



Final Draft National Land Policy of the Kingdom of Bhutan, 2010

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Royal Government of Bhutan
Thimphu, Bhutan

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GLOSSARY

- Alienable land** : Land under State forest delineated and demarcated as disposal area for development purposes
- land Acquisition** : Taking over of a registered land by the Government for public purposes after providing compensation in accordance with this Act.
- Chhazhag Sathram* : The sole authoritative document that shall record and establish the legitimacy of title to land of a juristic person in the country maintained under the custody of National Land Commission.
- Chhuzhing* : Irrigated and/or bench terraced agricultural land for paddy based cropping systems.
- Commercial agriculture** : Crop and livestock production for sale by employing modern production management and techniques established by an entrepreneur under the terms and conditions certified by the Ministry of Agriculture.
- Eminent domain** : Power of the State to extinguish or acquire any title or other interest in land for a public purpose subject to payment of compensation
- FDI** : Foreign Development Investment
- Freehold land** : A state of tenure that confers full right of use, management, transaction and control over the land.
- Green belt** : An area of greenery for environment
- Highlanders** : High altitude herders whose livelihoods are directly and traditionally dependent on *Tsamdro*
- Juristic Person** : Persons above the age of 18 years; family; the Institution of Monarchy; Government institutions; Gerab Dratshang; and civil society organizations, corporations and religious institutions of Bhutan.
- Kasho* : An edict from His Majesty the King granting *Kidu* or rehabilitation land
- Khimsa* : Land for dwelling house
- Kidu Land** : Land granted by His Majesty the King through the *Kasho*
- Land tenure** : Defined relationship among people as individuals or groups and with

Government on land ownership and use.

- Leasehold Land : State of tenure that confers only a right of use of land for defined period of time and purpose. It does not imply the ownership of land.
- Nye* : Sacred site of cultural, traditional or religious significance
- Sokshing* : A plot of the State land alienable for leaf litter production and collection
- State forests : Any land and water body outside a *Thromde*, the ownership of which is not vested in any person and is under the custody of the State.
- State land : Any land and water body that comprises of State forest or any land and water body within the territory of a *Thromde*, the ownership of which is not vested in any person and is under the custody of the Municipal Authority.
- Tsamdro* : State land alienable for grazing and improved pasture management
- Vulnerable groups : Community groups that unable to provide an adequate livelihood for the household for reasons of disability, illness, age or some other characteristic and groups whose resource endowment is inadequate to provide sufficient income
- Zoning of land : Process of planning for land use by allocating land for different appropriate uses. It includes restrictions that enable appropriate use of the land for the defined purpose.

THE NATIONAL LAND POLICY OF THE KINGDOM OF BHUTAN, 2010

1 PREAMBLE

The Royal Government and the People of Bhutan;

Cognizant of the fact that land is critical for supporting wholesome development including economic growth, poverty eradication, social integration, national identity and environmental sustainability and that it is an inter-generational asset or *Phazhing*

Acknowledging that the rapid economic growth, increasing population, high rural urban migration, transition from subsistence agriculture to a modern economy, changing lifestyle and consumption patterns and institutionalization of the democratic form of government are significant changes the country has seen recently. As a result, the demand for scarce land resources including prime agriculture land in particular, has become more competitive for different form of uses and users.

Realizing that fragmented sector approaches to land and land use management by different ministries, agencies and other entities are no longer capable of fulfilling the demand for land and that fragmentation of agricultural land will undermine sustainable agriculture production.

Appreciating that appropriate governance, management and development of land are imperative for national food security, good ecosystem services, hydropower generation, human settlements, *Nye* and religious monuments, forest management, mines and minerals management, infrastructure, tourism, industries and supply of raw materials for all economic sectors. It eventually influences and defines the general quality of life and achievement of Gross National Happiness.

Therefore, recognizing the need for an integrated, coherent and comprehensive framework for governance, management and development of limited land under the stewardship of the National Land Commission.

Hereby adopt the National Land Policy of the Kingdom of Bhutan, 2010, for sound governance, administration, sustainable use and development of land to guide all relevant sector policies, programmes and planning processes affecting the land resources in the country.

