

“Landless families will be endowed with land through implementation of land ceiling and land redistribution legislation. No reversal of ceiling legislation will be permitted”

*- Common Minimum Programme of the United Progressive Alliance
declared on 27th May, 2004*

New Vision for Land Reform

1. There are compelling reasons why land reform is an urgent priority today. Land reform that was carried out in the earlier Five Year plans might not be able to address comprehensively the current challenges in the changed economic and global scenario. Therefore it is necessary to revisit the land reform agenda with a new vision for the country.
2. The base of this new vision for land reform emanates from people's struggle to maintain their basic dignity and means of survival, which has been guaranteed by the Constitution, but to date many people, have not been ensured access to the existing mainstream development policies and programs.
3. Although there has been land reform laws adopted by all States in the country and there has been some partial success, the overall performance has been inadequate (i.e. land ceiling, tenancy, right to the tiller, land consolidation, etc.), and increasingly these land reform laws are self-defeating leading to disempowerment of a large number of small and marginal farmers especially women. It has not been sufficient in providing land to landless. In addition, in states where they have had some initial success, they are being “rolled back” and repealed.
4. This regression of land reform laws implies that the seminal issues of social equity and empowerment and poverty reduction have not been comprehensively addressed and therefore side-lined, which has resulted in increasing social violence and organized violent activities that are posing a real threat to democratic functioning. This has been coupled with rural distress due to high levels of land alienation/eviction, indebtedness and general insecurity with consequent migration and the breakdown of urban infrastructure.
5. Recognizing that land is a state subject and yet there is a multiplicity of laws at the state and central level, which results in a variety of inconsistencies such as

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jurisdiction conflict. Moreover, the land laws need to pay more heed to social equity and this is in the ambit of the central government.

6. The key components of this New Vision for Land Reform are:
 - ❖ Reduce the number of landless poor through immediate land regularization, and distribution including identification of surplus and ceiling land to ensure livelihood security.
 - ❖ Guarantee the land rights to the marginalized poor i.e. scheduled caste and tribes, women and minorities respecting the principles of social equity, empowerment and inclusion.
 - ❖ Reformulate development policies and programs in a manner wherein access, use and ownership of land is the central axis for poverty reduction and sustainable development.

Key Issues

- ❖ Land distribution to the landless
- ❖ Preventing loss of farmland particularly by small and marginal farmers
- ❖ Regularization of Tribal Land
- ❖ Reducing jurisdiction/juridical conflict over land
- ❖ Joint title
- ❖ Implementing inheritance rights for women
- ❖ Rehabilitation and resettlement to those displaced from protected areas, by industries or public sponsored infrastructural development.
- ❖ Check the unjust and arbitrary transfer of agricultural land for non-agricultural purposes
- ❖ Regularization of housing land
- ❖ Updating land records

Policy Implications

1. Land Identification, Regularization and Distribution of Land to the Landless Poor

This entails identification and allotment (viz physical possession) of surplus land, available ceiling land and other revenue land and ensuring the proper distribution (and regularization) to the needy communities taking into account tenancy rights. Homestead land as well as joint title is significant in this process. Individual and collective ownership (i.e. self-

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help women's groups) for landless poor are means to enable families to hold onto land resources.

The surplus land may include:

- Bhudan land
- Religious Trust land
- Benami transactions
- Unused land for factories and companies
- Unused land of Indian railways
- Disputed land between revenue and forests
- Common property
- Newly irrigated land

The issue of land under absentee landlords requires special attention particularly, non-resident Indians who are non-resident farmers.

2. Regularization of Tribal Land

Regularization includes survey, allotment, physical possession and safeguarding lands of scheduled tribes. Preventing land alienation (because of protected areas, industrialization and infrastructural projects) ought to be the norm. Wherever displacement becomes inevitable, the scheduled tribal family should remain the owner of the land benefiting from a lease agreement. Where there is no benefit the scheduled tribe should be guaranteed rehabilitation and resettlement.

