

# LAND GOVERNANCE ASSESSMENT FRAMEWORK (LGAF) KARNATAKA



## State Report - 2014

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## Glossary

<b><i>Akrama sakrama</i></b>	Regularization of encroachment on public land and violation of building bye-laws.
<b><i>Amrith Mahal Kaval</i></b>	The land assigned for the pasturage of Amruth Mahal breed of Cattle.
<b><i>Anewari</i></b>	Crop Yield Assessment
<b><i>Ashraya</i></b>	A housing scheme for the economically weaker sections.
<b><i>Bagar Hukum</i></b>	Government land which has been cultivated by farmers without permission and whose application for title is pending for disposal before the competent authority.
<b><i>Bane land</i></b>	A special type of tenure prevailing in the district of Coorg (Kodagu) Bane is part of the protected forest land granted for service of holding of wet land, held free of revenue by cultivator for grazing and to supply leaf manure and fire wood and small timber required for agricultural and domestic purposes of the cultivator.
<b><i>Benami</i></b>	Made, held, done, or transacted in the name of another person—used in Hindu law to designate a transaction, contract, or property that is made or held under a name that is fictitious or is that of a third party who holds as ostensible owner for the principal or beneficial owner. <i>Benami</i> Transactions are prohibited under the Benami Transactions Prohibition Act of 1988
<b><i>Betta land</i></b>	<i>Betta</i> lands are defined in the Karnataka Forest Manual as Forest privileges. <i>Betta</i> lands are protected forests assigned

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	to gardeners in the North Canara (Uttara Kannada) District of Karnataka with certain conditions that they can graze their own cattle. <i>Betta</i> lands in other districts are district forests.
<b>Bhoomi</b>	The name given computerization of land records project in Karnataka. <i>Bhoomi</i> means land in the local language of Kannada
<b>Booswadhana records</b>	Computerized records of land acquisition.
<b>Chavadi</b>	Village community centre
<b>E-swathu</b>	Computerization programme covering a range of activities such as maintaining and updating records with respect to ownership, extent dimension etc of the rural settlement lands.
<b>Gomal land</b>	Pasture lands set apart in a village for grazing purposes
<b>Gramathana</b>	Site inside village limits which are used for residential purposes
<b>Gundu Thopu</b>	Land used for planting trees for common use
<b>Hobli</b>	A cluster of villages
<b>Inam land</b>	<i>A grant of a village or land with total or partial exemption from the payment of land revenue made to a person or an institution, and entered in the land records as an inam,</i>
<b>Jamabandi</b>	village land audit system
<b>Jamma Malai land</b>	<i>Jamma Malai</i> is also a protected forest. <i>Jamma Malai</i> are basically given for the cultivation of Cardamom. These are treated as enclosure within the reserve forest, according to Rule 141 of Karnataka Forest Manual
<b>Jan Andolan</b>	People's movement
<b>Kana land</b>	Kanas are protected forests which is given for the privilege of the public for Coffee, Pepper, Gum and Honey and also Green Manure as per the Section 134(3) and 138(3) of Karnataka Forest Manual.
<b>KAVERI</b>	Abbreviated form of Karnataka Valuation and E-registration,
<b>Kharab land</b>	<b>Kharab</b> land is a waste, non-arable land that is in possession of the Government.

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<b>Khata</b>	The <i>khata</i> is primarily an assessment of property with a view to levy property tax. The document will contain details related to your location, the size of property, and the built up area and will also have the survey numbers of the properties that border on all sides
<b>Kisaan</b>	Farmer
<b>Kumki land</b>	Kumki is Government waste land which can be used by a specified group of land holders.
<b>Lok Adalats</b>	Alternative dispute resolution system, legally recognized ( <i>Lok Adalat</i> literally translates into 'people's court')
<b>Lokayukta</b>	Anti-corruption ombudsman or a grievance redressing body which investigates cases of administrative abuse
<b>Maidan</b>	Open ground
<b>Mandi</b>	Market
<b>Mantra</b>	A commonly repeated word or phrase
<b>Mojani</b>	Means Survey in the local Kannada language. It is also the name given to a software used to issue issues pre-mutation sketches which are a pre-requisite for any sale transaction to happen
<b>Motasthal</b>	Wetlands
<b>Namma Bhoomi-Namma Thota</b>	A housing scheme to distribute homestead plots to the poor.
<b>Pahani</b>	Pahani is one of the local words used to describe Record of Rights or the Record of Tenancy Rights and Cultivation (RTC)
<b>Paisari land</b>	As per para 53 (97) of Karnataka Revenue Survey Manual, <i>Paisari</i> lands are all waste and forest lands which are declared to be the property of the Government and which have not be notified as protected forests or as reserve forests.
<b>Panchayat</b>	A local council of elected representatives which has autonomy; a decentralized unit of administration
<b>Panchatantra</b>	A software used to maintain accounts in local government offices
<b>Patta</b>	Legal document issued by the government in the name of the actual owner of a particular plot of land

<b>Peramboke land</b>	As per para 53 (93) of Karnataka Revenue Survey Manual, <i>Perampoke</i> means rocky portions of land void of earth, which cannot be ploughed of, and on which even grass does not grow, and also land which in consequence of being with thick jungle cannot be cultivated.
<b>Phodi</b>	Re-drawing the borders of a parcel of land with consequent changes in the cadastral map.
<b>Ryotwari</b>	One of the principal methods of revenue collection during British India, widely prevalent in Southern India. Taxes under this system were directly collected from each individual cultivator by government agents.
<b>Saguvali Chit</b>	A grant certification which demarcates the extent of land granted to an individual; without this certification the individual is not allowed to cultivate the land
<b>Sakala</b>	The name given to the time-bound delivery of services under the Karnataka Guarantee of Services Act.
<b>Shiristedas</b>	A revenue official in the office of <i>tahsidlar</i> .
<b>Smashaana</b>	Graveyard
<b>Soppina Betta</b>	Usufruct forest legally provided to farmers for purpose of compost production (comes from the words – <i>soppu</i> which means foliage and <i>betta</i> which means hills)
<b>Suvarna Paravnige-Gruha nakshe</b>	Computerized building plan sanction system
<b>Taluk/Tahsil</b>	An administrative unit below the sub-divisional level.
<b>Udyog Mitra</b>	A government of Karnataka organization, it is an initiative to promote and facilitate investments and assist investors
<b>Zamindari</b>	A method of revenue collection in British India. The Zamindar or the landlord was tasked with the duty of collecting taxes from the peasants and hand it over to the colonial authorities.