2 POLICY AND LEGAL CONTEXT

Economic Development Policy of the Kingdom of Bhutan, 2010, calls for a comprehensive land use policy with clear zoning for industrial, tourism, environment conservation, prime agriculture land for agricultural and horticultural use shall be developed by 2011. It identifies agro and forest based production, natural resources, as a priority area of growth. It facilitates availability of land for large scale commercial farming where sustainable and provides for long term land lease to businesses based on the type of activity as a general incentive. It allows businesses to register land in the name of the company and enables local investors/promoters to put land as equity component in case of FDI. The policy permits mineral based industries that bring about value addition, availability of raw materials, participation from broader sections of the society and equitable distribution of income from mineral resource exploitation.

Water Policy, 2002, requires the maintenance of surface water sources to prevent water pollution, to reduce the risks of flood and landslide damage and that water resources development shall include programs and activities on source protection, groundwater abstraction, rainwater harvesting. It recognizes land-use planning at the natural river basin level to be crucial for water resources management to resolve water use interest conflicts.

National Forest Policy, 2010, calls for integrated landscape level approach to sustainable forest management and requires all Government Reserved Forest to be brought under management schemes focused on the sustainable supply of forest products or ecosystem services. While enabling conservation of a significant representation of the country's biodiversity, it emphasizes poverty reduction and promotion of forest-based industries through sound resource assessment, environment friendly value addition and waste minimization. The policy recognizes both science-based and cultural values for forest governance and management including integration of climate change, disaster management and payment of environment services.

The Constitution of the Kingdom of Bhutan calls for sustainable use and management of land and efficient land administration services in the context of the following provisions:

- The right of a Bhutanese citizen to own property but not the right to sell or transfer land or any immovable property to a person who is not a citizen of Bhutan.
- The right and ownership over mineral resources, rivers, lakes and forests belong to the State.
- Requirement to maintain a minimum of 60 percent of country's land area under forest cover for all times.
- Protecting the ownership of property except for public purpose by acquisition or requisition on payment of fair compensation in accordance with the provisions of the law.
- Requiring the Parliament to declare any part of the country to be a National Park, Wildlife Reserve, Nature Reserve, Protected Forest, Biosphere Reserve, Critical Watershed and such other categories meriting protection.

The Land Act of Bhutan, 2007, places various responsibilities relating to land administration on the National Land Commission. Although the Land Act provides for a central coordinating

agency, the problem of lack of overall policy framework on coordinated use and management of land prevails. It also protects *Chhuzhing* for sustained production of food with the allowance of 50-decimal *Chhuzhing* as *Khimsa* if the landowner has no other land category. In view of the need to identify and protect *Chhuzhing*, the Land Act provides for zoning of land for different purposes. However, in absence of national land policy, fragmented and sectoral approach to use land continues and is likely to continue in future. It maintains the provision on upper limit on land holding of 25 acres.

The Forest and Nature Conservation Act of Bhutan, 1995, recognizes the traditional and cultural rights of local people to access and use forest resources and provides for private forestry to be practiced in privately registered lands and for community forests to be established on government forest lands including the protected areas.

Environment Assessment Act, 2000 and *National Environment Protection Act, 2007*, requires environmental clearance as a prerequisite for issuance of development consent and calls for conservation and protection of wetlands, alpine regions, watersheds, and other vulnerable ecosystems in addition to the existing protected areas.

Mines and Minerals Management Act, 1995, stipulates that all rights of ownership of minerals found in private or government land are vested exclusively in the Government and provides a legal framework for regulating the mining industry. Mines shall be leased out to individuals or organizations based on Final Mine Feasibility Study that includes Mine Plan, an Environment Management Plan and a Mine Restoration Plan with due respect to efficient use of resources, protection of environment, worker and public health and safety.

The Electricity Act of Bhutan, 2007, accords authority to the Minister responsible for electricity to acquire land for the purpose of providing or maintaining electricity supply services to the public without causing jeopardy to public property and life. In exercising the right of way for work related to electricity projects, the licensee of the operation shall observe the environmental guideline or regulation in force and must do as little damage as possible and make full compensation to the owner of the land for any loss of income derived from such land or damage caused to the land in consequence of the exercise of the rights.

