2	3	Assessed property taxes are collected.
			A: More than 80% of assessed land/property taxes are collected.

CAG in the 2011 audit report pointed out that in 2010-11 the collection of taxes from land revenue decreased by 3.62 *per cent* as compared to Budget Estimates for the year in respect of Land Revenue. However, it increased by 33.71 *per cent* over the previous year which was attributed by the Department to the increase in conversion of land under Section 8A of OLR Act 1960, alienation of Government land to the different agencies, collection of premium thereof and collection of more royalty etc. In respect of stamp duty and registration fee and the decrease in collection (7.60 *per cent*), as compared to the Budget Estimate was attributed to excess target fixed in comparison to previous years which was not correct since the target (450 crore) fixed for 2010-11 was less than the target (Rs 495.66 crore) for 2009-10.

Table 20 Land revenue collections over years

¹⁵⁴ (http://www.telegraphindia.com/1110524/jsp/orissa/story_14018978.jsp).

Year	Budget estimates (in crores)	Actual receipts (in crores)	Variation excess(+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State
2006-07	180.00	226.38	(+) 46.38	(+) 25.77	6,065.07
2007-08	230.91	276.16	(+) 45.25	(+) 19.60	6,856.09
2008-09	260.24	348.79	(+) 88.55	(+) 34.03	7,995.20
2009-10	348.79	292.18	(-) 56.61	(-) 16.23	8,982.34
2010-11	405.32	390.66	(-) 14.66	(-) 3.62	11,192.67

Table 21 Collection of stamp duty and registration fee over years

Year	Budget estimate (In crores)	Actual receipts (In crores)	Variation excess(+)/ shortfall (-)	Percentage of variation
2006-07	290.00	260.49	(-) 29.51	(-) 10.17
2007-08	359.84	404.76	(+) 44.92	(+) 12.48
2008-09	350.54	495.66	(+) 145.12	(+) 41.40
2009-10	495.66	359.96	(-) 135.70	(-) 27.38
2010-11	450.00	415.82	(-) 34.18	(-) 7.60

Collection in Urban Areas

While arrears collection from private properties in the area of Bhubaneswar Municipality Corporation has come down from 43.56 % in 2001-02 to 11.52 percent in 2005-06, during the same period, arrears from government properties decreased marginally from 54.66 % to 47.60 percent. Major defaulters of BMC in terms of collection of Holding Tax include central government departments like Airport Authority, Railways, Postal Department, Doorbhas Nigam, etc., and state government departments like Department of Tourism, etc. In addition, there are several commercial and institutional defaulters as well. In 2011-12, the total holding tax collected by BMC was Rs. 20,0721,489.00 which was more than that of previous year's collection.

Table 22 Demand-Collection-Balance of Holding Tax from Government and Private Properties¹⁵⁵

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¹⁵⁵National Institute of Urban Affairs : The demand for 2006-07 is stated at 12.87 crores. However, it may be noted that in the current system, the arrears of the previous year get added in the current year's demand. This is not the correct reflection of BMC potential from Holding Tax. For instance, out of the total demand of Rs.12.87crores for 2006-07, arrears would amount to almost 38 percent of the total demand.

Year	Demand	Collection	Collection Efficiency
	Total (Rs In Lakhs)	Total(Rs in Lakhs)	
2002-03	651.96	325.78	50.03
2003-04	882.57	557.81	63.15
2004-05	749.32	420.96	56.07
2005-06	1146.37	750.48	65.45
2006-07	1286	878	68.27

Gram Panchayat Tax Revenue

The average tax revenue per GP varies between Rs.935.00 to Rs.1190.00 from 1999-2000 to 2001-2002, which is quite low; while that for the year 2002-2003 it was at a nadir of Rs.336.00 only. A sum of Rs.8592.00 only was collected on this account during 2000-01 and again there was no collection during 2001-02 to 2002-03. As per an all India survey of GP finances, "The maximum per capita tax of a GP goes as high as Rs 75.51 in Kerala, followed by Andhra Pradesh Rs 57.31 and Maharashtra Rs 47.52. It was as low as only 44 paisa in Orissa.

7	2	4	Receipts from property tax exceed the cost of collection.
B (land), D (Property)			B: The amount of property taxes collected is between 3 and 5 times cost of staff in charge of collection.
			D: The amount of property taxes collected is less than the cost of staff in charge of collection.

Table 23 Collections and Expenditure on Collection of Stamp Duty and Registration Fee¹⁵⁶

Year	Gross Collection (Stamp duty and Registration fee)(In Crores)	Expenditure on Collection (In Crores)	Percentage of expenditure to gross collection
2008-09	495.66	15.23	3.07
2009-10	359.96	15.91	4.42
2010-11	415.82	17.09	4.11

The above table indicates that the collection cost of property tax is very less in amount than the gross collection. However the percentage of the cost of collection was higher than the all India average

percentages, which were 4.11 for the year 2010-11. The CAG report suggested that the Government may take appropriate steps to reduce the cost of collections so as not to exceed the all India average cost.

The land revenue per se has been abolished since 1975. The revision of land revenue is done during settlement/ consolidation operation only, to fix rent and cess. There is no mechanism in place for automatic enhancement of land revenue periodically. Simultaneously, the cost of staff in charge of collection from RI's office to Tahasil keeps on increasing rapidly and enormously.

Urban Area

A perusal of holding tax collection and staff deployment at BMC (BMC, 2010) reveals a collection of Rs 23.6 lakh per employee, which indicate a high level of efficiency (Staff cost information has not been accessed so far)

Table 24 Holding Tax collection of Bhubaneswar Municipality (2005-12)

2011-2012	2010-2011	2009-10	2008-09	2007-08	2006-07	2005-06
20,07,21,489	20,06,94,112	12,88,00,208	11,85,00,146	10,02,23,783	8,78,28,255	7,50,47,846

Table 25 Staff Position at BMC involved in Assessment and Collection of Holding Tax

Tax Daroga	Cashier	Tax Collector	DLR
3 Nos	1 Nos	76 Nos	05 Nos

10.3 Summary of Issues

- Meeting the cost of the land revenue establishment from the land taxes etc. was never the objective of the state government, which views land administration as a service to be rendered to the citizens at a nominal cost.
- The land revenue collection has been abolished since 1978, as per Orissa Land Revenue Abolition Act 1978 and only cess is collected (now about 75% of last assessed land revenue).
- Holding Tax has got the nomenclature of Property Tax in the Orissa Municipal Corporation Act, 2003. But since Rules and by-laws regulating the Property Tax is in the pipeline¹⁵⁷, for the time being Holding Tax is being collected as per Orissa Municipal Act, 1950.
- Property tax, the main source of own income of ULBs in Odisha, has not been able to achieve adequate buoyancy due to constraints like rent control, inefficiency in updating property rolls and resistance to periodic assessment, etc
- There are allegations/observations about the State Government losing huge revenues due to a

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¹⁵⁷ Urban bodies in Odisha are going to migrate to Unit area based Method (non-discretionary method) for calculation of Property Taxes. The bill was introduced in the assembly, but was referred back by the legislature. The ULBs will be able to migrate to self-assessment system of property taxation after the unit area-based method of taxation is approved by the legislature. The ULB are required to collect and validate records to be digitized for property tax

lesser determination of conversion fee, non-realization of outstanding premium, interest and consent fees, and not taking up auction where applicable etc.

- f) There is no equity and transparency in the exemptions from property taxes.
- g) On October 2013, the State Cabinet made payment of stamp duty applicable to Power of Attorney (PoA) agreements, which was being avoided earlier.

10.4 Analysis and Recommendation

- a) Rationalization and Standardization of rent as per kissam (land types), which are also required to be standardized first, following re-survey (during the ongoing Hi-tech Survey being taken up following Odisha Special Survey and Settlement Rules, 2012) and a process of harmonization.
- b) Property tax collection in ULBs needs to be ensured with adequate institutional arrangement along with online transparent assessment and payment provision.
- c) Rent Restructuring
 - i. Rent should be assessed for all private lands (including bebandobast lands and no land should be recorded as bebandobast). There is scope of reintroduction of land revenue (rationale can be made public with a base minimum price to allow cost recovery or O & M) with online payment options not only to make the revenue governance self-sustainable, but also to make them more accountable.
 - ii. There is need of restructuring of rent collection mechanism. Water rent should be collected by Water Resources Development Department, not by Revenue Department to increase the efficiency of collection and link collection with supply of water. Similarly, nistar cess should be abolished

11. Panel 8: Dispute Resolution

11.1 Context Analysis

Land is most valuable imperishable possession from which people derive their economic independence social status and modest and permanent means of livelihood. In addition to that land also assures them identity and dignity, food security and creates conditions and opportunity for realizing social equality. Thus, land being the most important asset of mankind; it is also one of the main sources of conflict in human society. All land conflicts produce negative consequences for individuals, communities and as well as for the entire society. Ultimately it leads to social unrest. In every kind of civilization the pursuit of justice is instinctive. The urge for justice is in fact a basic and primordial instinct in every human being. It is an individual as well as societal instinct and every society strives and aspires to ensure that a strong notion of justice permeates its entire legal system. Therefore dispute resolutions assume significance.

Legal rights over the land are acquired by individuals, through various means such as inheritance, succession, gift, sale/purchase, partition, will, lease, adverse possession, or by operation of law etc. Various laws have been enacted to regulate the rights and liabilities of the individuals in the matter of acquisition of land effected through the aforesaid transactions. Similarly procedures have been prescribed under law through which individual/groups can assert their rights over lands in case of any dispute. A judicial system is a dispute resolution system, which offers a mechanism for the enforcement of rights and obligations of individuals. Therefore an effective, rational and humane judicial process is an essential foundation of good governance particularly in a democratic country like India, committed to the rule of law.

Though right to property is no more a fundamental right and is rather a constitutional right, the Article 300 A of Constitution of India provides that “no person shall be deprived of his property save by authority of law”. Therefore, whenever right of any person over his property is affected he is entitled to get remedy recognized under Law.

11.2 Land Governance Indicators: EI Report and Scoring

Indicators

- **Assignment of responsibility: responsibility for conflict management at different levels is clearly assigned, in line with actual practice, relevant bodies are competent in applicable legal matters, and decisions can be appealed against.**
- **The share of land affected by pending conflicts is low and decreasing.**

8	1	1	There is clear assignment of responsibility for conflict resolution.
			A: There are no parallel avenues for conflict resolution or, if parallel avenues exist, responsibilities are clearly assigned and widely known and explicit rules for shifting from one to the other are in place to minimize the scope for forum shopping.

Land disputes arise in various forms. It may be on account of disputes relating to land-lord and tenants, non-recording of names of individuals/groups as per their legal entitlements in the record of right during settlement operation, boundary disputes, encroachment, inheritance, use of private land by trespassers illegal/improper use of common property, multiple sale of lands, illegal eviction of persons in possession by State Officials, or other persons, inadequate compensation or R&R benefits in case of acquisition of land by the Government for public purposes etc.