# List of Abbreviations

<b>BBMP</b>	Bruhat Bangalore Mahanagar Palike
<b>BDA</b>	Bangalore Development Authority
<b>BSUP</b>	Basic Services for Urban Poor
<b>CAG</b>	Comptroller and Auditor General
<b>CPR</b>	Common Property Resource
<b>FMB</b>	Field Measurement Book
<b>GoK</b>	Government of Karnataka
<b>JFPM</b>	Joint Forest Planning and Management
<b>JNNURM</b>	Jawaharlal Nehru National Urban Renewal Mission
<b>KIADB</b>	Karnataka Industrial Areas Development Board
<b>KIP</b>	Karnataka Industrial Policy
<b>KLRA</b>	Karnataka Land Revenue Act
<b>KPCB</b>	Karnataka Pollution Control Board
<b>KPLC</b>	Karnataka Public Lands Corporation
<b>KSCB</b>	Karnataka Slum Clearance Board
<b>KT&amp;CP</b>	Karnataka Town & Country Planning
<b>KUM</b>	Karnataka Udyog Mitra
<b>LAA</b>	Land Acquisition Act
<b>LGI</b>	Land Governance Indicator
<b>NUHHP</b>	National Urban Housing and Habitat Policy
<b>RAY</b>	Rajiv Awaas Yojna
<b>Record of Rights</b>	Record of Rights
<b>RTC</b>	Records of Rights, Tenancy and Crop Inspection
<b>SC</b>	Scheduled Caste
<b>SRO</b>	Sub Registrar Office

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<b>ST</b>	Scheduled Tribe
<b>UPOR</b>	Urban Property Ownership Record
<b>VFC</b>	Village Forest Committees

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# Executive Summary

## INTRODUCTION

Land Governance in the southern Indian state of Karnataka is characterized by both bright spots and serious areas of concern. The state has been in the forefront of modernizing land governance by using information technology for the past two decades, and it has launched a few highly successful projects to improve the delivery of land-related services. It also has a record of having implemented one of the most progressive land reforms laws in India. At the same time, however, the state has been witnessing public outcries against increasing instances of land grabbing and an increasing demand for more equitable distribution of land. Its urban land records, land use and planning are in a state of disarray and in need of urgent corrective actions. The land bureaucracy has been facing serious capacity constraints. Private investors are complaining of delay in getting land for industrial projects. While the successive governments have been attempting to address these issues, the results have been far from satisfactory so far. It was in this context that a comprehensive assessment of the status of land governance has been taken up in the state, by using the World Bank's Land Governance Assessment Framework (LGAF) during 2013-2014. This report presents its findings.

The assessment was taken up in nine distinct thematic areas of land governance as envisaged in the LGAF. These nine thematic areas are: (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 Cadastre (vii) Land Valuation and Taxation (viii) Dispute Resolution and (ix) Review of Institutional Arrangements and Policies. In line with a participatory process that the LGAF has specified these nine thematic areas were investigated by six locally drawn expert investigators and was reviewed by a panel of stakeholder representatives.

Each of the nine thematic areas has been assessed using a set of land governance indicators which have been further divided into various dimensions. The dimensions have been scored

on a scale of A to D based on a thorough assessment of the state's performance in the given indicator area. The reports prepared by the expert investigators with their recommended score for various dimensions were discussed with the stakeholder panels. These panels consisted of representatives from the state government departments concerned, retired officials of the government, members of civil society, private sector and in some cases lawyers specializing in land laws. The panels discussed the reports and arrived at a consensus on scores for various dimensions besides suggesting policy recommendations. The scores and policy recommendations were validated at a state-level meeting of the senior state government officials and various other stakeholders.

The main findings of the report are summarized below with policy recommendations under each of the nine thematic areas.

## LAND RIGHTS RECOGNITION

1. Karnataka has a strong legal and institutional framework which recognizes and protects private land rights. The abolition of tenancy in agricultural land and conferment of land rights on tillers of land under the Karnataka Land Reforms Act-1974 reduced insecurity of land rights to a large extent in rural areas. At present, while overall the system provides for security of land rights, there are certain categories of land holders who continue to face various kind of insecurity of tenure. These include poor people who occupy government land without proper titles, those who occupy land of which the legal status has not been clearly identified (for example those who have been granted land which actually belong to forest department) and those who live in urban slums. While the government has been coming out with periodic measures to strengthen the tenure security of the first and the third categories of land holders, those who occupy the forest land which was mistakenly granted to them as non-forest rural agricultural land in some parts of the state face the threat of eviction under the current regime of strict forest laws. Exact number of those who face such insecurity of tenure is not available. Similarly, although the customary and indigenous land rights are recognized and protected in general there are some issues of confusions and overlap.

The problem of informal or undocumented tenancy is also a matter of concern. While the tenancy in agricultural land was abolished under the Karnataka Land Reforms Act-1974, over the years a large number of people resorted to tenancy cultivation informally. Since this tenancy is undocumented as they are legally not recognized, the status of such informal tenants remains a grey area. They have no security of tenure nor can they access agricultural credit or various schemes of the government.

2. Individual land in rural areas is recorded but their mapping remains incomplete. Overall, according to the data available with the Karnataka Survey, Settlement and Land Records

Department over 12 million of the total 16 million records have been mapped, leaving a gap of around 25 per cent. In urban areas no such recording or mapping is available except in four cities where individual property records have been created under a new program called Urban Property Ownership Records (UPOR). In other urban areas, tax paid receipts (*khata* registers) are used as property records. Another category of land for which proper recording or mapping is not available is the rural settlement land or *gramthana* lands. For these lands also, the tax receipts constitute the sole documentary evidence of ownership.

3. According to the current records of rights of rural land ownership, women constitute over 18 per cent of total recorded land owners in the state. Data to determine what proportion of women owners is not recorded is not available. However, qualitative studies show that historically there has been a low incidence of land in the name of women in Karnataka.
4. In Karnataka, over 55% of all land use is for agricultural purposes. The rights over private agricultural land are subject to following restrictions under various provisions of Section 79 of the Karnataka Land Reforms Act - 1974.
  - Any person not cultivating land personally is not entitled to hold agricultural land.
  - In order to be eligible to purchase agriculture land, the individual must have had an agricultural land in his/her name before the year 1974. That is the person should be an agriculturist or an agricultural worker by profession in order to be eligible to purchase agricultural land.
  - The non-agricultural income of a purchaser who must be an agriculturist should not exceed Rs 200,000 (roughly \$ 3200) a year.

However, amendments brought in 1995 to the Karnataka Land Reforms Act relaxed these conditions to some extent which some commentators have termed as reverse tenancy.

Further Section 63 of the Act imposes ceilings on the extent of agricultural land that can be owned by various categories of individuals.

Although these restrictions were imposed in the overall public interest, over the years the agricultural situation and the land relations in rural Karnataka have undergone a change and some of these provisions may have to be reviewed. Widespread concealed tenancy is practiced which go unrecorded because of the blanket ban of tenancy affecting the rights of the actual cultivators of land. Similarly, the restrictions on purchase of agriculture land by non-agriculturists have often been violated and have created opportunities for corruption. Studies have shown that agricultural productivity is higher in neighbouring state of Tamil Nadu where there are no such restrictions on owning agricultural land by non-agriculturists suggesting that there is a case for a comprehensive review of the agricultural land right laws in Karnataka.

5. Through a series of amendments beginning 1970 the Karnataka government through its Land Revenue Act 1964 has attempted to provide a process for the regularization of unauthorized occupation of land. Purportedly acknowledging the “hardships” faced by the poor and underprivileged as a result of eviction from occupied land, a series of amendments in 1970, 1997 and 1999, led to the insertion of three sections in the Act that dealt with regularization of such land for bona fide landless persons. An amendment made in 1999 introduced a provision for regularisation of unauthorised dwelling houses constructed on Government land, constructed prior to 14, April, 1998. Similar amendments are being contemplated once again now to help the poorer sections who have occupied the government land.

While the equity objective of these measures which aim at providing security of tenure to the poor is laudable, the current policy allowing unauthorized occupation in the first instance, leaving such occupants in a state of limbo for a long time and then conferring on them the ownership rights may lead to several problems. First, the provisions could be abused easily for land grabbing and second, such post facto regularization can come in the way of systematic land use planning. The government should therefore take a relook at this policy of periodic regularization of unauthorized occupation of land.

