

# LAND USE ACT

## ..... POLICY BRIEF .....



**SAMRIDDHI**  
FOUNDATION

**Land Use Act**  
:::: Policy Brief ::::

## Introduction

Land use regulations are brought about to regulate and reduce negative externalities generated by unplanned and non-scientific use of lands. They are also used to protect and enforce constitutional rights such as Right to clean environment by disapproving of industrial establishments in a residential area, increase agricultural productivity by seeking to increase per hectare productivity by prohibiting any activity which may result in degradation of soil quality and arability. The recently enacted Land use act intends to do all this through categorization of land, registration of lands pursuant to the category in which it falls in, prohibitions on change of Land category and punishment for violating the said law.

While one cannot help but commend and applaud the intention with which the act was enacted, its future implications must also be thoroughly examined before we appraise the initiative taken by the government.

## 2. Problems requiring further review

### 2.1 Long run costs of land use restrictions

SN	Section	Subsection	Provision
1	3	1	Government of Nepal to initiate Land use programme
2	4	1	Land to be categorized

Land use programme is a designed to facilitate the optimum use of available land depending on several criteria's, which includes but is not limited to, arability of land, geography, the prevailing needs of the people residing on such land, the availability of other resources and infrastructures. A land use programme has been found to increase economic activity and act as a prerequisite for attaining sustainable development in many nations such as India, Srilanka, and various OECD nations. Given the vast number of countries that have benefited from such Land use programme, it can be said that it would be wrong to assume that the benefits of the said programme cannot be reaped in Nepal. However, when we look further into the actual workings of the programme in the said countries and the manner in which they benefit, it becomes clear that the authority to enforce the programme was delegated to the Local bodies. The reason for such delegation is fairly simply, since the local bodies have more knowledge about the geography, arability and availability of resources, a plan to carry out such a programme incorporates the said knowledge thereby making policies related with land programme more effective. In contrast the federal government can only have so much knowledge about the seven hundred and fifty three local units

that exists in Nepal; simply put the federal government is at a strategic disadvantage with regards to framing a Land use programme. Therefore, the effectiveness of the programme becomes questionable; perhaps reluctance on part of the federal government to delegate power to local bodies is to blame for or a lack of understanding of the federal structure and how some countries have benefited from devolution of power is the reason. In any instance, the program could, if not carried out with thorough research of each local unit, result in more damage than the benefit it intends to achieve.

The government of Nepal also intends to categorize land into Agricultural, Residential, Industrial, Mining area, Forest area, River/Lake/Pond area, Areas for common use, Areas of cultural and historic importance and any other category as may be specified by the Government of Nepal. The problem with such categorization is that, its effects with regards to reducing negative externalities due to improper use are only short run. What the drafters of the legislation have failed to understand is that in the long run the categorization can only lead to rising land prices and decrease in Industrial activity due to high costs related with procurement of land. If we study the implications of the provision, it becomes clear that, since the government has categorized land and the use of such land, the availability of the land for any purpose becomes limited. For instance, if someone were to open an industry, its operation can only be done in the Industrial area which means the supply of Industrial land becomes limited while the demand becomes high resulting in the only possible outcome i.e. increasing land prices in the Industrial Zones. The increase in price of land then becomes a part of cost of the products manufactured or service provided, which means prices of products and services increase. In other words goods and services become more

expensive, consequently if the per capita income cannot be increased in a subsequent manner then the demand for the products and services decrease due to low disposable income. In the end industries will be forced to cut down on production to offset the loss made due to decreasing demand which will ultimately lead to increasing unemployment rates.

An argument can be made that industrial activity will increase in the industrial area as a result of procurement of raw materials for production becoming easily accessible (due to industries being concentrated in one area rather than being dispersed). An easy availability of raw materials will in turn facilitate production thereby increasing the total output or GDP and vis-à-vis increase per capita income; the net aggregate effect of the increase in production cost as a result of land prices will be offset. However another factor we must consider here is the price of residential housing. Since the land available for residential housing becomes limited due to categorization, residential housing becomes expensive. This is not just reflected in the increase in land prices available for residential settlement but also increase in rent. Since housing is a basic necessity, a large part of the increased per capita income of the general populous then is spent on housing, resulting in lower disposable incomes to spend on goods and services. In the end the result will be lowering productions due to decreased demand and increased unemployment rates.

While one could also state that the increased residential housing prices will increase the earnings of landowners and house owners (due to increased rent) which means a part of the population has increased disposable income to spend on goods and services, we must also understand that the desire to spend on consumer goods will be lower than the desire to invest on

lands simply because the speculative demand for lands will be higher (expectations that land prices will further increase). In other words, even if a certain percentage of population has increased disposable income, spending on goods and services will not increase in a manner that result in increased demand of goods and services. In the end industries will not be better off due to the categorization, simply put, at a certain point industries will be forced to cut down productions to offset losses.