Normally land disputes are considered to be civil in nature and the Civil Courts have got wide jurisdiction to try such disputes. Section-9 of the Civil Procedure Code provides that the Court shall have jurisdiction by all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. Civil Courts have been operating across the State such as Civil Judge Junior Division, Civil Judge Senior Division apart from the Lok Adalats or Gram Nyayalayas, which are of recent origin. These Civil Courts are first instance conflict resolution forums. Appeals from decree/orders of the lower courts have been provided under the CPC as well as Civil Courts Act, 1984. Some statutes dealing with revenue administration, such as OEA Act 1951, OS&S Act 1958, OLR Act 1960, OGLS Act 1962 and OPLE Act 1972 etc designate mainly the officers of the Revenue Department as the competent authorities for dispute resolution. Under those Statutes local revenue authorities are empowered to resolve disputes that are specifically barred from being entertained in Civil Courts. For example Odisha Land Reforms Acts has been enacted to confer better rights on the real cultivators, put ceiling limits in respect of agricultural holdings of landlords and to determine surplus lands and settle the same with landless people. The Act also contains restrictions on alienation of land by ST / SC people to non-ST/ non-SC people and provides for restoration of possession of the alienated lands in favour of bona fide land owners, who as such belong to weaker sections of the community. There is a hierarchy of authorities to administer the provisions of the revenue laws and those authorities are competent to decide all questions of fact and law. Section 67 of the OLR Act expressly bars the jurisdiction of the civil courts to try or decide any suit or proceedings in any matter, which any officer or competent authority is empowered under the Act to decide.

Similar provisions also exist in such revenue laws of the State as Orissa Estate Abolition Act 1951, Orissa Hindu Religious Endowment Act 1969, The consolidation and prevention of holding and fragmentation of land Act, Orissa Prevention of Land Encroachment Act, and Orissa Public Premises (Eviction Of Unauthorized Occupants) Act 1972, Orissa Estate Abolition Act, Orissa Hindu Religious Endowment Act, The Right to fare compensation and transparency in land acquisition rehabilitation and resettlement Act, 2013 etc. It is the settled position of the law that if the special statute provides for a thing to be done in a particular manner, then it has to be done in that particular manner and in no other manner and the option for other recourses is not permissible.

The jurisdictions of the Civil Court to try and decide all kinds of civil disputes are clearly defined under the Code of Civil Procedure 1908 as amended from time to time. Similarly the jurisdictions of the Revenue Courts to try particular kinds of land disputes are also clearly laid down under the special Statutes. However it is the settled position of law that exclusion of jurisdiction of the Civil Courts is not to be readily inferred even if jurisdiction is so excluded Civil Courts have jurisdiction to examine into cases where provisions of the special Acts have not been complied with or the statutory tribunal has not acted in conformity with fundamental principles of judicial procedure. Civil Courts would interfere if it finds order of the special tribunal is unfair, capricious or arbitrary. In such cases the civil court cannot substitute its own decision for that of the tribunal but would give a direction to dispose of the case in accordance with the law. (Mangulu Lal Vs. Bhagwan Lal 41 (1975) CLT 526 (full bench). Thus so far, there are no parallel avenues for conflict resolution and there is clear assignment of responsibility to the authorities, for adjudication of land disputes of civil nature.

However, it needs to be mentioned that Orissa Gram Panchayat Act 1964 in its Section 154 provides for the saving of the provisions relating to Panchayat Police and Adalati Panchayat made in the Chapter-VI and Chapter-VII respectively of the repealed OGP Act 1948. By these provisions, each Circle in a district shall have an Adalati Panchayat to be managed by a Panel of Panches (Judges) who would be elected by Gram Sabhas covered under the Circle and a Panch to be elected from among all the Panches shall serve as the President of the Panel of Panches. The Adalati Panchayat was meant to exercise its jurisdiction over a number of both civil and criminal offenses, and the penalty against each offense was specified in the Chapter on Adalati Panchayat. Though the currently prevalent OGP Act 1964 saved the above provisions of Panchayat Police and Adalati Panchayat from the repealed OGP Act 1948, the said provisions have not been given effect to in absence of the necessary Rules that should have been made in that behalf.

Besides, the Section 4(d) of Provisions of Panchayats Extension to Scheduled Areas Act 1996 (PESA Act) has declared Gram Sabha as the competent authority inter alia for resolution of disputes through traditional methods in a Scheduled Area. The OGP Act 1964 as amended in December 1997 inserted this provision in Section 5(6). But, this provision has not materialized yet in absence of the appropriate Rules made in that behalf.

Accordingly this dimension is graded as “A”. Annexure 8.1.1 A will indicate that there are sufficient mechanisms for resolving disputes relating to public and private lands and there is effective right to appeal to higher forums against the orders of the first instance conflict resolution forums.

8	1	2	Conflict resolution mechanisms are accessible to the public.
			A: Institutions for providing a first instance of conflict resolution are accessible at the local level in the majority of communities.

The accessibility of conflict resolution mechanisms at local level varies between different legislations governing land disputes. For example Odisha Land Reforms Act 1960 and Odisha Estates Abolition Act 1951 have been enacted for abolition of intermediaries and bringing the actual cultivator in direct contact with the State, for security of tenancy, rent regulation, prevention of alienation of lands belonging to SC/ST to non SC/ ST categories of people and prevention of persons from encroaching the lands of others. These Acts have conferred power on the revenue officers to adjudicate specific nature of disputes at the first instance. Such revenue courts are mostly available at every sub-divisional headquarters. Similarly Odisha Special Survey and Settlement Act 2012 confer powers on Tahsildar to determine the right, title and ownership of land holdings. Under Mutation Manual, Tahsildar is also empowered to record mutation in the land records, in respect of sale/purchase transactions relating to land on the completion of settlement operations. He is also empowered at local level to deal with boundary disputes and mutual partition of landed properties between the share holders under the provisions of Odisha Land Reforms Act, 1960. Besides, the Tahsildar is also the competent authority in respect of partition of coparcenary and other kinds of family property between the members of a Hindu family under Hindu Succession Act 1956. Appellate forums are available against the orders/decisions of the Revenue Officers.

In Odisha, Court of Civil Judge Junior Division and Court of Civil Judge Senior Division are the first instance conflict resolution institutions to deal with every kind of land related disputes unless its jurisdiction is barred under special statutes. These courts are established under Civil Courts Act, 1984. At present, thirty nos. of Courts of Civil Judge Senior Division and thirty nos. of Courts Civil Judge Junior Division have been established at all the district headquarters covering subdivisions under those

districts. Out of 58 sub-divisions in our State barring six sub-divisions 22 nos. of Courts of Civil Judge Senior Division and Courts of Civil Judge Junior Division have been established at the remaining sub-divisional headquarters. (Besides, forty seven nos. of courts of civil judge junior division have been established at Tahasil level. Even five nos. of courts of civil judge senior division have been established at the Tahasil headquarters to tackle with heavy pendency of civil cases¹⁵⁸ .

In addition to this, pursuant to Gram Nyalaya Act 2008 established Gram Nyayalaya (Formal rural courts) at six Panchayats. These Courts are empowered to entertain specific nature of criminal cases and civil cases where the value of the subject matter of the property does not exceed Rs. 10000/-. These courts are bound to resort to alternative methods of dispute resolution such as mediation, conciliation etc, in civil cases as per Section 16 of the Gram Nyayalaya Act. The Gram Nyayalayas Act, 2008 was enacted by the Parliament to provide for the establishment of the Gram Nyayalayas at the grass roots level for the purpose of providing speedy and inexpensive access to justice to the citizens at their door steps. The Act was notified and brought into force w.e.f. 02 October, 2009. Central Government had committed to provide assistance to the State Governments for meeting the non-recurring cost of establishment of the Gram Nyayalayas. The Central Government would also meet 50% of the recurring expenses to be incurred on these courts in the first three years subject to a ceiling of Rs 3.20 lakhs per annum. The State Governments were requested to set up these courts early and inform the Central Government regarding the implementation schedule. The issue of the establishment of Gram Nyayalayas was also discussed in the regional conferences of the State Governments and the High Courts organized by the Department of Justice.¹⁵⁹

However, as against the promise of establishing 5000 Gram Nyayalays across the country, only 151 nos. were found operational in 2012 covering only six States, MP, Rajasthan, Maharastra, Odisha, Jharkhand and Karnataka, as reported by then Union Law Minister in Parliament on 22 May 2012. Among them Odisha had set up 8 nos. of Grama Nyayalayas, whose subsequent fate was tottering as in other States majorly due to funds crunch. Other debilitating factors for the slow demise of Gram Nyayalaya experiment, as admitted by the Union Minister himself were lukewarm response from advocates, stamp vendors and notaries, the reluctance of police to associate themselves with the Gram Nyayalayas and above all the problem of concurrent jurisdiction of regular courts.

In addition to the mainstream judicial system, and also in order to reduce the heavy pendency of cases, the Legal Services Authorities Act 1987 passed by the Parliament envisaged 'to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity'. By this Act the Civil Courts are mandated to work towards the disposal of cases through alternative modes of disputes resolution such as mediation, conciliation and arbitration, and also refer those cases to Lok Adalat, where there is a possibility of settlement between the parties through a compromise (vide Section 20). To reinforce the new conciliatory justice that underlined the Lok Adalat initiative, the Code of Civil Procedure 1908 was amended in 1999, where its newly inserted Section 89 of the Code entitled 'Settlement of Disputes outside the Court' required the civil courts inter alia to refer those cases to Lok Adalats where there was a possibility of settlement of a dispute between the parties through a compromise. Mediation Centres have also been established, being attached to the Courts including one at State level at Cuttack and one each in the district

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¹⁵⁸ (Civil list of the judicial officers prepared under the authority of High Court of Odisha 2012)

¹⁵⁹ (vide website of Dept of Justice, Gol at <http://doj.gov.in/?q=node/141&page=2>).

headquarters of the State where trained mediators have been appointed to resolve the conflict between the parties through mediation.

From the above discussion, it is recommended that this indicator be graded as 'A' as institutions for providing a first instances of conflict resolution are accessible at the local level in the majority of the communities. However lack of awareness about the rights and benefits conferred on the disadvantage persons under different pro-poor land laws and their financial incapacity to afford law fees are the main hindrances for the common people to access dispute resolution system. In fact legal Services Authorities Act 1987 has been enacted to provide free and competent legal services to the weaker section of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity. Under the Act, among the different categories the beneficiaries are SC, ST, women, child, mentally ill or otherwise disable person, victim of mass disaster, ethnic violence, cast atrocity, flood, drought, earthquake or industrial disaster and the persons whose annual income is less than 1 lakh rupees. Section 15 of the Odisha Legal Services Authorities Rule provide for payment of Court fees, process fees, other charges payable or incurred in connection with any legal proceeding, payment of lawyer fees etc. Due to lack of awareness of these beneficial provision common people are not coming forward to avail the benefit of the scheme and even if some persons take the benefit of the scheme, the lawyer fees provide under the scheme is so meager, no competent lawyer are coming forward to take of the cases of the persons belonging to weaker section of the society. Therefore it is suggested that people should made aware of the beneficial provisions of the free legal services and the lawyer fees should be substantially enhance so as to motivate the senior lawyers to take of the cases of the disadvantaged persons.