6. There are a number of restrictions on the sale of granted land. The restrictions are particularly stringent for land granted to SC/STs. While non-SC/ST grantees are allowed to alienate the granted land after five years with the permission of the jurisdictional Deputy Commissioner, in the case of land granted to SC/ST, permission needs to be obtained from the State Government, under Section 4 of the Karnataka Scheduled Caste and Scheduled Tribe (Prohibition of Transfer of Certain Lands) Act, 1978. This procedure of getting permission from the government, although well-intentioned, is tedious, time consuming and is said to be breeding corruption and various kinds of malpractices.

#### POLICY RECOMMENDATIONS

- Existing sources of insecurity of tenure need to be identified and addressed appropriately. This would mean conferring rights or providing rehabilitation to those who occupy land in the possession of the forest department; regularizing or providing alternatives to those who have settled in government land for a long period of time along with measures to prevent such unauthorized occupation in the future. In urban areas the informal tenure needs to be recognized and protected with appropriate titling or rehabilitation. Finally, the informally leased out agricultural land has created a new area of tenure insecurity. Since this is a direct outcome of the ban on leasing out agricultural land, the government needs to review the ban in the changed agrarian relations in rural Karnataka.
- Restrictions on purchasing and owning agricultural land under the Sections 79 of the Karnataka Land Reforms Act-1974 need to be comprehensively reviewed as the objective of

these restrictions seems to have not been fulfilled and these restrictions have put barriers on agricultural land market.

- There is an urgent need to create a digital repository of spatial data with geo referential coordinates for all agricultural lands so that land parcels can be identified and located easily both on satellite imagery and physically.
- Steps should be taken for stricter monitoring of compliance with conditions of land grant and confiscation of granted land which has not been utilized for the purpose specified at the time of grant.
- Steps should be taken to strengthen the security of land rights in urban areas by extending the urban property ownership record (UPOR) project throughout Karnataka.
- The government should bring about a policy for more systematic distribution of land among the landless and houseless people with a view to preventing unauthorized occupation of the government land.
- Restrictions on the right to alienate the land granted to SC/STs need to be reviewed as these restrictions have come in the way of their taking advantage of the land market. The government may buy back the land from SC/STs and create a bank of such land for future distribution among similar disadvantaged groups.

## RIGHT TO FOREST, COMMON LANDS AND RURAL LAND USE

1. Karnataka has a forest cover of 43,356 sq. km, according to data available with the State Forest Department. This forms 22.6% of the geographic region of the state which is slightly higher than the national average of 21.3%. Of this, the area under notified forests is 33,331.56 sq km which includes reserved forests, protected forests, village forests and private forests. The rest is called deemed forests which are not yet notified and they include proposed forests under Section 4 of the Karnataka Forest Act, *Betta Lands*, *Bane*, *Jammamalai forest parampoke*, *kans*, *kumki*, *Paisari*, *Amrit Mahal Kaval*, assessed waste lands, *kharab* lands, *Inam* lands, thickly wooded areas, plantations etc.
2. There is a general lack of clarity on legal recognition of forests and there is a mismatch between land records and the reality on the ground. As regards the rights to forest land, the status report for the implementation of the Forest Rights Act-2006 published by the Union Tribal Affairs Ministry in September 2013 reveals community rights are hardly ever realized in

Karnataka. In fact, they constitute only 2% of the total applications received (i.e. 3,080 community claims as opposed to 1,65,638 individual claims) and only 90 such titles have been granted under the Act.

3. The National Forest Policy, 1988 highlighted the urgent need to protect and preserve forests with the necessary involvement of village communities in the regeneration of degraded forest lands. Karnataka was one of the earliest states to issue a Government Order in 1993 for the implementation of a Joint Forest Planning & Management (JFPM) programme for the protection and management of degraded forests with a canopy density less than 0.25, and to provide a 50% share in forest produce to Village Forest Committees (VFCs) set up in JFPM areas. Over the last two decades, nearly 5,200 VFCs have been constituted, bringing around 340000 hectares of degraded forests under the JFPM. However, there are several issues with the JFPM programme as it exists. By restricting the lands that the JFPM would apply to, problems of open access continue to remain in forests with a greater canopy cover and in lands such as *gomaalas*, assessed wastelands and other lands which are similar in nature to forest lands, but under the control of the Revenue Department. Furthermore, the JFPM programme also does not cover a significant portion of forested lands in the Western Ghats which are under “individual access” systems (*soppinabettas*, *kumkis*, *baanes* etc.), whereby only certain households have exclusive rights over use.
4. As regards the common land, it is neither properly identified nor is the responsibility for its protection clearly assigned. The rights of community over non-forest common resources such as fishing ponds etc are not clearly defined, nor are codified. There seems a great deal of confusion with regard to the definition and status of such land despite government orders issued from time to time clarifying their status and the measures to be followed while disposing them of. In the absence of a clear policy relating to their diversion to commercial and housing purposes, the extent of common land is continuously dwindling. Although the official data shows the total extent as 4110425 acres, this figure does not necessarily reflect the reality on the ground as the diversion of common land has not been properly documented. There has also been large scale encroachment of such land. A comprehensive survey of all types of common land and clear policy for their management and use are the need of the hour.
5. Regulations regarding restrictions on rural land use have been imposed with the objective of serving public purpose but their enforcement seems to be weak. Similarly, while public opinion is sought while preparing and amending land use plans, these comments are not always incorporated in the finalization of land use plans as the process of notifying the public and soliciting participation is half-heartedly followed. The major regulation of rural land use is specified under Section 95 of the Karnataka Land Revenue Act which mandates that the use of agricultural land for non-agricultural purposes should have the consent of the government through a process of land conversion. Agricultural land, which does not come under the Green Belt, can be converted for non-agricultural purposes like residential, commercial, industrial

etc., subject to the approval of the Special Deputy Commissioner on payment of the prescribed fees and subject to certain conditions. However, this policy of conversion has come in for criticism for the undue delay in getting conversions even in genuine cases and for the absence of a proper mechanism to monitor the compliance of conditions imposed at the time of land conversion.

6. Rural Land Use planning is virtually absent and there is no institutional capacity in the rural local bodies to implement the provisions of the Karnataka Town and Country Planning Act in rural areas.

### POLICY RECOMMENDATIONS

- There is an urgent need for reclassifying, identifying and surveying all non-forest and forest common pool and property resources - including survey of different community uses of each type of commons.
- There is a need to legislate for conservation of dwindling permanent pastures. Diversion of permanent pastures for other purposes needs to be restricted.
- Joint Forest Planning Management programme needs to be extended to cover more common lands such as *gomaalas*, *soppinabettas*, *kumkis* etc.
- Awareness about the means of formalizing group rights over common land under the Forest Rights Act, 2006 needs to be created as official reports suggest that a large number of tribes eligible to seek land rights under the Act have not submitted their claim.
- Community rights/ privileges in non-forest Common Property Resources (tanks, *soppinabettas* etc.) need to be legally recognized and protected. Such rights in existence need to be codified.
- Thickly wooded public land can be declared as reserve forest with a view to preventing encroachment of such land.
- Transparent scientifically informed public processes need to be evolved for planning rural land use. Institutional arrangements necessary for this need to be established.
- There is a need to make explicit the contributions of CPR to private property resources – e.g. *soppinabettas* to arecanut / paddy lands; *jamma & bane* to plantations; *keres* to surrounding ground water levels