Nepal's own agenda for long has been to decrease imports by promoting domestic production and make domestic products competitive. What the drafters of the legislation have prepared in the name of sustainable and optimum land use policy is in reality, a policy that discourages domestic production by making the factors of production especially land dearer. When we are aiming to minimize our trade deficits, limiting the availability of land for establishment of industries goes entirely against the said aim. Furthermore, the policy itself will favor imports because of increased cost of production and subsequently selling prices.

Another major problem with the categorization is that it infringes upon the constitutional right to housing. Right to housing under the constitution is not just a right that restricts states from prohibiting their citizens to establish a residential settlement. It is a broader right that aims at restricting provisions that will affect affordability of housing and enjoyment of other rights. Given the limited supply of residential land, affording residential land and residential houses becomes difficult. This in itself affects the inherent and fundamental right of every being to reside and enjoy other rights. Furthermore if a large part of the income is spent on paying rents and acquiring land

for construction of house, enjoyment of other rights such as right to education becomes limited. Say for instance a middle income family has to spend a large part of their income on rents due to increased prices; the amount of income available to school their children becomes limited in that they now do not possess the luxury of choosing between educational institutions. Right to education as a fundamental right does not just mean an availability of educational institutes, it also entails the freedom of choice, specially the freedom to choose between educational institutions. This freedom of choice cannot be restricted or limited by any act of the government. When the government makes a legislation that affects this power to choose, it infringes upon the rights guaranteed and protected by the constitution. It cannot be denied that the Land use act unintentionally infringes upon the constitutional right to housing and the exercise of other rights such as the right to education. Before we move forward with the implementation of the act, its repercussions with regards to economic activity and constitutional rights must be considered.

### **2.1.1 Recommendation**

Instead of categorizing land and limiting the supply of land available for certain purposes, the government should instead take approaches that have proved to yield better outcome. The approach can either be to delegate power to state and local bodies, providing them the authority to come up with their own distinct land use policy based on the needs of their region or to use taxation as a tool to reduce negative externalities. This primarily includes reducing taxes on motor vehicles which will allow commute from sub-urban areas to urban areas thereby decreasing the concentration of population in urban areas subsequently decreasing externalities.



## 2.2 Cumbersome procedures

SN	Section	Subsection	Provision
1	8	1	Restriction on changing land use

The idea of land use in Nepal as per the prevailing act of the same nature is flawed, but what is more interesting is the bureaucratic hassle it has created. While one category of land cannot be changed to another, as per section 8, the provision in itself is not absolute. The use of land from one category to another can be changed if the owner of the land wishes to do so. Although it may sound as a relief, if we look at the procedure for changing land use, it becomes clear that such a change can take anywhere from two months to a year.

The detailed procedure as laid out states that first, an application must be submitted to Local Land use Committee, which will then be forwarded to the Provincial Land use committee. After the provincial Land use Committee receives the application, another committee is formed which will conduct a preliminary inquiry and test of the land for which a change is sought. The committee so formed will then prepare a report along with necessary recommendations, which then gets send to the Federal Land use committee which can either accept or reject the application. While on paper we have become a federal system with three tiers of government i.e. Federal, Provincial and Local, in reality we haven't moved forward from the unitary system of government. The idea of federalism and a three tier government system is to reduce time and costs associated with service delivery and make service delivery more effective, it is also to delegate and devolve power from federal to provincial and from provincial to local. But the federal government shows reluctance in doing so by time and again making laws that

have features of a unitary state by granting federal authority more power than is desired or necessary. The current Land use policy and its procedures is a glaring example of the said phenomenon, it also fails to consider the opportunity cost and the costs associated with time taken to change land use.

### **2.2.1 Recommendation**

The government should consider delegating power to local bodies in relation to either accepting or rejecting applications for change in land use.

## 2.3 Disincentivising agriculture

SN	Section	Subsection	Provision
1	11	1	Prohibition on construction of houses on agricultural land

It is quite understandable that the government in line with its initiative to increase agriculture production has sought to restrict the construction of houses in agricultural land in order to increase the availability of agricultural land. But the provision actually fails to promote agricultural production. Say for instance a person acquires land to cultivate, since he/she cannot establish a residence in the agricultural land, in order to cultivate he/she will have to travel from a residential area i.e. residential land to the agricultural land. The question then arises whether appropriate transportation facilities are available to reach the agricultural land from residential land. The time taken to reach the said land is also a factor to be taken into account. In reality costs incurred to cultivate land has increased due to the said provision.