8	1	3	Mutually accepted agreements reached through informal dispute resolution systems are encouraged.
			A: There is a local, informal dispute resolution system that resolves a significant number of conflicts in an effective and equitable manner and which is recognized in the formal judicial or administrative dispute resolution system.

The present adjudicatory system is the legacy of Anglo-Saxon jurisprudence for which the system is time consuming and costly. Large numbers of cases are now pending before various Courts at different levels. Lok Adalat has now been considered as one of the alternative modes of dispute resolution. Lok Adalat is a quasi-judicial forum organized primarily by the judiciary as a platform for conciliation and adjudication involving little cost and no delay and in an informal procedure. All this conforms to the requirements of natural justice where the keynote is justice rather than the codified law. Lok Adalats are manned by serving or retired judicial officers, members from legal profession and social workers of repute. The members of Lok Adalats while arriving at a settlement shall be guided by the principles of natural justice, equity, fair play and objectivity giving consideration, among other things, to the rights and obligations of the parties, prevailing customs and usages and the circumstances surrounding the disputes. The Lok Adalat shall have jurisdiction to arrive at a settlement between the parties to a dispute in respect of any case pending before or any matter, not brought before any court, except the cases, which are non-compoundable. The Lok Adalat shall have the same power as are vested in a civil court. The award passed by the Lok Adalat shall be deemed to be a decree of a Civil Court. The procedure in the Lok Adalat is informal, flexible and non-controversial (Justice K. Ramaswamy- former Judge Supreme Court of India). Taluk Legal Services Committees at the Taluk level (equivalent to Tahsil) and District legal

services authorities at the district level have been established pursuant to the Legal Services Authorities Act, 1987 who are now mandated to organize Lok Adalats at frequent intervals.

Section 4(d) of The PESA Act, 1996 stated, “every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity community resources and the customary mode of dispute resolution”. This provision shows that through a local, village level informal dispute resolution mechanism a significant number of conflicts can be resolved in an effective and equitable manner and it is recognized in the existing legislations.

All these features suggest there is a local informal dispute resolution system which can resolve a significant number of conflicts in an effective and equitable manner and which is recognized in the judicial and administrative dispute resolution system. However, though large number of cases seems to have been disposed of through Lok Adalats or Mediation Centres no specific data is available about the exact numbers of land disputes resolved through these conciliatory forums.

So it is recommended that this indicator be graded as ‘A’.

8	1	4	There is an accessible, affordable and timely process for appealing disputed rulings.
			C: A process exists to appeal rulings on land cases at high cost and the process takes a long time/ the costs are low but the process takes a long time.

Land disputes are considered to be civil disputes and the civil courts have got jurisdiction to adjudicate all such disputes. But their jurisdiction is either specifically or impliedly barred under various special statutes including revenue laws. Appeals from decrees/orders of the lower courts have been provided under the Code of Civil Procedure 1908 and Orissa Civil Courts Act 1984.

- i. The jurisdiction of Gram Nyayalaya to try Civil disputes extends to cases where the subject matter of the proceedings does not exceed Rs. 10,000/-, as provided under Section 6(1) Orissa Gram Nyayalaya (Court) Rules 2009. Against the order of the Gram Nyayalaya appeal lies to the District judge and thereafter to the High Court, subject to fulfillment of certain conditions. (Section 34 of the Orissa Gram Nyayalaya Act 2008)
- ii. The jurisdiction of Civil Judge Junior Division to try civil cases of civil nature extends to the suits of which the value does not exceed Rs. 50,000/-. (Section 15 of Civil Courts Act 1984) Against the decision of the civil judge junior division appeal lies to the District judge and then to the High Court. (Section 16(3) of Civil Courts Act 1984)
- iii. The jurisdiction of Civil judge senior division extends to suits where the value of the property exceeds Rs. 50,000/-. (Section 14 of Civil Courts Act 1984)
- iv. Against the decision of civil judge senior division appeal shall lie to the District judge where, the value of the original suit did not exceed five lakh rupees and to the High Court in any other case and thereafter to the Supreme Court by way of special leave petition. (Section 16 2A and 2B of Civil Courts Act 1984)

It is thus apparent that different legislations governing land disputes and above all civil courts provide for detailed framework for dispute resolution including the provision of appeal against the decision of lower courts. But time taken in disposing the appeals is too long; cost of appeal is also not affordable to the poor. Therefore it is recommended that though some process of appeal exists in every kind of land

disputes, the disposal process takes a long time and cost is not affordable to the poor. Accordingly this dimension is graded as 'C'.

8	2	1	Land disputes constitute a small proportion of cases in the formal legal system.
			D: Land disputes in the formal court system are more than 50% of the total court cases.

Accurate data is not available to grade these indicators. However, we have collected statistics from the District Courts relating to the Civil Cases disposed off in 2011-2013 in Bhubaneswar, Jharsuguda and Berhampur. After perusal of those statistics three of the panel members who are the retired district judges gave their opinion that land disputes in formal court system are more than 50% of the court cases. Therefore it is proposed to grade this dimension as 'D'. In the present format maintained by the Civil Courts, disaggregated information about land related cases is not available.

8	2	2	Conflicts in the formal system are resolved in a timely manner.
			D: A decision in a land-related conflict is reached in the first instance court within 2 years or more for 90% of cases.

No specific data is available to score this indicator. However from the inputs given by the panel members who are the retired district judges it transpired that a decision in a land related conflict is reached in the first instance Court within 2 years or more in 90% of cases. Therefore it is proposed to grade this dimension as 'D'.

8	2	3	There are few long-standing (> 5 years) land conflicts.
			D: The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases.

No specific data could be available to grade this dimension, However from the information collected from the Court of Senior Division and Court of Junior Division of Bhubaneswar and those of Jharsuguda for the period 2011 to 2013 it is observed that on an average 9,689 cases are pending an additional 2,089 cases are being filed every year but the disposal rate is very low i.e. only 1,458 cases. On an average 918 cases remain pending every year during last 10 years where more than 50 % cases remain pending for 5-10 years in these courts.

Therefore it is tentatively proposed to grade this dimension as 'D'.

Table 26 Annual Dispute Resolution statuses in the Courts of Two Districts

Bhubaneswar&Jharasuguda		Previous Pending	New case instituted	Disposal	5-10 year	> 10 years
2011	CJ (Sr)	14955	3410	2409	8687	836
	CJ (Jr)	5585	1348	926	3416	844

2012	CJ (Sr)	15443	3527	2600	8858	1005
	CJ (Jr)	6004	1785	866	4252	936
2013	CJ (Sr)	11359	1887	1539	4221	780
	CJ (Jr)	4788	576	410	2087	1104
Average		9,689	2,089	1,458	5,254	918

Figure 15 Court cases in Bhubaneswar & Jharsuguda Courts

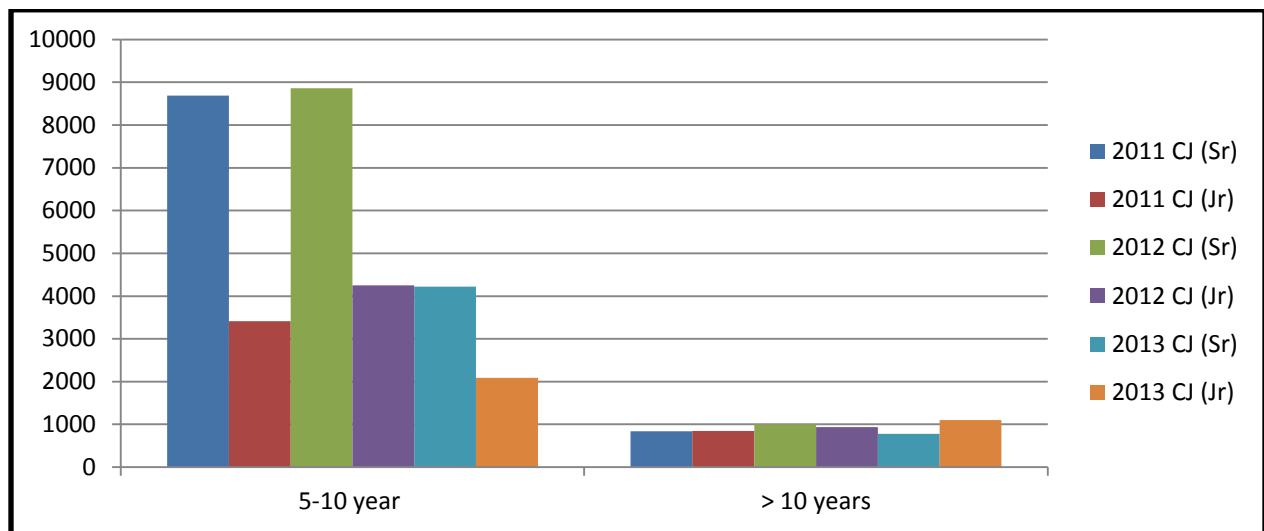
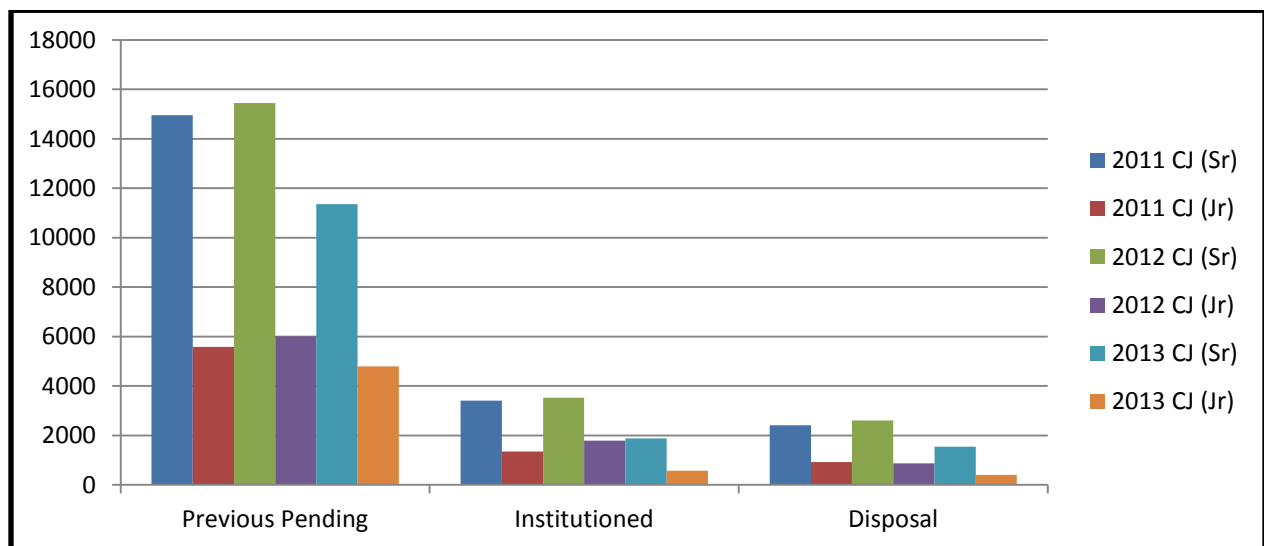