## URBAN LAND USE AND PLANNING

1. Karnataka has an urban population of about 23.6 million ( 38.67% ), according to the Census 2011. The governance of urban land in Karnataka is carried out by 213 urban local bodies which include eight City Corporations, 43 City Municipal Councils, 68 Town Municipal Councils and 94 Town Panchayats.
2. Urban land use planning is the responsibility of the elected urban local self-governments and the non-elected urban development authorities in Karnataka. The Karnataka Town & Country Planning Act (KT&CP) outlines the master plan, planning process and lists the key outcomes of the master plan – zoning regulations and plans. Despite the KT & CP Act itself being subjected to numerous amendments to facilitate ‘urban development’, questions have frequently been raised on the effectiveness of these master plans. For example, despite the restrictions on construction in tank beds, green spaces and such notified areas, there has been widespread encroachment, thus suggesting that the mandate of the laws is not being protected in practice.
3. Another important issue pertaining to the master plan and its amendments has been with respect to the ‘regularisation of unauthorised construction and development’ pursued by an amendment (under Section 76-FF of KTCP Act) and the notification of its rules subsequently. Though the master plan assigns land uses for localities, the exact alignments or extents of land being acquired are not known by the public until process is actually started. This is seen in land use changes by the Bangalore Development Authority and in the development of Electronic City in Bangalore by Karnataka Industrial Area Development Board.
4. The state government does provide services like access to power, community sanitation, street lighting, etc. Though a variety of policies and schemes exist to provide the urban poor with housing, their implementation has not been ineffective. Urban local bodies along with the state’s slum development board notify slums or informal settlements based on duration of occupancy and size of such settlements. However, the process is not clearly defined and ad hoc, giving rise to political manipulations. While national schemes like the Rajiv Awas Yojna (RAY) lays down guidelines for providing security of tenure to slum dwellers, its implementation by urban local bodies in Karnataka has been found to be ineffective.

#### POLICY RECOMMENDATIONS

- There is an urgent need to streamline urban planning and its implementation in Karnataka. The existing practice in which para-state planning authorities undertake planning and oversee the implementations need to be reviewed and appropriately democratic bodies (Metropolitan Planning Committee in big cities, for example) as provided for under the 74<sup>th</sup> Constitutional Amendments need to take over the planning function in letter and spirit or at least oversee them even if the local planning authority undertakes it.

- A common jurisdiction and geographical coverage for all agencies dealing with the urban provisioning of various services needs to be ensured. In the present scenario, the existence of many parastatal organisations, each of them acting in its own jurisdiction area, leads to challenges in coordinating different activities.
- Apart from the absence of a common jurisdiction and the lack of coordinated effort, even basic information related to different sectors is extremely difficult to collect, collate and to correlate. For effective planning it is imperative that all the basic information is gathered across a common jurisdiction with the effect of creating a robust city information system.
- There is a need for a systematic assessment of housing stock in the urban with tenure types and evolving a workable plan for provisioning housing.
- The policy of regularization of unauthorized construction and development in urban peripheries should stop and greater compliance with plan regulations and building by-laws should be ensured.

## PUBLIC LAND MANAGEMENT

1. Around 23 per cent (over 115 lakh acres) of the total geographical area in Karnataka is publicly owned, according to the data available with the Land Records, Survey and Settlement Department. Public Land management in Karnataka is in a state of disarray prompting the state to initiate a number of corrective measures such as setting up of the Karnataka Public Land Corporation and the passing of the Karnataka Land Grabbing (Prohibition) Bill 2011. The Bill is awaiting Presidential assent. These measures were initiated in response to the recommendations made by a high-level committee headed by former Additional Chief Secretary V. Balasubramanian, which investigated the cases of public land encroachment in the state. The committee detected rampant public land encroachments especially in the periphery of cities across the state and estimated that 10 per cent of the total available public land was under encroachment.
2. Public land under this definition, i.e., the land which the government owns and manages directly can fall under two broad categories. The first category of public land – referred to as common land - is one which is owned and managed by the government but the people may have some user rights on such land. The second category of public land – referred to as government land - is the land owned and managed by the government on which the people have no such user rights. Under the former category some kind of land are available for the use of the individuals and some other kind are available to the community as a whole. Public land on which user rights are available to individuals are generally adjacent to the private land and the owners of the private land either cultivate that land or only collect its produce for

cultivating their private land. The public land on which people have rights collectively include lands such as grazing land, burial lands, tank-beds and so on. Some of these lands were used for grazing and other common purposes and became common property resources over time. These include: *Gomal* lands (those used for grazing the cattle); *Gundu thopu* (those used for planting trees for common use); *Poramboke* (or the cultivable waste); uncultivable waste lands; lands used for public utilities including lakes and roads etc. The land on which the people have no such rights is commonly known as government land.

3. The extent of public land under these two categories in Karnataka were determined at the time of initial survey settlement and since then their size has been shrinking for two main reasons: first the government has been transferring these land (barring some kind of public land in the first category above) to various other public and private uses. Second, there has been rampant encroachment of public land across the state. The extent of public land shown in the government records may not reflect the ground reality as the records are not regularly and properly updated following the transfer of public land to private purposes and because of encroachments.
4. Reforms in public land management have been hampered greatly by the absence of proper records to properly identify such land. Currently a drive is on to recover encroached land but in the absence of a clear policy and appropriate records the government has been facing gigantic legal hurdles in completing this exercise. The data submitted by the Karnataka Public Land Corporation to the State Legislature in early 2014 shows that of the 1302241 acres of public land encroachment detected till the end of 2013, a total of 100555 acres have been recovered. Of the remaining 1201686 acres which are yet to be recovered more than 50 per cent (745603 acres) are held up in various court cases.
5. Under the provisions of the Karnataka Land Revenue Act- 1964 Subject to such rules as may be made in this behalf, the State Government, the Regional Commissioner, the Deputy Commissioner, the Assistant Commissioner and the Tahsildar, may dispose of land or other property belonging to the State Government. The process involves submission of an application by the applicant containing the details of the proposal, purpose etc. The DC after appraising the proposal, if satisfied can transfer the land invariably by lease. Although Section 69 A of the Act, states that, the state can auction any such land to fetch higher price, it is rarely used these days. Moreover though the DC is empowered, of late every such case is placed before the state cabinet for approval. The Deputy Commissioner also has powers to grant public land in his jurisdiction to certain marginalized sections of society.

Public Lands described above are typically disposed for three kinds of uses:

- *Use of Public Land by the poor* – the revenue department is authorized to grant cultivation rights to the poor and destitute for a limited period of time, in order to make public land useful to the needy.

- *For Industrial Use* –Karnataka Industrial Area Development Board is the statutory authority which mediates between the State and the industry for use of Public land for industrial purposes. Long term lease of Public land for industrial use is a typical arrangement.
- *For other public purposes* – Public land may be diverted to various public purposes such as building roads, schools, hospitals and so on.

The disposal of public land has become a very controversial issue as often such land is allocated in violation of rules. The recent controversy over the allocation of over 10000 acres of *Amrit Mahal Kaval* Land (grazing) in Challakere Taluk of Chitradurga district exemplifies this issue. Although there are restrictions on diverting grazing land for any other purpose, public or private, this land was handed over to various agencies of the union government by the state government, prompting some non-governmental organizations to move the Green Tribunal against this decision. The case has since been pending before the National Green Tribunal.