Regularization needs to look at the following:

- ❖ boundary areas
- ❖ orange area,
- ❖ un-surveyed land,
- ❖ double entry land,
- ❖ land under Adivasi Agricultural cooperative Society,
- ❖ forest villages

The tribal welfare policies work to enable communities to live in a co-existent and symbiotic relationship with nature, and recognize and respect their autonomous communitarian domain and lifestyle including ancestral rights.

3. Preventing loss of farmland particularly that owned by small and marginal farmers

Loss of farmland is due to land consolidation and contract farming; withdrawal of rural institutional credit; and adverse agricultural pricing and

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this has led to a high degree of distress sale and suicides. Those that become landless are forced to struggle for a limited number of employment opportunities and livelihood options. To mitigate this situation various urgent measures must be brought to the fore including:

- ❖ Under the Right to Property Act, all allotted land must be updated as Joint Entitlement
- ❖ Women should be able to hold property in her own and marital home.
- ❖ Widening Irrigation access in potential areas must be given priority
- ❖ Fixing of equal wages for agricultural laborers
- ❖ Greater access to rural credit
- ❖ Reduce incentives that lead to adverse pricing to small/medium farmers

4. Land and Women

Women need to be provided with land allotment that gives them independent and joint title and greater decision-making power over the land plot. Special attention needs to be given to widows and single women. In addition women who are managing small farms should be given incentives for remaining on the farm. Collective farming should be encouraged through self-help groups particularly among women who have no land resources. Women as farmers should be given that status in any subsidy, credit scheme, and agricultural extension program. Mainstreaming gender in agricultural and veterinary operations of the government is still lacking. At the policy level some of the following changes are sought:

- ❖ Greater legal access to property rights
- ❖ Amending land and tenancy laws to ensure greater gender equality
- ❖ Implementation of the amended Hindu Succession Act
- ❖ Press for changes in Personal Law, ISA and customary laws for land ownership and gender equality

Institutional Mechanism

National Land Authority

A National Land Authority is given statutory power to direct state governments and other agencies to carry out a comprehensive land reform agenda. It should be accorded the power to coordinate with other Ministries and Department.

Suggested Functions

- ❖ **Providing a clear picture of land utilization in India and update State Land Records**
- ❖ **Identify available land for redistribution with the help of State government and its concerned departments**
- ❖ **Strengthen various pro-poor laws related to land and livelihood resources like the Land Ceiling Act, Panchyat Extension in Scheduled Area, Tenancy Act etc.**

Fast Track Court on Land Disputes

Fast Track Courts need to be constituted in order to deal with the long delays in acquiring land title, adjudicating land disputes, and in minimizing harassment and expense. Adjudication of rights to the tiller or land under absentee landlords should also be addressed. Also cases against scheduled tribes should be given special cognizance.

Suggested Functions

- ❖ **The National Land Authority should be authorised to put Fast Track Courts in place across the country to settle this dispute in time bound manner.**
- ❖ **Its first basic task should be to clear the backlog of cases related to land disputes from lower to higher courts. The services of retired judges and social activists could be used over a period of years.**
- ❖ **There are thousands of dispute among the farmers and in many cases between the farmers and from labour in land issue.**

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- ❖ Reduce the time, energy and cost that people have to expend in litigations.

Single Window System on Land Disputes

Suggested Functions

- ❖ The National Land Authority should be able to get Single Window System established through the State Land Authority and necessary should make available to run this system.
- ❖ Once the backlog is cleared it is important to create Single Window System at the Tehsil level to deal with all problems related to land.
- ❖ Farmers and labourers can access this system and freed from harassment by pushing them through unnecessary red tape.
- ❖ Sensitive and efficient officer need to be appointed and provided with advisory board of social activists.

A Call for Action

The UPA has put into force a number of legislations that forward an agenda of distributive justice to the people of India. But to advance an ongoing sustainable growth and inclusive national development, a new vision of land reform has to be inculcated into development policies and programs. This can be done by building partnership with people and people's organizations across the country with trust and in a spirit of non-violence. Through the new vision on land reform, there is a possible process for continued dialogue and partnership.