Figure 16 Court Cases in Bhubaneswar, Jharsuguda & Berhampur Courts



From a look at the rate of disposal of Civil matters in the Courts of Senior Division and Courts of Junior Division in Bhubaneswar, Jharsuguda and Berhampur, it is very much clear that the rate of disposal of cases is very low in comparison to the previous pending and institutionalized cases before those courts

11.3 SUMMARY of Issues

- a) Land dispute cases are very high and being conducted in both judicial and revenue court systems. , They account for more than 50% of the total cases.
- b) Delay in completion of provisional survey for updating of records, denial of entitlements during preparation of Record of Rights, Incorrect recording of land holders in the RoRs, due to inadequate knowledge in law operating in the field dealing with complicated and archaic nature of both substantive and procedural laws regarding titles and above all knowledge deficit of the dealing personnel, non-payment, delayed payment or underpayment of compensation and R&R entitlements in land acquisition cases, are the main reasons for the proliferation of land related cases brought before Civil Courts, where disposal of cases drags on for a long time, to the detriment of both State and litigants.
- c) Delay in mutation of land records, officers assigned with the responsibility of correction of land records are engaged with other administrative works, non filling of the post of consolidation Commissioner and Land Records for long time, non-accountability of officers in disposal of cases in a time bound manner, lack of mindset of officers in expeditious disposal of land related cases, unnecessary adjournment of cases are the main impediments for speedy disposal of the cases.
- d) The formal process of dispute resolution through Courts is both time killing and inordinately expensive; time killing because of complex laws and cumbersome procedures, and expensive because of the collateral burdens such as lawyer's fees, Court fees etc.
- e) Some reforms have already been introduced and others are afoot for transforming the revenue justice system from a white elephant to a smart performer, but such reforms are yet to be grounded so as to yield the intended benefits to the State and the litigant public as well.
- f) Strong institutional mechanisms, as mandated under the recent spurt of progressive legislations and proactive orders of the apex court are in place for dealing with the land disputes at the local or community level, of course in formal sense of the term, What is required most of all is on one hand, a dogged and dedicated pursuit of capacity development programmes for public at large to familiarize them with the basics of the new era of laws and policies with their thrusts on participatory mode of dispute resolution, and on the other sensitization of the judicial and quasi-judicial personnel on the imperative of adopting the new judicial culture of out-of-court and fast-track settlement of civil disputes including land litigations through mediation, conciliation arbitration or Lok Adalat. This will contribute to speedy resolution of land disputes and unclogging of cases long pending in judicial and revenue courts.

Good Practices

- In many cases the land disputes arise out of action or inaction on the part of state Government. Therefore State Government is a major litigant in such cases before the Courts of Law. In order to enable the Courts to dispose of these cases in an effective and expeditious manner and for good governance, the State Government has come out with a State Litigation Policy (Orissa) in 2011. This policy is based on the National litigation policy to ensure conduct of litigation by the State Government as a responsible litigant aiming towards reducing pendency and delay in finality of litigation. Though neither of the Policies has been grounded as yet by the Central or State Government.

- Very recently Hon'ble High Court has issued direction to all the Civil Courts to dispose of the cases expeditiously where State is a party.
- Taluk Legal Services Committees at the Taluk level, District Legal Services Authorities at District level and High Court Legal Services Committee have been established pursuant to Legal Services Authorities Act, 1987, who are now mandated to organize Lok Adalats, but such Lok Adalats are normally held once in every month. However in order to afford opportunities to the litigants to dispose of their cases pending before the Courts as well as the cases which are not yet brought before the Courts, amicably through Lok Adalats the Schemes of Permanent and continuous Lok Adalat with conciliation and counseling centres scheme 2000 and Odisha High Court permanent and continuous Lok Adalat Scheme 2003 have been made operational.

11.4 Analysis and Recommendation

a) Legal reform

- Legislations dealing with judicial and revenue courts should provide for a time limit for disposal of cases.
- For disposal of huge pendency of cases, fast track Courts should be established. And every land related cases should pass through Lok Adalat.
- Section 22 B of the Legal Services Authorities Act should be amended to confer jurisdiction on the permanent and continuous judge to decide land related cases. Penal provisions should be introduced by way of amendment in the Code of Civil Procedure for filing frivolous litigations.
- The State Government needs to set up the 'Land Acquisition, Rehabilitation and Resettlement Authority' for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, resettlement and rehabilitation as required under Section 51 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.
- The State Govt in their revenue department may bring an enactment in the line of the Bihar Land Dispute Resolution Act 2009 empowering a revenue officer to deal with a) unauthorized and unlawful dispossession of any settllee or allottee from any land or part thereof settled with or allotted to him under any Act by issuance of any settlement document/ parcha by a competent authority, b) possession/ restoration of possession of settled/ allotted land in favour of legally entitled settllee/ allottee or his successor/ heir upon hearing/ adjudication of unauthorized and unlawful dispossession c) threatened dispossession of a legally entitled settllee/ allottee d) any of the matter enumerated in (a) and (c) above appertaining to raiyati land e) partition of land holding f) correction of entry made in record of right including map/ survey map g) declaration of right of a person h) boundary dispute i) construction of unauthorized structure. The Act may provide constitution of a tribunal headed by seating or retired District judge to hear appeals/ revision arising out of the order passed by the revenue officer. The time frame for disposal of appeal may be strictly within 6 months. The Act may provide for mandatory referral of every proceeding to Lok Adalat before it comes for final hearing.

b) Institutional reforms/restructuring

- Enhancement of lawyer's fees by the Legal Service Authorities so as to motivate them to take up the cases of indigent persons in right earnest.
- Legal awareness activities should be vigorously pursued through State Judicial Academy, Odisha State Legal Services Authority and competent NGOs with coordination by the OSLS Authority
- Land rights and legal assistance centres should be established at every block/ sub-

divisional headquarters either under the control of Legal Services Authorities or under DRDA.

- iv. A majority of lands of the State belong to endowment, these lands were endowed for specific purposes. Many disputes now arise between sevayats and the deity, which ultimately hamper smooth management of seva puja of the deities and religious institutions. Therefore State Government in their law department in coordination with the Revenue department may prepare an inventory all endowment and wakf lands and thereafter remove all illegal occupation and may take steps to put such lands (which are not yielding any income) into auction sells for better management and seva puja of the deities and religious institutions.
 - v. The State Govt may establish separate endowment courts for effective disposal of the land disputes, which arise between sevayats and the deities.
- c) Investment in Human and Physical resources
- vi. It is required for filling up vacancies and proportionate Increase in the Judges' strength of Courts in order to address the huge pendency of cases in each civil Court.
 - vii. At least one Grama Nyayalaya for a Block area and at least a Civil Court for covering 20,000 people should be provided along with adequate staffs and infrastructures and made functional for the whole State. People should be made aware of Section 89 of Civil Procedure Code (Settlement of Disputes outside the Court), which emphasizes the alternative dispute resolution through Lok Adalats or Arbitration/Conciliation/Mediation.
 - viii. Depending upon pendency of cases the State Government in the Revenue department may ensure for the appointment of adequate number of officers for disposal of revenue cases. The State Govt should issue executive instruction indicating strict accountability of the officers for disposal of revenue cases within a specific time limit in case of deviation; disciplinary action may be taken against erring officials.
 - ix. The State Government may ensure that the officers entrusted with the task of adjudication of revenue cases have not engaged in any other administrative works.
 - x. The presiding officers of the revenue courts and civil courts should not encourage adjournment of cases.
 - xi. The state government in the revenue department should ensure appointment of officers having adequate knowledge of law for effective disposal of revenue cases if required services of required judicial officers, advocates having practice in civil side may be hired for the purpose of clearing back log of cases, budget provision may be made for the payment of adequate honorarium to these officials.
 - xii. Endeavour should be made to enlist all the pending land disputes/ cases in various revenue courts and civil courts. An analysis of pending disputes/cases should be done to understand the nature of land problem reasons for pendency and the majors required for resolving them in a time bound manner. This initiative should be taken by the Govt in Revenue department so far as revenue cases are concerned. Regarding disputes pending before civil courts Govt in their law department may move Hon'ble High Court to appoint technical personnel; particularly law graduates from law schools on payment of remuneration and after enlistment of cases Hon'ble High Court may evolve a strategic plan for early disposal of cases by issuing suitable instruction to the judicial officers.
- d) Monitoring Legal database- Inclusion of 'land' as a key word in online database of Courts to make it easier for everyone to track the concerned cases and the particulars there of pending

at different levels and also the changes in land related legislations and administrative systems taking place from time to time.

- e) The State Government should immediately withdraw Orissa R&R Policy 2006 where there is no independent grievance redressal mechanism, and set up the ombudsman like agency viz, 'Land Acquisition, Rehabilitation and Resettlement Authority' with a District Judge, serving or retired, as its Presiding Officer for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, resettlement and rehabilitation as required under Section 51 of of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 which is in force w.e.f. 1st January 2014, along with implementation of other provisions of the Act.

12. Panel 9: Review of Institutional Arrangements and Policies

12.1 Context Analysis

Lack of security of tenancy is still a major problem in the State though the State has implemented land reforms since October 1965. On the whole, land reform legislation has had only limited success in Orissa. Weak land revenue administration and lack of up-to-date land records were important contributory factors. As a mineral-rich State Orissa government's primary objective has been to negotiate with private and domestic capital to invest in mining and mining-based industries. The State Government has allotted huge areas of land over the years to various industrial clusters across the state. The resultant land alienation among poor including tribals and absence of viable livelihood alternatives ensures that the displaced continue to be impoverished and dispossessed. It presents the paradox of poverty in plenty.

One can infer that many a times Government employ public policy and legal instruments which are unsuited for a particular ecosystem leading to discrimination, inequities and poverty as happened in Odisha. In the above context this background paper seeks to examine the land policies at the state level, including some of the recent initiatives taken by the state.

Along with the policy there is a requirement of appropriate institutional mechanisms to implement and promote the relevant policy effectively. This panel analyzes various institutional issues in Land Governance in Odisha from the point of both historical developments, current trends, and also attempts to identify “what type of policy framework and institutional arrangement could possibly lead to governance successes in land administration”.

12.1.1 Policy Framework and Institutional Arrangement

The land policies in India still bear the influence of colonial era whose single motive was to maximise revenue. Subsequent State involvement in land issues has led to many cases of economic inefficiencies and social injustice. Unequal land distribution and unchecked market forces have, in some cases, led to land being taken from small farmers and growing rural poverty. The reinstatement of land rights is therefore an essential aspect of the policy and institutional reforms required to promote equitable and sustainable development. Land policy reform is essential to securing the broader objectives of social justice and economic development.