#### POLICY RECOMMENDATIONS

- An immediate survey of all public land in Karnataka should be taken up and a clear policy for their management and disposal should be evolved keeping in view the future requirement of government land for various public purposes and the ecological and economic importance of common land resources. The recommendations made by V. Balasubramanian Committee in this regard should be implemented forthwith.
- The State should expedite the presidential clearance for the Karnataka Land Grabbing (Prohibition Bill) 2011, which provides for setting up of special courts to try land grabbing cases.
- While transferring public land to private purposes, people who are dependent on such land for their livelihood should be consulted and when the transfer takes place, the dependent people should be appropriately compensated.
- A mechanism should be evolved to monitor whether the land acquired and transferred to various purposes is actually used for the destined use.
- The departments charged with the responsibility of managing the public land should systematically identify public land and maintain a data-base which should be publicly accessible and updated from time to time. A portal can be created to make this information available to the public.
- All public land should be surveyed, fenced and protected not only to identify them but also to ensure that any encroachment on them is publicly visible.

- The practice of periodic regularization of unauthorized occupation of public land by the poor should be reviewed and a policy should be evolved keeping in mind the need to protect public land and the livelihood and residential needs of the poor.
- Measures should be taken to maintain a minimum stock of public land under each gram panchayat for unforeseen public uses in the future.

## ALLOCATION OF LAND TO PRIVATE USE

1. Karnataka Industrial Area Development Board (KIADB) is the government agency in charge of acquiring and transferring land to private industrial use. In addition to KIADB, the revenue department may directly acquire land for some private or public purposes such as setting up educational institutions etc. The Bangalore Urban Development Authority and the Karnataka Housing Boards acquire land and transfer them to private individuals as housing sites. All these agencies may acquire private land or use the existing public land for such transfers.
2. The KIADB followed the provisions of the Land Acquisition Act – 1894 along with the Karnataka Industrial Area Development Board Act while acquiring the land till December 31, 2013. A new land acquisition law titled The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act-2013 came into force from January 1, 2014. In June 2014 Karnataka published draft rules for the implementation of the new legislation and sought public comments. These rules are expected to make the land acquisition process faster, fairer and more transparent, thus addressing some of the issues which dogged land acquisition under the previous law.
3. Some of the major issues in this area in Karnataka relate to the way the acquired land is transferred to the private sector. First, as of now there is no clear methodology for deciding the actual requirements of an industry for the investment that it envisages and as a result there are complaints of private industries accumulating excess land through the KIADB.
4. Another major issue is that while all such transfer of industrial land to private sector had been previously on lease, now the land is sold to private industries. Although there are certain conditions imposed for the use and alienation of such land in cases of both lease and sale, there are no proper mechanisms to monitor compliance.
5. While high power committees receive, scrutinize and approve proposals for industrial enterprise and based on the demand of each proposal the KIADB acquires land as per the mandated provisions, in practice, the KIADB, in several instances, as noted by the Comptroller

and Auditor General, the courts and other studies, acted in violation of the norms. Notable areas of violation captured in these documents are:

- a) *Acquisition of land*: here the Board has either acquired land in excess of demand or acquired in an erratic fashion.
  - b) *The payment of compensation*: here it is either excess payment or payment without the scrutiny of the mandated documents.
  - c) *Transfer of land*: there have also been instances of violation of rules that hindered transparency in transfer of lands. Restriction of publicity, unauthorized transfer and reduction of allotment price are some of the violations.
  - d) The KIADB often acquired and transferred to private industries land in violation of land use planning regulations notified by the local planning authorities.
6. The price for the land acquired is determined by a district level price-fixing committee headed by the Deputy Commissioner of the district in a public hearing. The average registration price of the land being acquired over 5-10 years is used as a benchmark. Generally these prices are marked up by 20-50% to account for market prices being higher than registered prices. Inputs from the public and various other stakeholders are taken and the final prices are determined by the Committee headed by the Deputy Commissioner. Land owners can choose from two forms of compensation- they can opt for developed land as large as ~25% of acquired land in the same area or accept the price determined KIADB (except in the case of single unit complexes). Employment for one adult in each land owner's family is also provided along with the compensation. Under the new legislation, these measures are expected to be improved further.
7. Based on suggestions received from the investors attending the Global Investors Meet in 2010, the government launched a massive initiative in June 2010 to have a land bank and acquired over 1,00,000 acres of land ready for industrial development in time for the next GIM in June 2012. The KIADB, in collaboration with the Industries and Commerce department and the Revenue Department, has identified 119000 acres of land suitable for industrial use throughout the state.
8. Finally, there have been a number of cases wherein the land acquired for specific purposes has been de-notified subsequently in violation of the law.

### POLICY RECOMMENDATIONS

- The practice of resorting to KIADB Act as an overbearing law to acquire lands which are not to be used for industrial purpose under the provisions of other laws (Grazing land, Green Belt etc). KIADB should consult with the jurisdictional planning authorities while acquiring land for industrial purposes and strictly avoid transfer of land meant for civic amenities etc in the industrial areas to the private investors.

- Clear guidelines for compensation should be made to prevent discretion of the administration and the seller. There should be uniformity in the check-list of documents to be submitted by the land owners when they apply for compensation. Currently different kinds of documents are demanded by different land acquisition officers, resulting in corruption and payment of compensation in ineligible cases.
- There should be strict checks on de-notification of the land identified for acquisition.
- The Board should re-introduce the system of giving the land on lease and the lease conditions should be monitored strictly.

## PROVISION OF LAND INFORMATION: REGISTRY AND CADASTRE

1. The central government's Computerization of Land Records project has been enthusiastically pursued in Karnataka under the name Bhoomi since the early 2000s. As a result, rural land records have been made available in a digitized format allowing for relatively easy access by farmers. Fees for accessing records from the Bhoomi database are also reasonable and anyone can collect copies of the record of rights on payment of the official fee. The copies of the record of rights (Record of Rights) have also made available online.
2. The government has also established processes to link Bhoomi with the land registration database (KAVERI) which allows for synchronizing the updating of the record of rights with the registration process. Further, integration of Bhoomi with banks and cooperative institutions for efficient verification of records and determining liabilities on the land have also been put in place. Measures are afoot to link Bhoomi data base with courts so that the encumbrances would also reflect any pending court cases with regard to the land parcel in question.
3. One weakness of the Bhoomi project is that the manual records were digitized without first determining whether these records reflected the actual details of the land parcel or not. As a result, the data in *Bhoomi* may not reflect the true situation on the ground. As far as the cadastre is concerned, in rural areas, nearly 75% of land parcels have corresponding cadastral maps. However, an upgraded version of the Bhoomi Project which is likely to be launched within a year's time aims to update all the existing records in the data base besides developing a robust land information system covering all aspects of land governance.
4. For urban property records, Karnataka is in the process of implementing an Urban Property Ownership Records project using latest available technology. The project which began in 2011, aims to create an accurate record of both spatial and textual ownership data of urban

properties. Further, this database is planned to be used to provide speedy land related services to urban residents. At present, since tax accounts maintained by local bodies are being used as property records in the absence of proper ownership documents, no cadastre is maintained for urban properties.

5. Karnataka is one of the few states in India where the land records registry is financially sustainable through the fees charged for copies of the Record of Rights. About Rs 2250 million has been collected in the form of user charges since 2000. This money is used for purchase of equipment and to meet certain other operational costs. Even technical manpower at state and district level which is outsourced from private firms is funded using fees collected under this project.