This is a historical call for the Government along with the people of India to take the lead globally in the fight against poverty and embark on a new vision for land reform.

analysis & recommendations

LAND CEILING

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- ❖ In view of increased land productivity under the impact of new technology and improved agronomic practices, the ceiling limits should be re-fixed and implemented with retrospective effect. The new limit should be 5 to 10 acres in the case of irrigated land and 10 to 15 acres in the case of non-irrigated land, to be decided by the concerned state governments.
- ❖ Reclassification of newly irrigated areas should be undertaken with joint effort for bringing these lands within the ambit of ceiling laws. Besides, land covered under private irrigation and supply of water from a perennial source should be included in ceiling laws.
- ❖ The Benami Transactions (Prohibition of the Right to Recover Property) Act, 1989 should be suitably amended so that evasion of provisions of the ceiling law through benami land transactions can be detected, checked and nullified.
- ❖ Introduce Card Indexing System for prohibiting fictitious transfers in benami names. Recent developments in IT should be properly used to have accurate Card Indices in a speedy manner.
- ❖ Set up a special squad of revenue functionaries and gram sabha members for identification of benami and fictitious transaction in a time bound manner.
- ❖ Remove exemption granted to religious, educational, charitable and industrial units under ceiling laws of various states. Each entity should have the same ceiling as a family, even though state may exempt any particular category on valid grounds.
- ❖ Impose criminal sanction on the failure to furnish declaration of ceiling surplus land by land holders
- ❖ Insert a penal clause in the existing Land Ceiling Laws, making the officers responsible for intentional lapses if any.
- ❖ Set up Land Tribunals or Fast Track Courts under Article 323-B of the constitution for expeditious disposal of appeal cases.
- ❖ States to empower the concerned authorities to expedite allotment of ceiling surplus land. Bar the jurisdiction of civil court in respect of ceiling on agricultural land.
- ❖ Investigate all cases of illegal or improper allotments of ceiling surplus land and cancel such allotments. All such transactions after commencement of ceiling law should be declared null and void.
- ❖ Absentee landlords or non-resident land owners should have lower level of ceiling.
- ❖ For addressing problems relating to land single windows approach to be provided by the administration.

TENANCY

- ❖ While discouraging the pernicious system of rent seeking sub-infeudation, leasing in and leasing out of agricultural land particularly for the purpose of tilling should be permitted within ceiling limits. The state laws should recognize systems of

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- share cropping and protect the share croppers by giving security of tenure and fixation of equitable share of the crop without conferring the title to land.
- ❖ Gram panchayats/gram sabha should be empowered to update land records and enter the name of share croppers and other similar categories of tenants as tillers of land in the record of right after due enquiry.
 - ❖ Leased out benami land should be acquired and distributed to the landless poor for cultivation.
 - ❖ The marginal and small land owners should be assisted with adequate institutional support and rural development schemes so that they are not compelled to lease out land to big farmers or corporate houses, thereby creating conditions for reverse tenancy.
 - ❖ Under-raiyats/sharecroppers should be recognized by law with sufficiently overriding evidentiary value as under section 57 of the Indian Evidence Act.
 - ❖ There is a need for streamlining the tenancy laws in various states, so that the small landowners who have to migrate temporarily for higher wages do not lose their right. Interest of temporary migrant workers has to be protected.
 - ❖ Fair share of the crop on agricultural land should be fixed in all the states. In case of crop land, the landowner's share should not exceed one fourth of the principal crop, if the costs are borne by the tenant and half if the costs are borne by the landowner.
 - ❖ Personal cultivation should be strictly defined for the purpose of resumption of land tilled by the tiller. It should be done through due process of law.

TRIBAL LAND ALIENATION

- ❖ At present PESA is applicable only to the scheduled areas but a large part of the tribal population lives outside scheduled areas. Therefore, the provisions of PESA should be applicable *mutatis mutandis* to villages/areas where there is a

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sizable tribal population/where majority of the population consists of scheduled tribes.