As specific to this research, an institutional approach provides opportunities to identify Land related institutions and gain insights about how they are influencing (or not) land governance and management. In fact institutional analysis is the process of gaining insights into institutional contexts to understand how they affect human actions and shape outcomes (McGinnis 2011). A particularly prominent example of institutional reforms has been that of land reform. Redistributive land reform was a core component of socialist policies across Eastern Europe, Asia and Africa in the 20th century. Other types of land reform initiatives that followed in the last decades range from land registration and titling, tenancy reform, consolidation of landholdings, to restitution of land rights to historical owners ([Sikor and Müller 2009](#)). An assumption that has dominated the latest set of initiatives is that secure land tenure – that is “the terms and conditions on which natural resources are held and used” ([Bruce 1986](#) in [Scoones 1995](#)) – will positively affect agricultural and economic growth ([Deininger et al. 2009](#)) thereby reducing poverty.

This argument has generated heated debate regarding both its theoretical underpinnings and its validity in the field ([Peters 2009](#); [Place 2009](#)). The claim that there is “broad agreement” that secure individual

land rights will “increase incentives to undertake productivity enhancing land-related investments” (Deininger 1999, 35) may be exaggerated. On the contrary, it has been shown that market-based land reform often results in the increasing concentration of land holding patterns and the further exclusion of poor people from common property resources.

12.1.2 A State-level Perspective

Land policy aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. According to Constitution of India, land including assessment and collection of revenue, maintenance of land records, land management and alienation of revenue etc. fall under the purview of the State Governments. “Land” being a State subject, falls under the legislative and administrative competence of the States. Land use planning falls, therefore, under the responsibility of the State Governments. However, the subject of ‘Forests’ and ‘Environment Protection’ were brought into the Concurrent List with the 42nd Amendment to the India Constitution adopted in 1975. Thus in the period following this amendment, forests, wildlife and coastal areas were increasingly viewed as national public goods and were subjected to Federal Government regulations and legislations. The Government of India promulgated the Forest (Conservation) Act, 1980, prohibiting state governments from allowing the use of forestland for any other purpose without the approval of the central government.

In different states India including Odisha, while land-reform legislation remained active, land policies in more recent decades have focused less on land reform and more on land development and administration (Deshpande,2006). The Orissa Land Policy framework is loose, a result of various successive legislative documents, government circulars which have been created to overcome numerous land related issues. The land laws at the state level could be broadly classified as:

- *Land Acquisition Laws* including the state-level amendments to the Land Acquisition
- *Laws relating to Land Reforms* including State Land Reform Acts, Zamindari Abolition and Tenancy Acts, Cultivation Tenants Protection, Act and Bhoodan Yagna Acts.
- *Land Administration and Development Laws* including Land Preservation and Development Laws, Consolidation of Holding Acts, amongst others.

In addition, states have a significant role to play in the rehabilitation and resettlement (R&R) of those involuntarily displaced by land acquisition. **Thus an explicit state land policy is absent in Odisha.** However, some important areas relevant to land policy are discussed in the context of Odisha.

Implementation of many national reform initiatives, such as the land ceiling laws, and early state-level efforts in Odisha were minimally effective in large part due to the diverse land administration legacy and lack of reliable records (Deo 2011; Mearns and Sinha 1999). This was primarily a result of four formerly distinct land revenue administration systems originally established during the British colonial period. Land Tenure System in modern Orissa has a variety of legacy. From 1936 to 1948, Orissa consisted of six districts and undivided Ganjam was a part of it. The Ganjam region had two types of land administration system, *Royatwari* and *Muthadari* system. The land system of tribal regions of Orissa varies from area to area due to historical factors. Merger of 24 Feudal states with the modern Orissa after independence has influenced the land related law of the tribal communities. These administration systems included major differences in revenue assessment and record keeping, leading to administration difficulties that persist today. Odisha has, subsequently passed numerous laws aimed at land reform and unifying land administration in the state

12.1.3 Institutional Arrangements in Land Administration in Odisha

The Revenue and Disaster Management Department (R&DM) dominantly deals with Land and Land Reforms. The department considers “Land is an important resource of livelihood of people and their shelter. Revenue administration touches all social groups and stakeholders and is concerned with their problems. The activities of the Revenue and Disaster Management Department (R&DM) are not merely confined to solving people’s problems relating to land; these also include providing land to the landless and protecting the Government land. In the matter of transfer of property, particularly the transfer of immovable property, the Registration Offices under the R&DM Department”

Further, computerization of Revenue Offices, updation of land records, digitization of cadastral maps, inter-connectivity among revenue offices, under taking survey operations using modern technologies, distribution of Government waste land for agriculture/ homestead purposes, distribution of ceiling surplus land, prohibition of tribal land alienation, regularization of pre-1980 forest villages and encroached human habitations in forest areas, acquisition of private land for public purposes, formulation of comprehensive R&R policies for displaced persons, administration of minor minerals of the State and conduct of decennial census are some of the important activities of R&DM Department. (<http://odisha.gov.in/revenue/index.html>)

12.1.4 Land Acquisition Policy and Institutions

Land acquisition remains at the centre of many controversies and public policy paralysis in Odisha. The Government of Orissa follows the National Land Acquisition Act 1894/1984 for the requisition and acquisition of land, with appropriate amendments from time to time in its application to the State of Orissa viz. The Land Acquisition (Orissa Amendment) Act, 1948 and The Land Acquisition (Orissa Amendment and Validation) Act, 1959. The Industrial Infrastructure Development Corporation of Orissa Act, 1980, is also invoked in cases where Industrial Infrastructure Development Corporation (IDCO) acquires land for companies. In Odisha, the Revenue and Disaster Management Department is the nodal department for acquisition and allotment of land for different purposes including for setting up of industries.

As per the Industrial Policy Resolutions (IPRs) of the State, Odisha Industrial Infrastructure Development Corporation (IDCO) has been acting as an agency, in respect of private promoters desirous of establishing industries in the State, for collection of land premium and compensation money from them, depositing the same with the LAOs/Special LAOs, taking over possession of land after acquisition and leasing out / handing over the same to promoters. In case of allotment of Government land, Collector, Revenue Divisional Commissioner (RDC), Member, Board of Revenue and the RDM Department can sanction lease of such land within prescribed limits. Tahasildars concerned are responsible for assessment and collection of lease premium and other charges realisable from the allottees. It is the prime responsibility of the Tahasildar to guard against encroachment of Government land and to bring any case of encroachment to the immediate notice of the Collector, who is required to take prompt action for removal of such encroachments.

The growing perception that these powers are frequently abused and that the compensation provided by the laws is inadequate coupled with its psychological and socio-cultural consequences. The arbitrariness in implementation was clearly reflected in Performance audit of ‘Land Acquisition and Management’ covering six districts of the State was reported in Audit Report (Civil) for the year ending

31 March 2010. The processes and procedures ultimately tended to benefit the private buyers/industries at the expense of those who lost their land, mostly farmers.

The Government of Odisha did not have any rehabilitation policy for a long time. The displaced people of Odisha they were dealt with the limited provision of compensation under LAA 1894. In May 2006, the Government of Odisha declared the Orissa Resettlement & Rehabilitation Policy (ORRP) following the Kalinganagar massacre in January 2006 in which 14 tribals were shot dead in police firing. This R&R policy has broadened the definition of a family with a major focus on livelihood analysis and planning, perspective infrastructure planning in the resettlement areas, socio-cultural and socio-economic survey to give recognition to wide-ranging livelihood options in the affected areas. This is the first attempt at benefits sharing with the offer of preference shares. National Rehabilitation and Resettlement Policy, 2007 (NRRP-2007) and Land Acquisition (Amendment) Bill, 2007 recognizes traumatic, psychological, and socio-cultural consequences on the displaced populations, which calls for affirmative state action for protecting their rights. It talks about the concept of indexed benefit and direct negotiations similar to the Orissa Policy mentioned above.

12.1.5 Tribal land Governance in Odisha

The areas with predominantly tribal population have been declared as scheduled areas under Part C of the 5 Schedule of the Constitution of India. In Odisha, the district of Koraput except the Kashipur Tahasil, Mayurbhanj, Sundargarh, the Ganjam Agency areas, the Kondmals and the Baliguda sub-division of Phulbani district barring the Chakapad block were specified as scheduled areas under the Constitution (Scheduled Areas) Order, 1950. The Scheduled Area Order, 1950, was revised in 1977 and some more areas were included in the specified scheduled areas in the state. The scheduled area covers about 44.70 per cent area of the state. It extends over 118 blocks in 12 districts containing about 68 per cent of the total tribal population of the state. In Odisha some important legal provisions applicable in tribal lands began with the

- Government of Odisha passing the Orissa (Scheduled Areas) Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 with the objective of checking the transfer of land from the tribals to non-tribals.
- The Orissa Land Reforms Act, 1960, which contained certain provisions in section 22 & 23 for the protection of the interest of Scheduled Tribes in non-scheduled areas came into force with effect from 1 October, 1965. Section 22 and 23 of the Act provided that the transfer of lands from people belonging to Scheduled Caste and Scheduled Tribe to people of other castes was to be declared void unless it was made with the previous permission in writing of a Revenue Officer. All transfers in contravention of this provision were declared illegal and the restoration of lands to the Scheduled Caste and Scheduled Tribe people was provided in case of illegal transfer (Government of Odisha, 1987).
- In 2002 the government amended the Orissa (Scheduled Areas) Transfer of Immovable Property (by Scheduled Tribes) Regulation 1956 and the amendment provided for complete ban on transfer of land belonging to ST persons to non-ST persons in tribal areas of the state. The last amendment to Regulation 2 of 1956 has been made in 2008 and it provides for complete ban on transfer of tribal land to non-tribals but with certain relaxation (Government of Odisha, 2010).
- Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA): PESA extends to all the states having Schedule V Areas. PESA aims at ensuring that the 'gram sabha or panchayat at appropriate level' are endowed specifically with powers for management of land resources, amongst other things. A significant aspect of this power is that these bodies need to be *consulted* before (i)

acquisition of land for development projects and (ii) R&R of persons affected by such projects in Scheduled areas.

There are a large number of processes through which tribals have lost their access to land and forests essential for their survival and livelihoods in India. These not only include alienation of land, which is legally owned by the tribals through debt mortgaging and sale, but also loss of access to land through reservation of forests, loss of traditional shifting cultivation land through survey and settlement, displacement, unsuitable and unimplemented land reform law, etc.

In spite of existence of policies/acts to secure the rights of the tribals over their land, natural resources, and livelihoods, execution has been quite tardy. One of the most important pieces of legislation called PESA was introduced almost 17 years back. It is unique in being in consonance with customary laws, focusing more on tribal hamlets based on culture rather than revenue villages. However, hardly any steps have been taken to operationalise PESA. Field studies in Odisha reveal that many people on the ground are not even aware of the legislation (Upadhyay 2007).