3 STRATEGIC DEVELOPMENT CONTEXT

There are already various development visions and strategies expressing an urgent need for a national policy framework to guide the country in coordinated and sustainable use of its land and land-based resources. The most important of these visions and strategies are highlighted below.

Firstly, **Bhutan 2020: A Vision for Peace, Prosperity and Happiness** adopts Gross National Happiness (GNH) as the central development concept based on its four pillars of Equitable and Sustainable Socio-Economic Development, Environmental Conservation, Preservation and Promotion of Culture and Good Governance and their linkages. The Vision provides strategic direction to development policy making, particularly in the areas of use and management of land and land-based resources.

Secondly, **Strategy for Gross National Happiness and Economic Development Policy** of the Kingdom of Bhutan, 2010, emphasize on the management of Bhutan's land resources as the most important precondition for sustainable economic development and poverty alleviation. Both call for a national spatial policy which will use zoning as the overall approach to land and space use in Bhutan on the premise that majority of the country's population live in rural areas and secured and increased access to land and natural resources for them is a key means of achieving food security and broadening their economic opportunities.

Thirdly, **Economic Development Policy of the Kingdom of Bhutan, 2010**, further expresses the need to allow leasing of land for large scale commercial farming and businesses. Leasing of land will require the use of land from government forest which is critical to maintain the fragile natural ecosystem and other services in the country. More importantly, at any cost leasing of land under government forest should not undermine 60% forest cover as required by the Constitution.

Fourthly, **Bhutan National Urbanization Strategy, 2008**, envisages urban development through regional growth centers and towns. The Strategy calls for a balanced approach to urban development in view of the demand for land also for other national priorities. Such balanced approach can materialize only from zoning of land into different use categories based on physical land limitations and land capability.

Finally, as **member of international community**, Bhutan has a role in global environmental affairs and other related issues. Bhutan's international land related commitments already include membership, among others, to Convention on Biological Diversity, the United Nations Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, UNESCO World Heritage Convention, the Millennium Development Goals and the SAARC Development Goals.

4 THE NATIONAL LAND POLICY OF THE KINGOM OF BHUTAN, 2010

4.1 VISION

The National Land Policy of the Kingdom of Bhutan, 2010, will provide an overall and consistent guiding policy framework for sustainable use of limited land and land-based resources for fulfilling the long-term aspirations and needs of all Bhutanese people while conserving the natural environment.

4.2 SCOPE

The National Land Policy of the Kingdom of Bhutan, 2010, shall be the country's umbrella policy on land and land-based resources and will apply to all land categories.

4.3 GUIDING PRINCIPLES

The National Land Policy of the Kingdom of Bhutan, 2010, has been developed based on the following principles.

- ▶ Right of access to land enabling the citizens to secure an adequate livelihood.

- ▶ Right to secured land tenure to all citizens regardless of gender, religion, ethnicity or way of life and without being deprived of best practices of customary rights and by acquisition except for public purposes for which prompt and fair cash compensation and/or land substitution should be provided.
- ▶ Governance, management and sustainable use of land in harmony with overall national goals, development priorities and strategies considering the need to maintain a minimum of 60 percent of land area under forest cover at all times.
- ▶ Zoning of land for different uses considering physical land limitations and capabilities.
- ▶ Application of good science and indigenous knowledge for efficient and optimum use of limited land resources
- ▶ People centered and people-friendly land management practices, decision making and information dissemination.

4.4 GOAL

The goal of the National Land Policy of the Kingdom of Bhutan, 2010, is to strive for sustainable use of land through efficient and effective land management and prudent land administration for socio-economic development and conservation of the natural environment in the country.

4.5 POLICY OBJECTIVES AND INSTRUMENTS

The objectives of the National Land Policy of the Kingdom of Bhutan, 2010, and policy instruments to achieve them are promulgated below.

Objective 1: To coordinate and harmonize the use of land by different users.