- ❖ It is necessary that, whenever land is acquired for industrial or mining projects, the exact extent of land required for the projects assessed by the concerned project authorities should be reassessed by a neutral agency/expert body consisting of experts, with the representatives of tribal community.
- ❖ The Central Land Acquisition Act of 1894 and the Central Coal Bearing Areas (Acquisition & Development) Act 1957 should be amended in the line of the provisions of PESA.
- ❖ The Land Acquisition Act should be amended to incorporate R&R policy for all projects. Rehabilitation should be undertaken in such a manner that the displaced tribals have a clearly improved standard of living after resettlement. Their ecology, culture and ethos will have to be given due consideration in the Resettlement Plan.
- ❖ The tribals who are displaced, should preferably be resettled in a zone adjacent to the affected area in consonance with their social, ecological, linguistic and economic affinity.
- ❖ Resettlement and rehabilitation should be completed prior to the commencement of the project. The package should be approved by Gram Sabha in the PESA Area and by such other representative institutions in non-PESA tribal areas.
- ❖ Unmarried daughters/sisters, physically challenged persons, orphans, widows and women divorcees should be treated as separate families in the R&R policy.
- ❖ All tribal communities must be rehabilitated strictly in compliance with ILO convention No. 107.
- ❖ Efforts should be made to ensure that all tribal families are resettled together to the extent possible. The minimum unit for relocation must be a hamlet or clan.
- ❖ Compensation should be calculated and given on the basis of calculation of a 20 year prospective income stream to the tribal families for loss of customary rights over forests.
- ❖ Shifting the cut off date beyond 1980 with regard to regularization of tribal settlements in forests and extending R&R benefits to tribal families in the event of their relocation/eviction must be undertaken.
- ❖ The Mines and Minerals (Development & Regulation) Act 1957 should be suitably modified to reflect the provisions of PESA. In the PESA Act, the consent of the Gram Sabha should be made mandatory not only for minor minerals but also for major minerals. In Orissa and Rajasthan, mining concession rules should be modified to reflect the provision requiring consent of the Gram Sabha/Palli Sabha.
- ❖ Pending amendments to the Central Act on land acquisition and incorporating the provisions of PESA, the State Governments with scheduled areas should utilize the flexibility provided for in the Vth Schedule of the Constitution and modify the Land Acquisition Act to provide for consent of the Gram Sabha prior to the acquisition of land.
- ❖ Survey and settlement operations should be taken up in those areas where it has not been done so far to remove any confusion or uncertainty. Following the recommendation made by the Expert Group on Tribal Land Alienation, survey of the hill slopes up to 30 degrees should be mandatorily done in the States with Schedule areas and such lands should be settled in favour of tribals doing shifting cultivation and subsistence agriculture. This will not only confer land rights on the tribals occupying such lands, but also help improve the forest

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- cover. The areas under shifting cultivation should be brought under tribal community management.
- ❖ All tribal states should provide a share of the royalty to the Gram Sabha, as in case of Chhattisgarh.
 - ❖ While it cannot be argued that the 'eminent domain' of the state should be done away with, a clearer definition and guidelines for 'public purpose' would help remove some of the arbitrariness present in the existing system of land acquisition. The lack of transparency in the process of land acquisition needs to be addressed.
 - ❖ The sale of tribal land could be permitted by a competent authority senior enough to be able to exercise judgement in order to protect the interest of tribals. The State should promote the concept of a Land Bank wherein tribal land is purchased by the State and allotted to other deserving tribal families in the same area. Lease of Govt. land in the tribal areas by tribals for agriculture and homestead purposes should be more than proportionate to the percentage share of tribals in the population of the village.
 - ❖ The Government land encroached by poor tribal families should be settled in their favour.
 - ❖ The Common Property Resources (CPRs) including grazing land, village forest and water resources should not be acquired without providing alternative sources of equal or higher value.
 - ❖ The role of Tribal Advisory Council should be strengthening. Under article-238/2, the Governor can make regulations for the Scheduled Areas for prohibiting and restricting transfer of land by or among the members of Scheduled Tribes and regulate money lending. There is provision for TAC in Schedule -5th area and the Governor is bound to consult them.

LAND ACQUISITION

- ❖ Abolish land acquisition act under the preview of article 14, 15/4 and 19, where State may legislate restricting the acquisition by landed property in the tribal areas.