### POLICY RECOMMENDATIONS

- A resurvey with latest technologies which will ensure that all land parcels will become spatially identifiable and accurate maps can be created which will help in better land management.
- The Urban Property Ownership Record project currently being implemented in four cities needs to be scaled up for other cities and towns in the state.
- There is an urgent need to create ownership records for *gramthana* (village habitation) land on the lines of urban property ownership documents and amending the Karnataka Land Revenue Act to enable panchayats to manage these lands.
- The notice period to file objections and to conduct physical verification of land parcels as part of mutation process should be reduced to 8 to 10 days from the current 30 days period.
- There is a need of enabling appointment based registration system. Public should be given opportunity to apply for registration and uploading of documents through web based application.
- The land registry and the registration should be integrated to end duplication of records and to evolve a robust land information system.
- The current drive launched for correcting errors in the Record of Rights digitized under the Bhoomi program should be completed within a definite time-frame.

## LAND VALUATION AND TAXATION

1. There is a well-established process for property valuation in Karnataka which is supposed to get revised every year. The Department of stamps and registration uses various sources to get

the market value of the property for fixing guidance value. The important sources are report from sub-registrars, District registrars, Banks, real estate agencies; Advertisements issued by developers etc.

2. Karnataka as part of its urban reforms process has attempted to introduce Capital Value Based property taxation system along with schematic GIS and MIS of all properties of urban areas. This has involved the computerization of the revenue sections of the urban local bodies for efficient tax management. Further, a GIS Based Property Tax Information System is being put in place to improve property tax collection. These processes bring transparency in property tax levy and collection, which was hitherto criticized for inefficient tax management and low revenue collection.
3. As regards tax exemption, it is difficult to say that norms are applied in a transparent and consistent manner especially in urban local bodies while providing exemptions as it is subjective decision of the officer in charge based on his discretion. Further, tax exemptions details are not publicly displayed for scrutiny. Also, the government has not conducted any study for determining the costs of collection of taxes making it difficult to determine the efficiency of the system.

#### POLICY RECOMMENDATIONS

- The current practice of area-specific valuation of properties may be replaced with property-specific valuation for efficiency and better compliance.

## DISPUTE RESOLUTION

1. In Karnataka, as in other states in India, land disputes form a high proportion of cases before the courts and are also seen to clog the formal legal system as they generally are not disposed of quickly. These disputes may be classified under three broad heads- (i) acquisition disputes under the Land Acquisition Act, 1894; (ii) revenue disputes under the Karnataka Land Revenue Act, 1964 and the Karnataka Land Reforms Act, 1961; and (iii) transactional disputes such as succession and transfer of property.
2. Land acquisition cases filed in the last decade have increased substantially. However, the same is not true for land revenue disputes. The former also have a higher disposal rate than the latter.
3. The revenue department is also vested with dispute resolution powers in Karnataka. The Tahsildar, who heads the revenue department at the Taluk/block level is identified as the first level dispute resolution officer. A large number of cases remain pending at this level. Also, this system has been criticized on the grounds that this combines both the functions – dispute resolution as well as the executive functions, which may create a conflict of interest.

4. In addition to regular courts, the *Gram Nyayalayas Act, 2008* establishes formal rural courts (*Gram Nyayalayas*) at the panchayat level. In the context of land disputes, *Gram Nyayalayas* are empowered to adjudicate on disputes related to rights to purchase a property, use of common pasturage, use of irrigation facilities, wells and water channels and disputes regarding possession of village and farm houses.
5. Finally, in addition to the regular civil litigation system, the state is mandated to make efforts towards clearing the backlog in courts through *Lok Adalats*. Under the Legal Services Authorities Act, 1987 states organise *Lok Adalats* or courts that are specifically set up for speedy disposal of cases. The jurisdiction of these courts is limited to cases in which the parties agree or file a complaint before this forum or when a Court deems it fit to refer the case to a *Lok Adalat*. The award of this court is in the form of an agreement and appeals against such awards are not allowed. However, the efficacy of the *Lok Adalat* system requires careful examination

#### POLICY RECOMMENDATIONS

- Special tribunals for land disputes may be established on the lines of land tribunals in Bihar to relieve the formal legal system of the land cases clogging the system.
- A separate category for land-related cases needs to be created in the data base of pending court cases.
- Special courts may be established for trying land grabbing cases.
- Legal Cells (in Law Department) dealing with land cases needs to be strengthened as suggested by Balasubramanian Committee.
- There is a need to separate out dispute resolution powers from the executive authorities such as *Tahsildars* to facilitate faster resolution of land disputes and to avoid conflict of interests.

## INSTITUTIONAL ARRANGEMENTS & POLICIES

1. The policy and institutional arrangement for land governance in Karnataka has evolved over a period of time. Although these mechanisms are in place with proper separation of policy making from implementation and arbitration in most institutions, there are significant issues of horizontal institutional overlap and multiplicity of laws. This is because there is an absence of a single land code which covers all aspects of land administration.
2. Although the Revenue Department is in general responsible for land administration, the actual management of land is shared by at least four departments and a number of agencies under these departments. The forest land is managed by the forest department and of what constitutes the non-forest land, the rural agricultural land, both public and private, and

common lands are under the revenue department, the urban land is under the urban local bodies, rural housing site land (*gramthana*) is under the rural local bodies. Besides these, land use planning is under the Town and Country Planning Department which itself is under the larger Urban Development Department. This multiplicity of institutions has resulted in horizontal institutional overlaps affecting overall efficiency of land governance.

3. The revenue department which is responsible for the larger part of land administration is also the general administration department. Since the revenue department is burdened with a wide range of general administration functions, the time and energy that it could devote to land administration has been traditionally low and this has also affected the efficiency of land administration in the state.
4. Karnataka has one of the most progressive land reforms acts in India. The state has also come out with several policies to promote equity in land holdings and distribution, such as free grant of land to marginalized community, provision for joint registration of land in the names of both husband and wife etc. However, the implementation of most of these policy measures have been found lacking and some of the policies require a re-look at in order to effectively balance the demands of equity, ecology and growth.
5. There is a serious lack of capacity at various levels of land administration, starting from the village level. The time-tested system of village *jamabandis* (land audit) has been discontinued with for want of sufficient manpower at the lower levels of land administration. The State has taken measures to fill the vacancies of the village accountants who deal with land matters at the village level, and surveyors whose shortage had resulted in spatial data remaining not updated over a long period of time. However, generally, the vacancies are not filled on a regular basis. Besides this, the land bureaucracy at various levels lacks proper training and motivation.

#### POLICY RECOMMENDATIONS

- Land administration should be taken away from the general administration department and be vested with a separate land administration department following the West Bengal Model. The land administration department should be responsible for managing all kinds of non-forest lands – both rural and urban.
- Land administration needs to be strengthened from the village level by re-introducing annual *jamabandi* (village land audit) system.
- There is a need to create a single land code which covers all aspects of land administration to avoid overlaps and conflict of land laws.

- Procedures for correction of Record of Tenancy Rights and Cultivation (RTC) should be simplified and all land records related services should be made available at the village level.
- On the question of capacity building and training, the recommendation made by the Second Administrative Reforms Commission (SARC) pertaining to the need for State Administrative Training Institutes (ATI) to overhaul their training content and to ensure availability of high quality trainers, with adequate focus on land governance, needs to be implemented forthwith.