- 1: The National Land Policy of the Kingdom of Bhutan, 2010, shall be the apex policy framework for all matters related to land in the country and it shall require alignment of all existing land related policies and management under various user groups along the policy directives contained in it. The Government may alter any part or review the National Land Policy of the Kingdom of Bhutan, 2010, as a consequence of changing environmental and development needs of the country.
- 2: The National Land Commission shall be the apex body to coordinate the implementation of the National Land Policy of the Kingdom of Bhutan, 2010, with concerned stakeholders and its branches carrying out delegated functions in all local governments.
- 3: The National Land Commission shall be the central depository for *Chhazhag Sathram* wherein ownership and mortgages of freehold land shall be registered and for maintenance of record of State alienable land on lease.
- 4: The National Land Commission shall be the apex body to administer and approve all land transactions and issuance of land title certificate.

- 5: The National Land Commission shall be the national agency responsible for geodetic, geophysical, levelling, control surveys at different orders and precision and topographical base mapping at appropriate scales.
- 6: The National Land Commission shall be the national agency to coordinate the development of spatial data infrastructure by different user agencies in the country.

Objective 2: To provide access to land for all Bhutanese citizens and juristic persons

- 7: Allotment of freehold land shall be the prerogative of His Majesty the King.
- 8: Except for members of the Royal Family, there shall be ceiling on freehold land.
- 9: The Government shall facilitate access to land through
 - Identification of State forest land as alienable land for leasing and allotment;
 - Easy and transparent processes for transfer of ownership of private land;
 - Adoption of prompt and transparent procedures to lease alienable land ; and
 - A well-functioning and easily accessible land information system.
- 10: All *Kasho* lands shall be dealt as per the contents of the *Kasho*.
- 11: The Government shall allow access to State forests land where leasing of such land would contribute to socio-economic development, conservation or other strategic purposes of national, regional or local development priorities without undermining national security and sovereignty.
- 12: The Government shall allow highlanders and vulnerable groups who are mainly dependent on livestock farming to inherit leasehold rights on *Tsamdro* and to engage in traditional land management practices with appropriate interventions and technical support from the Government to improve land productivity.
- 13: Farmers who practice and depend mainly on agriculture shall be allowed to lease *Sokshing* from State forests.

Objective 3: To provide secured land tenure and rights to title holders.

- 14: There shall be freehold and leasehold land tenure in the country.

- 15: State Land and state forest land shall be made available only on leasehold basis except in the case of:
- Satshab
 - Kasho
 - Rehabilitation
 - Or any other instances as may be permitted by law.
- 16: Leasehold land shall be State property on lease from State forests or state land to Bhutanese citizens or any juristic person of the country including agencies and corporations for specified purpose and time. 100% FDI companies shall have access to land only on lease hold basis.
- 17: Freehold land shall be registered in *Chhazhag Sathram* regardless of gender, religion, ethnicity or profession of the title holder.
- 18: Leased land shall not be registered in *Chhazhag Sathram*; a lease deed between the Government and the leaseholder shall be maintained to provide sanctity of ownership of use to the leaseholder.
- 19: Freehold landowners shall have the right for all actions on registered land subject to land use obligations imposed as per national priorities and other laws.
- 20: The use and management of leased land by the leaseholder shall be governed by the terms of lease.
- 21: The ownership of the subsurface mineral deposits on freehold land shall belong to the State.
- 22: If minerals are found in private land and the government intends to give the mining/extraction right to private parties, then the first offer for the extraction right shall be given to the land owner.
- 23: Freehold land **belonging to** recognized religious institutions **in the name of any individual** shall be registered in the name of **institutions**.
- 24: Freehold land registered in the name of recognized religious institutions shall not be allowed to be alienated in favour of any private party. In the event of abolishment of such religious institutions, such land shall be State land.

- 25: Boundaries of land parcels shall be demarcated on the ground and accurate cadastral surveys conducted to record and ensure the sanctity of the ownership of the land and associated rights.
- 26: Right of Way through State forest land or freehold land for public and community utilities and services shall be permitted through legal provisions.
- 27: Mechanisms to create and maintain easements for enabling individual landowners to deliver utility services provide right of way, and other customary rights through property owned by another persons should be addressed by law.
- 28: The Government shall exercise the right of eminent domain to acquire or expropriate freehold land for public purposes when the reason for such acquisition is vital. In such cases, prompt and fair cash compensation or land substitution or both shall be provided.
- 29: Development cost of the land under acquisition and transitional and resettlement costs if the household has to be relocated as a consequence of acquisition shall be paid to the landowner as per the rules approved by the Government.
- 30: Land occupied by *Nye* and religious monuments recognized by the state shall not be used for other purposes through acquisition or expropriation.