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- ❖ The displaced tribal communities from about 250 National Parks & Wildlife Sanctuaries and Biosphere Reserve etc. must be rehabilitated before any further Protected Areas.
- ❖ The tribal communities who have been displaced due to development projects, mining projects or industrial projects etc. must be rehabilitated before any further land acquisition.
- ❖ In case the company is unable to use all the land it has acquired, the unutilized part should be returned to the government for distribution to the landless.
- ❖ Government land acquisition in the name of “public purpose” should be properly defined to include mainly the public utilities.
- ❖ As far as possible, fertile agricultural land should not be acquired for or by any company. The industrial units should be located in areas where wasteland is available.
- ❖ The Land Acquisition Act should be amended to incorporate compensation not only for the landed individuals but also for those who are landless and dependent on the land for livelihoods, for homes and items obtained from local common property resources. In other words, landless labourers, artisans, tenants, etc. should also be compensated with housing and livelihood security.
- ❖ All compensation should follow the principle of gender equity.
- ❖ Where possible resettlement should be such that an entire community or family network is not split up but settled in the same site so that support networks continue to exist.
- ❖ While determining compensation, the basic principle must be replacement value at market rates of the land cost. This must be at the market rates that actually operate at the time of purchase and not those that are officially recorded. A suitable and credible mechanism must be evolved to arrive at operative market rates.
- ❖ A detailed rehabilitation/resettlement plan must be formulated with sufficient financial earmarking.
- ❖ In medium and major irrigation projects the farmers gaining from the project could be taxed and the proceeds transferred to those displaced so that the gains of the project can also be shared with the losers.
- ❖ The displaced must be guaranteed a minimum living standard (above poverty line) after rehabilitation. Rehabilitation should include access to adequate infrastructure in terms of health, education, water and sanitation provision and community interaction.
- ❖ Where possible resettlement should be such that an entire community or family network is not split up but settled in the same site so that support networks continue to exist.
- ❖ While determining compensation, the basic principle must be replacement value at market rates of the land lost. This must be at the market rates that actually operate at the time of purchase and not those that are officially recorded. A suitable and credible mechanism must be evolved to arrive at operative market rates.
- ❖ All assets or cash compensation provided in the rehabilitation/resettlement package should follow the principle of full gender equity. All adult women and men should be equally compensated.
- ❖ In land reform and tenancy laws, the definition of “a family” varies across states. Most states include only the husband, wife and minor children.

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Some add an adult son who gets additional land in land distribution and resettlement programmes. Few states recognize an adult daughter as part of the family unit. This creates an anomaly. The definitions of a family should be made uniform across states and all resettlement packages made gender equal in the recognition of sons and daughters.

LAND-AGRICULTURE SUPPORT

- ❖ In order to enable the small and marginal farmers to participate and benefit from the land market, there should be a group approach to farm investment and cultivation wherever possible. Groups of poor farmers, especially women and dalits, who are willing to work in groups, should be provided liberal assistance for acquiring land for joint activities, in terms of collectively leasing in land.

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- ❖ Institutional credit should also be made available by way of medium or long-term loans for group investment and farming activities. Poor dalit women should be especially assisted to purchase or lease in land in groups through targeted schemes.
- ❖ The group approach need not be limited only to raising crops, but could also be extended to other activities such as fish production. There are success stories where NGOs have helped tribal women lease in land from the government on 10-year leases for fish ponds.
- ❖ In farmer's cooperatives and other related institutions, there should be special provisions and rates for poor farmers, and especially for poor women farmers, who purchase production inputs and undertake marketing as a group rather than as individuals. There is need to encourage them to reorganize investment in lumpy inputs such as irrigation on a group basis, by providing special credit incentives for joint purchases.
- ❖ Restrictions on land leasing within ceiling limits should be removed to help improving poor people's access to land through lease market and also for improved utilization of available land, labour and capital. However, there should be legal safeguards in the lease contracts that would protect the small and marginal farmers, and a clear recording of all leases, including share cropping.
- ❖ Indiscriminate, large-scale, ecologically damaging, socially harmful transfers of agricultural land to non-agricultural use should be checked.
- ❖ Speculative land markets in the immediate periphery of urban areas should be checked.
- ❖ The new areas which come under the urban development plans should be notified.
- ❖ To prevent long term speculative transactions on agricultural land the government should enact suitable laws.
- ❖ Farmers should be entitled to their share in rising land prices in the wake of urbanization and any form of major investment.
- ❖ All medium to large-scale transfer of land from agricultural to non-agricultural use should be subject to an environmental protection clause, and its strict implementation.