## CONCLUSIONS

To conclude, this report presents in detail the status of land governance in Karnataka. The report is prepared by applying the World Bank's Land Governance Assessment Framework (LGAF). The study has examined the state's land governance in nine focus areas. Overall conclusions emerging from this study show that Karnataka has a strong policy and institutional framework for land governance which seeks to recognize and protect land rights and to use land resources for the larger socio-economic development. The State has also made good progress in using information and communication technology for strengthening the administration of land records. However, there are some significant areas of concern which need policy attention.

This study shows that multiplicity of laws with a lack of legal clarity on several crucial issues; an overburdened land administration infrastructure; mismatch between textual and spatial records and a poor land information system have affected the effectiveness of land governance in the State. As a result, despite the state's pioneering efforts of digitizing land records management and land registration system, fraudulent duplicate and overlapping land titles continue to dog the system, especially in urban areas, leading to conflicts and litigation in private land and unabated grabbing of public land. Land use planning is a matter of serious concern both in rural and urban areas. In urban areas, while there is planning machinery in place although the plan stipulations are routinely flouted, in smaller towns and rural areas, there is virtually no land use planning in practice. There is no clear policy to guide the use of land for the state's overall development by striking a balance between the competing claims of economic development, equity and environmental concerns. Indiscriminate diversion of common land for housing and commercial purposes and a highly discretionary system of allocation of land for private investment are too glaring to miss. The absence of a centralized land information system to assist in decision making and in monitoring compliance of regulations is another deficiency in the land governance system.

The State has taken up several progressive reforms in the land sector, especially in land distribution and land records management. While these existing programs need scaling up, this study strongly recommends for an integrated approach to solving the problems of land governance starting with a comprehensive survey of land using modern technological tools and eventually moving towards an absolute titling system in place of the current practice of presumptive titling.

## 1. Introduction

The southern Indian State of Karnataka presents a paradox in land governance. The State has been in the forefront of using information technology to improve land records administration for the past two decades. Yet, the state has of late been routinely witnessing cases of large scale grabbing of public land, a principal reason for this being lack of proper land records to establish the government's ownership of such land. The State's has a progressive land reforms policy and is known for its effective implementation during the 1970s. But of late there has been a wave of discontent regarding the indiscriminate diversion of agricultural and common land for non-agricultural purpose. There is also an increasing concern that some of the provisions of the land reforms legislation have become obsolete and are adversely affecting the interest of the poorer sections in whose interest the reforms had been introduced. Post land reforms the state has seen a number of schemes to distribute smaller plots of land to the landless through various grants and housing programs. At the same time, the National Sample Survey (2003) has recorded proportion of landless households in the state at 14.09 per cent as against the national average of 10.04 per cent. The situation compares favourably with the neighbouring states of Tamil Nadu which has 16 per cent of households as landless and Andhra Pradesh (14.33 per cent) but poorly with the southern neighbour, Kerala, which has only 4.8 per cent landless households.

Karnataka has a range of institutions including Karnataka Industrial Area Development Board and a single window clearance agency to facilitate smooth availability of land for the industrial sector. The State's overzealousness in acquiring land for industrial purpose has often come under criticism, especially the creation of a huge land bank to ensure speedy availability of land to the prospective investors. Despite all of this, the Karnataka Manufacturing Task Force appointed by the State Government makes the following observation in its report (2013):

*Land is the biggest constraint for the growth of the manufacturing sector. At present, the availability, cost and the process of obtaining land causes significant financial and time overruns for business looking to grow or set up industries in the State. This contributes to lack of competitiveness for the manufacturing sector (pp 7)*

As the above instances suggest, Land governance in Karnataka, as it is the case in any other Indian State, is one of the most complex areas to comprehend. Being one of the most preferred investment destinations, especially in information industries sector of late, Karnataka has under tremendous pressure to meet an ever increasing demand for land for industrial investment. The fact that the state has second largest dry land and has some of the world's most sensitive ecological hotspots only intensified the challenge of having to balance between the needs of economic growth, ecological conservation and equity concerns while managing the land resources. Therefore, it is critical that the state (i) possesses an accurate estimate of its available land (ii) develops a balanced approach for its management through an effective, efficient and equitable legal and institutional framework, and (iii) maintains a highly detailed and easily accessible land records system to govern the available land resources efficiently and equitably.

In this context, Land Governance Assessment Framework (LGAF) - Karnataka is an attempt to take a comprehensive look at the current challenges of land governance, identify the gaps and suggest corrective measures. Developed by the World Bank, it covers the entire gamut of land governance issues in the state under nine focus areas (panels) – namely (i) Land Rights Recognition, (ii) Rights to Forests, Common Land and Rural Land Use, (iii) Urban Land Planning and Development, (iv) Public Land Management (vi) Transfer of Large Tracts of Land to Private Investment, (vii) Land Information, Registry and Cadastre, (viii) land dispute resolution and (ix) institutions and policy framework.

The results of the LGAF exercise carried out through an inclusive and participatory methodology, developed by the World Bank and detailed out in the next section are presented in this document. It

is hoped that the findings along with scores given to various indicators would help the government identify and prioritize reforms to be initiated to strengthen land governance.

The LGAF exercise was carried out in Karnataka at a critical juncture. A new government voted to power in early 2013 has been initiating a number of reforms in land governance ever since it assumed office. Among the other things the new government is upgrading the computerized land records management system, launched a fresh survey of land parcels on a pilot basis and is planning to review the existing land statutes comprehensively to identify overlaps, conflicts and redundancy. The LGAF recommendations made in this background are expected to help the government identify policy and institutional constraints and problems associated with the implementation of the existing policies and programs.

The rest of this report will proceed as follows: The next section will elaborate the methodology of LGAF – Karnataka, which will be followed by a detailed presentation of the context of Karnataka State. The subsequent section presents the main findings of the study along with scores and analysis of various indicators of land governance in Karnataka. The final section comprises policy recommendations, some of the best practices and conclusions.

## 2. Methodology

**T**he Land Governance Assessment Framework was developed by the World Bank and its partner organizations. It has been customized to the Indian context through a series of deliberations involving the representatives of the participating States in India and the members of the Technical Advisory Group consisting of serving and retired All India Service officials and a retired High Court Judge. The objective of the LGAF is to provide a tool for the diagnosis of land governance problems in the specific context of its implementation to establish bench marks and to monitor progress over time.

The LGAF framework consists of 27 land governance indicators (LGI) that cover a set of nine panels listed in the previous section. Each indicator is further broken down into a number of “dimensions” with pre-coded statements (on a scale from A to D). In total, there are 116 dimensions in the LGAF. The implementation followed the protocol described in the LGAF Manual. This involved an expert investigation into each of the nine thematic areas (panels) to prepare a background report and suggest scores for each indicator. Each of the expert investigator’s reports and scores were reviewed at workshops attended by representatives of government, civil society, academia and lawyers and other experts in the respective thematic area. The results and scores were validated at a meeting of stakeholders, expert investigators and TAG member assigned to the state concerned.

The indicators were scored mainly on the basis of the official documents (administrative data), secondary literature, consultation with informed individuals and the expertise of the investigator concerned. The administrative data were obtained from the participating departments directly, or by filing applications under the Karnataka Right to Information Act. The documents tabled in the State Legislature were also used in some cases.