Laws on restriction in sale of land from tribals to non-tribals (to avoid landlessness among tribals), has been largely ineffective and land alienation persists in large areas of the country. In Dhenkanal, Ganjam, Koraput, and Phulbani districts, about 56 per cent of the total tribal land was lost to non-tribals over a 25–30-year period. Since PESA came into being, there has been growing criticism from the civil society, pointing out that in most cases even the minimal mandate of '*consultation before acquisition*' is not honoured by the project proponents, and that this aspect has been taken lightly by the state governments (Upadhyay and Sinha, 2009)

Curiously certain instances have come to the fore in the state in which the land is found in the name of the tribals but non-tribals who have loaned money to tribals cultivate it (Ambagudia, 2010)). This shows that the tribals are not entirely free from the grips of the moneylenders in the state. A survey conducted during 2008-10 in the two tribal dominated districts of Koraput and Rayagada found that among the ST households 21.61 per cent had transferred their land through sale and 46.23 per cent through mortgage (Patnaik & Patnaik, 2011). Similarly, the Forest Rights Act is a significant step towards recognising the pre-eminent rights of tribals on forest land, but in most cases it has not yet harmonised well with forestry /wild life legal frameworks. (Sundar 2012)

In the state of Odisha the process of implementation of the Forest Rights Act, 2006, started since January 2008. A number of agents are involved in the process: four departments namely tribal, revenue, forest and panchayati raj are working in coordination for implementing the Act, with the Tribal Welfare Department being the nodal agency. Due to the legal and technical grounds on the control and management of land by both Revenue and Forest departments, only the maps for the lands occupied and cultivated within the revenue boundary were prepared while the areas under Reserve Forest (RF), Protected Forest (PF), national parks, sanctuaries, etc., were excluded.

This was observed only in case of individual rights over forestland, while the rights over Community Forest (CF) were not given much attention for a long time. The FRA has been largely considered as land rights over a piece of forestland negating the Community Forest Rights (CFR). This has been a major gap in understanding the FRA at the government level as well as at the civil society level. Besides, there are specific provisions for the PTGs, pastoral, and pre-agricultural nomadic communities displaced under the FRA, which has been a no-starter. In this regard also, there has been complete lack of clarity at the government as well as the civil society levels

12.1.6 New Initiatives – Women’s Rights/Community Participation

The state Cabinet approved Odisha State Policy for Girls and Women 2014 in July, 2014. The policy would also enable women groups to claim their rights over assets, land and housing and ensure inheritance rights. The Government would make proper legislation and administrative measures to ensure asset ownership right. A special course would be introduced on land rights of women and related laws and judicial decisions. As per the provisions, the Government would provide free land and homestead land to the landless women and widows above the age of 45 years and disabled women. The women SHGs would be provided at least four decimals of Government lease land free of premium. Besides, stamp duty would be waived for women for registration of land and house and other immovable property, whether bought or obtained as gift.

The Community Resource Person (CRP) model, promoted by RDI-Landesha and State Revenue Department, provides a partnership platform where the native and traditional knowledge of local communities is recognised as a crucial input to the governments landless enumeration process, thereby cementing local participation in land governance. The CRP model is an excellent example of decentralising knowledge to enable enhanced access to basic information on ownership of land. Engaging and involving community members in selection of beneficiaries, delivery of inputs and services, and adopting a participatory method can result in measurable results and enhanced impact.

Savath et.al (2014) in a recently concluded study on Vasundhara and Gramakantha Paramboke (GKP), two Odisha government land titling programs, observed the emphasis on titling land jointly for husband and wife to be an additional layer of legal protection for women. **GKP** is a separate state government program that provides individual titles to households that were previously on collectively owned land, under the 2009 Amendment of the Odisha Government Land Settlement Act.

12.2 EI Background Report and Score

Indicator 9.1 Clarity of mandates and practice” Institutional mandates concerning the regulation and management of the land sector and clearly defined, duplication of responsibilities is avoided and information is shared as needed

9	1	1	Processes of policy formulation, implementation and arbitration affecting land rights and land use are properly separated
			B. A comprehensive land policy exists or can be inferred by the existing legislation, and sections of the community affected by these decisions are informed, but feedback is usually not sought or not used in making decisions

The Revenue Disaster Management Department (R&DM) was a part Department of Revenue and Excise (DRE) till December 1999. The Revenue Department is the custodian of Government Land. As such Revenue Administration is intimately connected with management of land in the State and other allied matters. Broadly its role and responsibilities range between policy formulation, policy implementation, and judicial matters The Department is concerned with laws regarding land tenures relation between landlord and tenants, disposal of Govt. land and alienation of land and rights over land and consolidation of land holdings. Maintenance of land records, survey for revenue purposes and updating of record of rights constitutes one of the major activities of the Department.

All revenue cases in which tenant’s right to possess and land are in dispute such as mutation, encroachment, waste land lease; land acquisition etc. is disposed of by Revenue Department. There are

also hierarchies of institutions of adjudication of land disputes by the Civil Court unless its jurisdiction is either specifically or impliedly barred under specific statutes.

Odisha Government Rules of Business empower the General Administration (GA) Department to control, administer, manage and protect Government land within the geographical limits of capital city of Bhubaneswar i.e. Bhubaneswar Municipal Corporation (BMC) area. Although the GA Department was entrusted with the management with this land since 1952, yet no rules, regulations, manuals for allotment of land have been framed by the Department for the last 60 years.

9	1	2	Land policies address equity and poverty reduction goals; progress towards these is publicly monitored.
			C: Land policies incorporate some equity and poverty objectives but these are not regularly and meaningfully monitored.

Department of Forest and Environment undertakes different activities for protection, regeneration and extension of forest and tree cover in the State. The Forest Department has full control over the Reserve Forest and National Parks whereas in the **Protected Forests and sanctuaries a dual control (Forest- and Revenue Departments) is likely till the forest settlement process is over.** The Revenue Department has some lands of forest characteristics (called jungle kisan) and has a provision for gramya jungle (village forest) within the village boundaries. The gramya jungle may be different from the village forest to be declared under the Odisha Forest Act in the sense that the latter may be outside the village boundary also.

The Government has not framed any policy and procedure for allotment of Government land in Bhubaneswar. As a result, multiple bodies like Bhubaneswar Development Authority (BDA) and Odisha Industrial Infrastructure Development Corporation (IDCO) and GA Department itself were allotting land for similar purposes. Audit scrutiny revealed that though the GA Department was leasing land to IDCO for industrial purposes and to BDA for residential purposes; they were in turn allotting land to educational institutions, hotels and hospitals, which was done directly by the GA Department as well.

In the State, IPICOL is the State Level Nodal Agency (SLNA) under Odisha Industries (Facilitation) Act 2004 and is engaged in assessing the requirement of land for industrial purposes and liaising with other departments to ensure its availability. In this context IPICOL had engaged MN Dastur and Company (Private) Limited in October, 2005, for preparing norms and guidelines for allocation of land and water for steel projects of different capacities ranging from one million ton per annum (MTPA) to six MTAP which was approved in August 2007 by the State Level Single Window Clearance Authority (SLSWCA) under intimation to Government in R&DM and Industries Departments. However, the same was yet to be accepted and raised to normative level by the state Government. A wide variation in the quantum of land recommended by IPICOL Vis-à-vis land applied for and actually allotted, thus indicating absence of a rational correlation amongst the three figures.

Normally planning for the urban areas is managed by a Town Planning Authority. For larger areas more competent authorities with greater power and resources are established, viz. Bhubaneswar Development Authority (BDA). The Puri-Konark Development Authority and the Talcher-Anugul-Meramandli Development Authority represents areas that presently consist of two or more separate towns but are fast developing into a larger urban conglomerate. However, there have been allegations of inadequate/ inefficient functioning of these authorities.

9	1	3	Administrative (vertical) overlap is avoided.
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	A: Assignment of land-related responsibilities between the different levels of administration and government is clear and non-overlapping.
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A Summary of Relevant Material Contained in Audit Reports by the Office of the Comptroller and Auditor General of India regarding irregularities connected with the POSCO project pointed out towards Deficiencies in the Functioning of the Central Ministry of Environment and Forests. The EAR (Environmental Audit Report) does not directly mention POSCO, but does provide us some understanding of why MoEF failed in its duties when it came to the POSCO project. The report enumerates a distressingly long list of deficiencies in the functioning of the MoEF ranging from a near-total lack of monitoring to significant delays in completion of projects to non-achievement of objectives of projects.

As a part of his responsibilities the Regional Development Commissioners (RDC) in reviews from time to time, implementation of laws relating to land reforms and tenancy in his jurisdiction and to apprise the Board of problems requiring its intervention. To advise the State Government on any unauthorized alienation of forestland caused by any method whatever resulting in jeopardy to public health. Efficacy of this responsibility could not be ascertained.

9	1	4	Land right and use information is shared by public bodies; key parts are regularly reported on and publicly accessible.
			A: Information related to rights in land is available to other institutions that need this information at reasonable cost and is readily accessible, largely due to the fact that land information is maintained in a uniform way.

The CAG report of 2012 states that the state failed to maintain consolidated data on land owned or leased or allotted by it – and so could not provide information on utilization of existing land resources or justification for acquiring private land.

Though the RDM Department was approving all cases of land acquisitions, a comprehensive and centralized database on private land acquired, the nature of use of such land- agricultural or non-agricultural, compensation paid, private land handed over to promoters/ requisitioning officers, the rate charged from the promoters for such acquired land, Government land allotted, leased to various institutions/ promoters of industries and the lease premium charged by Government/ IDCO/ Collector was not maintained at that level. At the district level, though data on acquisition of land was available, yet it was not publicly available to enhance transparency in the acquisition process.

The panel opined that land use information is not regularly reported and updated. However, the records of rights are accessible in public in Land Records Information Portal *Bhulekh* maintained by Revenue and Disaster Management Department, Government of Odisha. It was agreed that Odisha has to catch up to introduce Karnataka like model RTC model (Record of Rights, Record of Tenancy and Record of Cropping).

9	1	5	Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute.
			D: The Legal framework and procedures for land-related matters (incl. renewable and subsoil resources) deal with land-related matters very differently and effective mechanisms for addressing overlap are not in place.

Records of rights are maintained up to date, so that tenants know exactly what their rights are in respect of the land they own or possess. All revenue cases in which tenants' rights to possess and own land are in dispute such as mutation, encroachment, wasteland lease, land acquisition etc. are disposed of.

Curiously certain instances have come to the fore in the state in which the land is found in the name of the tribal but non-tribal who have loaned money to tribal cultivate it (Ambagudia 2010). This shows that the tribal are not entirely from the grips of the moneylenders in the state. Further though laws are in operation in Odisha to prevent the transfer of tribal land in tribal areas, land alienation in varying degrees continues in various parts of the state. In fact a survey conducted during 2008-10 in the two tribal dominated districts of Koraput and Rayagada found that among the ST households 21.61 percent had transferred their land through sale and 46.23 per cent through mortgage (Patnaik and Patnaik, 2011). Moreover the erosion of tribal communal land rights owing to faulty survey and settlement operations, land alienation as a result of displacement of tribal and the encroachment of tribal land by outsiders, loopholes in the laws and lack of awareness among the STs with regard to the protective laws in their favour have contributed to the present plight of the tribal in Odisha especially in making them impoverished and deprived. However solution to the malaise lies not in the policy to make the laws stringent but in the education of the tribals and in their awareness of the provision of laws.