HOMESTEAD RIGHTS

- ❖ All landless families with no homestead land as well as those without regularized homestead should be ensured 10-15 cents of land each. This can be done through either allotment of government land, ceiling surplus land etc. or purchase of land from the market and their allocation to the homeless poor. Some of the required sum could be arranged through reallocation of resources from existing

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schemes, such as the Indira Awas Yojana, SGSY, NREG etc. The Kerala model could be useful in this regard.

- ❖ When regularizing the homesteads of families occupying irregular and insecure homesteads, the homesteads so regularized should be in the names of both spouses.
- ❖ All new homestead land distributed to landless families should be only in women's name. Where more than one adult woman (say widows, elderly women etc) is a part of the household, the names of all female adults should be registered.
- ❖ As far as possible, the beneficiaries should be given homestead land in a contiguous block, within 1 km or less of their existing village habitation, with proper road and infrastructural connectivity. In such a consolidated block, essential facilities should also be provided such as primary school, primary health centre, drinking water, and a women's resource center.
- ❖ The beneficiaries of homestead-cum-garden plot should be assisted by panchayats and line departments of government to develop plans and receive financial assistance for undertaking suitable economic activities such as livestock rearing, fodder development, planting of high value trees, and if water is available also flowers, fruits, vegetables, etc. HUDCO/Housing Development Corporation may open special windows to help homeless families to secure dwellings on the plots to be allotted to them.

FOREST LAND

- ❖ Framing Land Use Policy for the tribal/ dalits other landless.
- ❖ There are well documented examples of innumerable instances of Forest Offences filed against forest dwelling communities. These are violations of their traditional recorded and non-recorded rights. Thus it is imperative that these

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Forest Offences be taken back by the government/ concerned department. This important aspect has been ignored by the proposed Act. We may bring to your notice that the Government of Madhya Pradesh and Chhattisgarh have withdraw about 6 lks such cases.

- ❖ A comprehensive set of measures should be undertaken involving legislative, administrative and public education measures to ensure the rights of the tribals over land, forest, water and minor mineral resources.
 1. wall mapping of land possession in village
 2. legal aid cell to provide consultative guidance
 3. legal literacy programmes under framework of customary laws

Thus it is imperative that the statuses of these rights are recognized under the proposed Scheduled Tribe and other Forest Dwellers (Recognition of Rights) Act, 2006.

- ❖ A comprehensive Survey & Settlement of the tribal sub-plan areas in a time bound manner. The pre-settlement leases should be regularized by authorizing the Tehsildar to make corrections in the record of rights as per the Orissa Mutation Manual.
 1. re-alignment of Forest & Revenue land records especially under common property land & resources
 2. recognition of “Record of Rights”/ “Adhikar Abhilekh”/ “Nistar Patrak”/ “Vazibul Arz”/ “Dafayati Rights” ; that was established after abolition of malgujari-jamindari (1952) for securing & institutionalizing their due traditional recorded & non-recorded rights on common property resources.
- ❖ A framework guiding the survey should be based upon the specific forms of property rights operative in the tribal areas namely, customary rights over forest and land resources belonging to local community as well as individual.
- ❖ The cut-off period (December 31st 2005) for recognition of rights of Primitive Tribe Groups (PTGs) on occupied land is not justified. It may be recalled that the Task Force set up by Government of Madhya Pradesh in 2003 had decided to give exemptions to PTGs in the State.
- ❖ The government of India had declared “Van Gram” unconstitutional in 1974. However even today, about 4000 such “Van Gram” (Forest Villages) are still to be converted into Revenue Villages. The current Act does not touch on this aspect as well.

LAND RECORDS

- ❖ Updating land records with active participation of tribal community through trained tribal youth on customary laws of various communities and statutory measures for their protection, on private & community land.

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- ❖ Establishment of Land Bank, which facilitate lease from tribal to non-tribal and will settle the same with the tribal or will meet the requirements of land for public purpose at prevalent market prices.

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