Objective 4: To generate land revenue and control land speculation

- 31: The Government shall levy progressive tax on freehold land proportionate to landholding and by differentiating rural and urban land to control excessive land holding.
- 32: The Government shall impose capital gains tax from commercial land transaction based on market value developed and maintained by the National Land Commission. Conveyance through inheritance shall be exempted.
- 33: Rent on **Government** leased land shall be fixed by the Government.
- 34: **Thromde** authorities may levy service fees, development charges, non-development fees on **land within their jurisdiction** as per approved legislation.

Objective 5: Broad zoning based on land use capability to fulfil land needs for different purposes.

35: The Government shall delineate land into different zones capable of supporting different development activities and conservation purposes, considering environmental and development needs of the country. Zoning of land shall specify prime agricultural land, *Chhuzhing* in particular for food production, urban and human settlement areas, industrial areas including areas for hydropower development, rural infrastructure areas and State forests.

36: While upholding the constitutional requirement of maintaining a minimum of 60 percent of forest cover, the Government shall also delineate forest areas that do not provide biodiversity values nor have any implications on local ecosystem, as alienable areas to use for development purposes.

37: The Government shall conduct periodic review of all land under declared zones to:

- Enable informed **and timely** decision-making on land management **and utilization**.
- Monitor the maintenance of a minimum of 60 percent forest cover.
- Provide information on the status of State forests and alienable land.

Objective 6: To enhance equitable, sustainable and efficient use of land resources.

38: The concerned ministries and agencies shall use and manage the declared zones for specific purposes in rural and urban Bhutan. This shall happen on the basis of explicit mandates and legal provisions.

39: The Government shall endeavour to increase and sustain production from land by adopting technologies and land management practices that are economically, environmentally and socially acceptable.

40: The Government shall provide incentives to landowners whose optimal use of land has been compromised for public purposes, such as conservation, national security, cultural heritage and for food and nutrition security.

41: The Government shall allow a specified acreage of *Chhuzhing* to be converted to *Khimsa* for those landowners who own only *Chhuzhing*. Should these *Chhuzhing* fall under declared prime agricultural zone, the alternative to provide *Khimsa* from proximate alienable state land shall be considered as a strategy to save *Chhuzhing*.

42: The Government shall adopt land pooling, except in those cases where it is technically not feasible, as a mechanism to implement local development plans and to provide adequate infrastructure and service facilities.

- 43: The Government shall promote swapping of unproductive marginal agricultural land with alienable state land to offer better livelihood options to the landowners and improve access to service delivery, while contributing to the conservation of environment. The vacated land shall be State land.
- 44: In order to ensure that land holdings are economically **and environmentally sustainable**, a periodic review of land use practices with the objective of reorganization of rural settlements and land consolidation should be conducted under the coordination of the National Land Commission.
- 45: Flat areas and lowlands that are prone or affected by flood must be protected or reclaimed through flood mitigation and protection or reclamation measures for use for productive purposes.
- 46: The Government shall implement a national strategy to ensure that declared prime agricultural areas are not left fallow and are used optimally for food production.

Objective 7: To ensure protection and conservation of ecology

- 47: “Green belt” concept shall be applied **to area based** development plans to establish and maintain green areas to maintain local ecology and to enhance local landscape.
- 48: A minimum buffer of land along banks of major rivers, streams and lakes should be maintained to protect water bodies from pollution and other associated risks. Residential and infrastructure development shall not be allowed in the buffer zone.
- 49: The Government shall limit anthropogenic activities on watersheds and catchment areas to protect all sources of streams, creeks and rivers that provide water for drinking, irrigation and hydropower generation.
- 50: The Government shall allow underground construction schemes that ensure public safety with minimal environment impact and contribute sustainability to socio-economic development.