9	1	6	Ambiguity in institutional mandates (based on institutional map) does not cause problems.
			D: Different public institutions deal with land-related matters very differently and effective mechanisms for coordination are not in place.

Land administration will function smoothly only when the roles and responsibilities of all organisations involved are clear, unambiguous and followed accordingly. This applies both horizontally between agencies and vertically between levels of hierarchy.

In Odisha such ambiguity is observed between Department of Forest and Environment and Revenue Department with regard to Protected Forests and sanctuaries (Forest- and Revenue Departments) is likely till the forest settlement process is over. The Revenue Department has some lands of forest characteristics (called jungle klsan) and has a provision for gramya jungle (village forest) within the village boundaries. The gramya jungle may be different from the village forest to be declared under the Odisha Forest Act in the sense that the latter may be outside the village boundary also.

Multiple bodies like Bhubaneswar Development Authority (BDA) and Odisha Industrial Infrastructure Development Corporation (IDCO) and GA Department itself were allotting land for similar purposes. Audit scrutiny revealed that though the GA Department was leasing land to IDCO for industrial purposes and to BDA for residential purposes; they were in turn allotting land to educational institutions, hotels and hospitals, which was done directly by the GA Department as well.

Indicator 9.2 Equality and non-discrimination in the decision-making process: policies are formulated through a decision-making process that draws on inputs from all concerned. The legal framework is non-discriminatory and institutions to enforce property rights are equally accessible to all

9	2	1	Land policies and regulations are developed in a participatory manner involving all relevant stakeholders.
			D: No clear land policy exists or can be inferred by the existing legislation and land policy decisions are generally taken without consultation of those affected.

An explicit state land policy is absent in Odisha. The Orissa Land Policy framework is loose, a result of various successive legislative documents, government circulars that have been created to overcome

numerous land related issues. Despite declaration in State's Industrial Policy Resolutions (IPRs) of 2001 and 2007 for creating a land bank and framing a land policy, it were not formulated and even no land use plan was prepared for the State.

As an exception consultation with various direct and indirect stakeholders including civil society of the state has been conducted, and the views of the academicians and specialists in the field of resettlement and rehabilitation have been considered as part of democratic response of the Government R&R Policy formulation. Limitations of the past policies have been acknowledged and analyzed and a flexible framework has been attempted. The new policy demonstrates the commitment of Odisha to an investment climate, which is both pro-business and concerned with human welfare.

While is an endowment, its utility is undetermined. The political will in this process to be committed to enabling community control at the micro level that foregrounds local self-governance. Such shifts will revolutionize the allocation of power over land. To support these shifts community participation in forest department controlled forums must be replaced by the department's participation in community-convened platforms.

9	2	2	Land policies address equity and poverty reduction goals; progress towards these is publicly monitored.
			C: Land policies incorporate some equity and poverty objectives but these are not regularly and meaningfully monitored.

Although it is not legal, concealed tenancy persists, with tenants having little protection under the law. The sharecropping system is financially oppressive and most sharecroppers are unable to break out of **poverty and debt**. Sharecropping is an open secret in Odisha as major land owners are now not cultivators. At the same time these farmers are not entitled to get any institutional credit for the crop.

Apart from tardy implementation, certain loopholes in the laws however have diminished the impact of ceiling provisions. Particularly the wide latitude given to the landowners in the land laws to select the land for personal cultivation enabled the landowners to retain for them the best lands and consequently a large part of the declared ceiling surplus land was found quite unsuitable for cultivation. These factors as well as a sizable area of surplus land which still remains undistributed for being entangled in litigation apparently point to the fact that the ceiling laws in the state have failed largely to serve the desired purpose.

Moreover the time gap between the enactment and enforcement of the ceiling laws enabled the landowners to make all kinds of adjustment to escape from the ceiling provisions. Thus, the ceiling laws have failed to effect revolutionary changes in the property relationship within the agrarian structure and the **inequalities** within the village structure which the ceiling laws intended to solve persists to a great extent even today. In fact, this is not the case in Odisha but in most of the states in the country.

9	2	3	Land policies address ecological and environmental goals; progress towards these is publicly monitored.
			C: Land policies incorporate some ecology and environmental sustainability objectives but these are not regularly and meaningfully monitored.

Odisha is endowed with a variety of vast mineral deposits and therefore occupies a prominent place in the country as a mineral rich State.

It has been found that the agricultural lands surrounding the mines area become infertile due to air, water pollution and disposition of huge amount of overburden. Due to pollution of water bodies and choking of natural stream, the agricultural activity of surrounding areas gets affected. This leads to

affect the livelihood of the tribal people inhabiting in that area. One of the most severe impacts of mining has been the change it has brought to the local land use patterns and concurrently its landscape. It has been found out that maximum land diverted for mining activity is forestland, agriculture fields or common grazing land. Forests have especially borne the brunt of mining. The villagers were dependant in the forest resources for earning their livelihood. They were collecting various forest products like firewood, timber, forest products, mushroom, resin which used to supplement their family income. Reduction in collection of the NTFP is leading to negative impact on the tribal livelihoods in this region. (Source: *Impact of mining land degradation in livelihoods*; 3. March 2014- Sanjay Kumar Parichha)

Odisha has formulated the State Climate Change Action Plan. The scoping study was undertaken to understand the range of issues. The scoping study covered several sectors including agriculture, fisheries, animal husbandry, energy, forestry, health, industry, mining, transport, urban planning and others.

9	2	4	The implementation of land policy is costed, matched with benefits and adequately resourced.
			D: The implementation of land policy is not costed and there is inadequate budget, resources and capacity to implement the land policy.

Except in Odisha R&R Policy 2006 wherein the provisions suggest that wherever required, adequate provision will be kept towards land acquisition and R&R establishments to ensure effective implementation of R&R Policy. As a procedure the Directorate of R&R should submit such budgetary estimate/works by 1st January of every year. Government will ensure timely release of allotment to the concerned authorities.

As per budget preparation guidelines amounts required for satisfaction of Court decree in respect of Land Acquisition cases, which have no scope for appeal, should be proposed for inclusion in the Budget Estimate under the “Charged” Section. Normal land acquisition charges for projects/ schemes should be proposed in the voted section under detailed heads made for the project/ scheme.

9	2	5	There is regular and public reporting indicating progress in policy implementation.
			C: Formal land institutions report on land policy implementation but in a way that does not allow meaningful tracking of progress across different areas or in a sporadic way.

The Annual Activity Report of Revenue and Disaster Management Department, Government of Odisha incorporates a report on this issue. The progress relating to implementation of the policies are reported which is made available to the public. However, the reports are not sufficiently meaningful and comprehensive.

9	2	6	Land policies help to improve land use by low-income groups and those who experienced injustice.
			B: Policy is in place to improve access to and productive use of assets by poor and marginalized groups, is applied in practice, but is not effective

Distribution of Waste Land/ Ceiling Surplus and to Landless Families as a part of land reform measures for agricultural development and social equity, ceiling surplus land up to 0.7 acre has been allotted free

of Salami to landless agricultural families. Since its inception, 1, 60,559.92 acres of ceiling surplus land was distributed among 1, 43, 382 landless families. Out of this, 51, 313, .73 acres land was distributed among 49,076 SC families, 66,424.06 acre among 53,149 ST families and 42,831.94 acre among 41,157 other caste families.

In addition, the State Government also allotted government wasteland up to one standard acre to landless poor families for agricultural purposes. From 1974-75 to 2010-11, 7,44,854 acres of Government wasteland has been distributed among 4,88,167 landless families, including 3,88,756 acres for 2,36,506 ST and 1,77,126 acres for 1,06,091 SC landless families. During 011-12, 319,729 acres of wasteland was distributed among 356 landless families for agricultural purpose comprising 118 acres for 138 ST families, 82 acres for 92 SC families and 119.71 acres for 126 other

Vasundhara, grants title to households considered to be encroaching on government land, while the other, Gramakantha Paramboke (GKP), distributes individual title to households residing on previously communally titled land.

The state approved Odisha State Policy for Girls and Women 2014 in July, 2014. As per the provisions, the Government would provide free land and homestead land to the landless women and widows above the age of 45 years and disabled women. The women SHGs would be provided at least four decimals of Government lease land free of premium. Besides, stamp duty would be waived for women for registration of land and house and other immovable property, whether bought or obtained as gift.

9	2	7	Land policies proactively and effectively reduce future disaster risk.
			C: Policy is in place to prevent settlement in high risks areas but which is not enforced.

Certain landscapes are fragile in nature because of their inherent natural dynamics. These include the seacoasts, riverbanks and mud flats. However, anthropogenic interventions may also make some landscapes fragile, like mining (opencast and underground). Underground mining can lead to instability in the land making to vulnerable to collapse. Opencast mining can lead to landslides. Odisha large population lives in these high-risk areas and suffers from annual natural disasters on coasts and river banks

The eco-sensitive nature of the coastline is to be protected as per the Coastal Zone Regulation (CRZ) under which there are restrictions on specific activities that can alter the land use in the coastal zones. However, the Regulation has not been imposed strictly leading to several cases of violation in the State. While Puri and Ganjam have been the most problematic districts as far as the CRZ violations are concerned, cases have also been reported from Bhadrak and Balasore districts as well.

The impact of the cyclonic storm Phalin in October 2013 has reportedly intensified the erosion of the Odisha coastline to such an extent that about 350 km of the stretch has been affected by this. The critical erosion of this coastline, that was said to be confined to about 5.93% of the total stretch, has now been extended to about 25% of the stretch. Rapid erosion is occurring in about 45% of the stretch, which is very threatening. Therefore a sincere and proper management of the coastline has become urgent.