The said provision in reality does not promote agricultural farming. The said provision would prove to be fruitful if the owners of agricultural land were themselves involved in farming, but in Nepal a significant part of agricultural land is owned by city dwellers. Although the provision intends to stop unplanned urbanisation of agricultural lands, it in reality is discouraging agriculture and moreover also going against the inherent right to private property which also includes the right to determine the use of private property within the preexisting norms. It should also be pointed out that the said provision is a restriction on Right to housing under the prevailing Constitution of Nepal.

Given the circumstances, any person intending to pursue agricultural

farming would be discouraged to do so because of the costs involved and created by section 8 of Land use act.

### **2.3.1 Recommendation**

Instead of prohibiting construction of houses in agricultural land, the approach should be to prohibit construction of houses by people not involved in agricultural farming and construction of houses that result in unplanned urbanisation.

## 2.4 The question of arability

SN	Section	Sub-section	Clause	Provision
1	24		b	Except in circumstances beyond control, non cultivation of agricultural land for more than three years will be punishable by fine of up to Rs 2 lakhs

Almost forty five percent of the land in Nepal is not irrigated, of the non irrigated lands; most do not have access to proper equipments needed for farming. In the absence of irrigation and equipments, earnings through agricultural production are significantly lower. The result is that most people tend to find new ventures of earnings rather than agriculture. In the existence of lack of irrigation facilities, cultivation in agricultural lands also becomes difficult. What the government has failed to realize when enacting the Land use act, with a provision stating non cultivation of agricultural land is an offence is that, there is a possibility of non cultivation due to the inadequacies present in the agriculture sector itself. Such inadequacies are a result of the failure on part of the central government in providing proper irrigation facilities to all agricultural lands.

When a land cannot be cultivated due to lack of basic facilities, a provision to impose fine for non cultivation of land seems a bit extreme. Another problem is the fact that people who own agricultural lands, reside in urban areas. Since the act prohibits people from constructing houses in agricultural land, cultivation of agricultural land can only come at the cost of either increased transportation cost and opportunity cost on part of the land owner residing in the urban area, or through

loss of half the agricultural land after several years owing to tenancy rights.

### **2.4.1 Recommendation**

The government should first ascertain whether basic facilities required for cultivation are available in all agricultural lands. Instead of stating all agricultural lands, the provision should be revised to be applicable to only those agricultural lands which have access to basic facilities required for agriculture and proper transportation to allow the produce to reach the market.

It would also be fruitful to incorporate policy regarding Land bank that is currently being discussed in the land use act itself. The provision of land bank will allow land owners to deposit their land in the said bank where interested parties after payment of fees to the land owner can cultivate the land.

SN	Section	Sub section	Clause	Provision	Problem	Recommendation
1	3	1		Government of Nepal to carry out land use policy.	Federal government may not have enough information to carry out a land use program all over the country	Delegation of authority to carry out land use policy to Local units.
2	4	1		Land use categorization	Such categorization can only lead to scarcity of land available for specific purposes	Following a taxation/policy approach to reducing negative externalities
3	8	1		Prohibition on changing Land use	Created bureaucratic hassle	Delegation of authority in relation to change in land use to local units
4	11	1		Prohibition on construction of houses in agricultural land	Discourages agricultural farming.	Prohibition on construction of houses by people not involved in agricultural farming in the said area

5	24		b	Non cultivation of agricultural land for more than three years to be an offence	Does not consider the availability of facilities required for agriculture	The use of the phrase “agricultural land having access to facilities required for agricultural production” instead of “agricultural land”
---	----	--	---	---	---	---





Samriddhi, The Prosperity Foundation is an independent policy institute based in Kathmandu, Nepal. It works with a vision of creating a free and prosperous Nepal.

Initiated in 2007, it formally started its operations in 2008. The specific areas on which the organization works are:

- i. Entrepreneurship development
- ii. Improving business environment
- iii. Economic policy reform
- iv. Promoting discourse on democratic values

Centered on these four core areas, Samriddhi works with a three- pronged approach—Research and Publication, Educational and Training, Advocacy and Public Outreach.

Samriddhi conducts several educational programs on public policy and entrepreneurship. It is dedicated to researching Nepal's economic realities and publishing alternative ideas to resolve Nepal's economic problems. Samriddhi is also known for creating a discourse on contemporary political economic issues through discussions, interaction programs, and several advocacy and outreach activities. With successful programs like “Last Thursdays with an entrepreneur” and “Policy Talkies”, it also holds regular interaction programs bringing together entrepreneurs, politicians, business people, bureaucrats, experts, journalists, and other groups and individuals making an impact in the policy discourse. It also hosts the secretariat of the ‘Campaign for a Livable Nepal’, popularly known as Gari Khana Deu.  
*(more information at [www.samriddhi.org](http://www.samriddhi.org))*