12.3 Summary of Issues and Challenges

- Legal Framework
 - State inherited multiple land revenue systems
 - Vast & complex revenue laws and systems
 - Govt owns substantial land ; governed through multiple laws Government Land Settlement (OGLS) ,Prevention of Land Encroachment (OPLE) Act, (OLR) Act, Govt Grant Act etc
 - Land reforms partially successful
 - Protection to Tribal land Rights exists : Provisions under OLR, OSATIP regulation, PESA and GP Act Amendments, Forest Rights Act,
 - Land Acquisition dealt with LA Act and State act, 1984 and highly forward looking R & R policy
 - Involvement of PRI remain limited inspite of 73rd , 74th amendment and PESA (Panchayats (Extension to the Scheduled Areas) Act, 1996)
 - Forest land governance through RF/PA (Reserve Forests/Protected Area) declaration remains complex and contested.
 - FRA/JFM implementation quite satisfactory
 - Robust legal and institutional framework around Urban land, but implementation and coordination remains challenging
- Institutional Framework
 - Continuation of the colonial system, though revenue collection has become secondary
 - Limited role of Board of Revenue and Revenue Divisional Commissioners
 - Low involvement of Collector in Revenue matters
 - Multiple agencies, institutional overlaps, limited coordination across rural, urban and tribal land and also around registry and cadastre processes
 - Incomplete separation of arbitration and implementation authorities
 - Many land laws debar jurisdiction of civil court, providing revenue court and authorities arbitration role
 - Modernization of Record and Hi-tech Survey
 - Focus now more on land allotment for poor and industrialization along with NLRMP
- Issues and Challenges

- Framing State Land Policy and Land Use Policy
- Balancing Industrialisation with Conservation
- Urban and Regional Land Use planning
- R&R as right based entitlement
- Modification or Replacement of existing ineffective institutional arrangements
- Limited PRI and community participation in rural and urban land governance
- Ecological and equity objectives not clearly manifested legally, neither pro-actively pursued institutionally
- Inadequate Institutional resources to implement policy and legal framework
- Limited pro-active dissemination of land information

12.4 Analysis and Recommendations

- Institutional Reform in Revenue and Disaster Management Department
 - Review of Positions of Member, Board of Revenue and Revenue Divisional Commissioner to rationalize administrative structure;
 - Reducing institutional/official layers in provisioning of land information
 - Bringing in most land related services under Public Service Delivery Act
 - Restructuring of land revenue system to ensure cost recovery and efficient provision of services
 - Reorganising the department around Land and creating a land governance cadre; integrating PRI and community participation into land governance
- Development of Common Revenue Code/ Integrated Framework law, taking cognisance of legislations like 73rd and 74th amendment, PESA, FRA
- Introducing provision of proactive reporting of land transactions/allocations/redistribution etc. in Bhulekh sites regularly
- Integrating emerging concerns in land use planning and policy like biodiversity, pollution and climate change in consultation with communities

Best Practices

Continued focus on land to landless and homesteadless; *Distribution of Waste Land/Ceiling Surplus Land to Landless Families (Ceiling Surplus Land¹⁶⁰, Distribution of Waste Land¹⁶¹, Land Alienation¹⁶², Land*

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¹⁶⁰ As a part of land reform measures for agricultural development and social equity, ceiling surplus land up to 0.7 acre has been allotted free of *salami* to landless agricultural families. Since its inception, 1,60,559.92 acres of ceiling surplus land was distributed among 1,43,382 landless families. Out of this, 51,313.73 acres land was

Restoration¹⁶³, Bhoodan program¹⁶⁴, Vasundhara Homestead Allocation¹⁶⁵, Mo Jami Mo Diha Campaign¹⁶⁶

- Forward looking R&R Policy-Displaced person can opt for shares in the company(industrial and mining projects)
- Bhulekh website accessible by anybody provide updated RoR information easily without discrimination, so as registration information and process through E-dharni
- Land Passbook Programme
- Land restoration cells to implement OSATIP in Schedule Area

distributed among 49,076 SC families, 66,424.06 acre among 53,149 ST families and 42,831.94 acre among 41,157 other caste families.

¹⁶¹ State Government also allots government wasteland up to one standard acre to landless poor families for agricultural purposes. From 1974-75 to 2010-11, 7,44,854 acres of Government wasteland has been distributed among 4,88,167 landless families, including 3,88,756 acres for 2,36,506 ST and 1,77,126 acres for 1,06,091 SC landless families. During 2011-12, 319.729 acre wasteland was distributed among 356 landless families for agricultural purpose comprising 118 acres for 138 ST families, 82 acres for 92 SC families and 119.71 acres for 126 other

¹⁶² The State Government has amended the Odisha Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956, in which transfer/alienation of land belonging to ST persons to non-ST persons has been completely banned. Since its inception till 2008-09, around 1,07,903 land alienation cases were instituted, out of these 1,07,467 cases were disposed off and 57,103 acres of land was restored to tribal families. During 2010-11, 7,307 cases have been instituted and 1,341 involving 1,455.204 acres of land have been disposed of till the end of December 2010.

¹⁶³ As per sections 22, 23 and 23 (A) of the Odisha Land Reform (OLR) Act, 1960, the transfer of land from SC and ST people to non-SC/ST without prior permission of the competent authority has been declared void and restoration of such lands to the respective recorded tenant has been allotted. So far land to the extent of 13,183.432 acres has been restored in favour of 14,084 ST and 17,805.684 acres of land restored in favour of 25,271 SC beneficiaries.

¹⁶⁴ Orissa Bhoodan Yagna Act 1953 provided for the establishment of a Bhoodan Yagna Samiti in the State of Orissa. Government of Orissa passed the Orissa Bhoodan and Gramdan Act in 1970. Out of the total 11, 065 *Gramdans* made in the entire country by November, 1965, Orissa made a handsome contribution of 2807 *Gramdans* and thus occupied the second place in the country in that respect. Since 1951 to the year 2012, around 6, 38,706.50 acres of land was collected as donation by the Bhoodan Yagna Samiti. So far, 5, 79,994 acres has been distributed among 1, 52,852 landless person according to the Bhoodan Yagna Samiti (BYS).

¹⁶⁵ In 2005/6, the Government of Odisha launched the Vasundhara scheme, which aimed to provide homestead plots of what is now up to 10 decimals to homesteadless families. In 2008, Government that all identified 2,49,334 homesteadless families (as per enumeration reports received from Collectors) shall be provided with housesites under Project Vasundhara within a period of three years as a crash programme.the government reported allocation of 90 percent of land through the scheme, reaching a total of 2.32 lakh households.

¹⁶⁶ State Government launched a campaign named as “Mo Jami Mo Diha” during 2007 to protect the land rights of the poor. The objectives of the campaign are (a) to protect and ensure the land rights of the poor, who were allotted lease of Government land earlier or to restore their lost land (b) to achieve convergence with the development schemes to see that the land allottees are in a better position to utilize the land and (c) to assist the poor, with emphasis on those belonging to ST and SC communities to retain their land and homestead within the existing legal framework. Till end of December 2012 around 708,316 numbers of cases received for verification out of which 618657 cases physical possession has been restored in favour of beneficiaries.

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LIST of PANEL MEMBERS

Panel	Sl No	Name and position	Position
Panel 1	1	Arvind Padhi, IAS	Secretary, Department of Culture, GOO
Panel 1	2	Biswara Nayak,	Retd Spl Secy, SC ST Development Dept and Secy, Board of Revenue (Retd)
Panel 1	3	Prof R M Mallik	Prof/Retd Prof
Panel 1	4	S B Shukla	Joint Secretary, RDM Department, GOO
Panel 1	5	Gauarang Mahapatra,	Bhudan Yangnya Samiti, GOO
Panel 1	6	Dr Premananda Panda	Retd. Director, SCST Research Institute
Panel 1	7	T S Chakravorty	Joint Secretary, RDM Dept (Retd)
Panel 2	8	Sanjoy Patnaik	State Director, RDI-Landesia
Panel 2	9	Shishir Pradhan	Independent Consultant
Panel 2	10	Dr Debabrata Swain, IFS	Special Secretary, Forest and Environment Dept, GOO
Panel 2	11	Debidutta Biswal, IFS	Addl I Secretary, Forest and Environment Dept, GOO
Panel 2	12	Siddhant Das, IFS	Addl PCCF, GOO
Panel 2	13	Nirmalendu Jyotishi	Foundation for Ecological Security
	14	Subhendra Ku. Mishra	Director, Town Planning and Chief Town Planner
Panel 3	15	Prasanta Kumar Patnaik	Retd Director, Town Planning and Chief Town Planner
Panel 3	16	Surendra Behera	Retd Director, Town Planning and Chief Town Planner
Panel 3	17	Mrs. Anjana Panda	Deputy Secretary, Housing and Urban Development Department, GOO
Panel 3	18	Mrs. Raj Kunwar Nayak	Independent Consultant
Panel 3	19	Dr. D. K. Behera	State Pollution Control Board
Panel 3	20	Umesh Patnaik	Secetray, CREDAI
Panel 3	21	Ashok Senapati	Advocate
Panel 4	22	Sanjoy Patnaik	State Director, RDI-Landesia
Panel 4	23	Achyut Das	Director, Agragamee
Panel 4	24	S B Shukla	Joint Secretary, RDM Dept
Panel 4	25	Chitta Behera,	Advocate
Panel 4	26	S S Bhuyan	Joint Secretary, RDM Dept
Panel 4	27	Golak Bihari Nath	Retd Professor, Sambalpur University
Panel 4	28	Dr P K Chaulia	Collector (Retd)
Panel 4	29	Saroj Jena	Advocate
Panel 5	30	P.K. Das	Senior Audit Officer, AG
Panel 5	31	Dr. Latha Ravindran	Prof, XIMB
Panel 5	32	S.K. Mohanty	Land Officer, IDCO
Panel 5	33	Suresh Padhy	Land Officer, Jindal Steel and Power Limited
Panel 5	34	M.S. Parija	Sahara India
Panel 5	35	Mrs. Rajashree Singh	Deputy Secretary, RDM Dept
Panel 5	36	Rabi Das	Senior Journalist

Panel 5	37	Kulamani Rout	Retd Senior Govt Officer
Panel 6 & 7	38	Sangram K Jena	DIG, Registration (Retd)
Panel 6 & 7	39	Biswara Nayak	Retd Spl Secy, SC ST Development Dept and Secy, Board of Revenue (Retd)
Panel 6 & 7	40	Subhadarshee Mishra	GIS Expert, SPARC
Panel 6 & 7	41	Mr Ambika Mishra	Advocate
Panel 6 & 7	42	Amar Patnaik	AG , Odisha
Panel 6 & 7	43	Dwijabara Kanungo	Retd Director, Land Resources
Panel 6 & 7	44	Surendra Karan	Director, CDRT
Panel 6 & 7	45	R M Mallik	Retd Prof, NCDS
Panel 6 & 7	46	Sudarsan Nayak	CEO, CESCO
Panel 8	47	Gouranga Charan Tripathy	Retd Judge
Panel 8	48	Prof Bhagaban Jaysingh	Retd Prof, SCS College, Puri
Panel 8	49	Bhuban Mohanty	Advocate
Panel 8	50	Chitta Behera	Advocate
Panel 8	52	Nageswar Patnaik	Senior Journalist
Panel 8	53	Sirish Chandra Mishra	Retd Judge
Panel 8	54	Pradeep Jena	Advocate
Panel 9	55	Pranab Ranjan Choudhury	State Coordinator
Panel 9	56	Aurobindo Behera	Expert Investigator, Panel 6 & 7
Panel 9	57	Suvendra Mohanty	Expert Investigator, Panel 8
Panel 9	58	Sumita Sindhi	Expert Investigator, Panel 5
Panel 9	59	Ajay Kumar Dutta	Expert Investigator, Panel 3
Panel 9	60	Biswa Ranjan Rath	State Nodal Officer