In all over 60 individuals representing various stakeholder groups were part of the LGAF process in Karnataka, besides the coordinator and the World Bank officials. The findings, scores and policy recommendations presented in this document emerged from this elaborate process which began in October 2013 and concluded with the Validation Workshop held in June 2014.



### 3. Karnataka Context

**K**arnataka, with a total geographical area of 191,791 sq km is India's eighth largest state. Its population according to Census 2011 is 61.1 million which accounts for 5.05 per cent of India's population and makes it the ninth most populated state in the country. The state is divided into four divisions, 30 districts, 49 sub-divisions and 176 talukas. It has 27028 inhabited and 2362 uninhabited villages<sup>1</sup>, 281 towns and seven municipal corporations.<sup>2</sup>

Karnataka was known as princely state of Mysore during the colonial period and it became an independent state of the Indian Union post-Independence.

<sup>1</sup> Revenue Department, Government of Karnataka

<sup>2</sup> Urban Development Department, Government of Karnataka.

The state assumed its present form on November 1, 1956 with the integration of Kannada speaking areas from the erstwhile states of Madras, Bombay and Hyderabad with Mysore State. The integrated Mysore State was renamed as Karnataka on November 1, 1973. Karnataka borders the Arabian Sea in the West and has three natural regions – the coastal belt, the Deccan Plateau and the Western Ghat region. The state shares its borders with Maharashtra and Goa in the North, Andhra Pradesh and Tamil Nadu in the East and Kerala in the South.

Agriculture remains the main source of livelihood for a majority of population in the state although the contribution of agriculture to the State Domestic Product has been on a decline. Around 56 per cent of working population in Karnataka is engaged in agriculture while secondary and tertiary sectors account for 18 per cent and 26 per cent of workers in 2009-10. Agriculture is characterized by a wide crop diversification and is still remains largely dependent on the southwest monsoon. Out of the net sown area only 30 per cent is irrigated. The broad land use change over the years is indicated in the table 3.1 below:

### 3.1 Area under various land use categories over the years

Land use category	1966-68	1976-78	1986-88	1996-98	2001-03
Non-agri.Purp	876.33	1036.47	1172.37	1288.60	1330.95
Perm.Pastures	1675.57	1449.53	1131.57	1003.18	951.75
Current Fallows	1065.53	1305.73	1090.33	1358.64	1084.73
Net Sown Area	10067.23	9939.87	10621.50	10401.23	9907.43
Gross Irrigated Area	1297.32	-	2383.33	2970.22	9907.74

*Area in '000 hectares, Source: Purushottaman and Kashyap (2010)<sup>3</sup>*

## Land Tenure System

The tenure system that historically prevailed in most part of southern India including Karnataka was the ryotwari system under which individual cultivators were recognized as proprietors of their land with rights to sub-let, mortgage and transfer land through sale or as a gift. Tenure of land was secure as long as revenue payment was made directly to the collectors of the colonial administration. In 1850s, the British Government passed laws which enabled farmers to borrow from money lenders on the security of their land holdings. As revenue assessments were high, indebtedness grew and this in turn led to the dispossession of land, resulting in rising tenancy. Consequently, the distribution of land

<sup>3</sup> Purushottaman, S. and Kashyap S., (2010) Trends in Land Use and Crop Acreage in Karnataka and their Repurcussions, Karnataka Journal of Agricultural Science 23 (20) 330-333

became very unequal, with rural society polarized into landlords and rich peasants against tenants and agricultural labourers.

Against this broad backdrop, however, there were widespread local variations in the tenancy system. As Pani (1997) notes the coastal Karnataka region had an agrarian structure that would have met the major requirements of the zamindari system. In contrast, the agrarian system in old Mysore region of Karnataka had historically a very limited role for tenancy. In the 1971 agricultural census, the area under tenancy in most districts of old Mysore was well below 10 per cent, with this figure dropping to less than 2 per cent in some districts, for example Chitradurga. In Northern Karnataka, which includes the present Bombay Karnataka and Hyderabad Karnataka areas, agrarian system was dominated by a very large proportion of tenant-cultivators but the system was quite different from that which existed in coastal districts. Especially, in the three districts of Hyderabad Karnataka region (now six), the proportion of tenanted holding to the total holdings were less than 50 per cent. One of the reasons for this could be that the region when it was part of the Hyderabad State between 1948 and 1956 witnessed some progressive tenancy reforms legislation under which ownership rights were conferred on a large number of tenant farmers.

Post-independence, Karnataka is one of the states known for having effectively implemented land reforms. Aziz and Krishna (1997), in their review of the land reform program in Karnataka identified four distinct phases of land reform and administration. In the first phase, intermediaries and new tenancy arrangements were abolished. Then, ceilings on agricultural land holdings were imposed. In the next phase, land of disadvantaged groups like Scheduled Castes and Scheduled Tribes were provided protection. And finally, there has been a relaxation on ceilings and previous restrictions on the acquisition of agricultural land for non-agricultural use.

Although, land reforms resulted in a large number of tenants becoming land owners, analysts later argued that its actual impact was limited. First, as the land reforms had been planned for a long time many land lords in anticipation of the radical changes had terminated tenancy much before the Act was passed (Damle 1989). Second, even those who benefited from the new legislation were largely the members of the dominant castes (ibid). So, the agrarian relations changed only to a limited extent even under Urs. Damle argues:

*In conclusion, it can be said that the land reforms in Karnataka had failed to achieve the avowed ideal of creating an egalitarian society. The legal measures could hardly sabotage*

*the vested interests in land. On the contrary, the loopholes in the laws were aides in disguise to the landlords to maintain status quo in the agrarian social structure (1989: pp 1905)*

Apart of an impressive record of land reforms, Karnataka has also been known for introducing several progressive measures in administration over the years. The state introduced a decentralized system of governance in 1986, almost a decade before the country-wide administrative decentralization took effect under the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments. The State also established an anti-corruption ombudsman (the Lokayukta) also in 1986. Among other things, the administrative reform measures introduced since then the Right to Information Act – 2000 and the Karnataka Guarantee of Services to Citizen's Act, which guarantees time-bound delivery of 478 administrative services across 47 state departments are noteworthy.

### **Land Administration**

In Karnataka the Department of Revenue headed by the Minister for Revenue is primarily responsible for land administration. The revenue department in Karnataka as is the case in several other states has a range of general administration responsibilities along with land governance. These include magisterial, executive and residency functions. Specific land governance related functions such as land registration and valuation, and the Survey Settlement are handled by separate units within the Department. While a Principal Secretary is the principal executive under the minister for the overall revenue administration, the registration and valuation unit known as Department of Registration and Stamps is headed by an Inspector General and the Survey Settlement unit known as the Department of Survey Settlement and Land Records is headed by a Commissioner. While all the three wings of the Revenue Department are individually involved in specific aspects of land governance; they jointly handle the land registry in a complicated arrangement. In addition to the Revenue Department, the rural and urban local bodies also enter into the land administration. The village level rural local bodies called gram panchayats manage the village settlement land (gramthana) while the urban local bodies are responsible for the maintenance of the urban land under their jurisdiction. The town planning authorities and the urban development authorities are responsible for planning and land use management in urban areas. There are also Special Purpose Vehicles such as Karnataka Industrial Area Development Board which have been formed for facilitating transfer of land for industrial purposes. The responsibility of managing the forest land is vested with the Karnataka Forest Department, which is headed by the Forest Minister and has secretariat of its own.

Karnataka is one of the few states to have made remarkable progress in the computerization of land records, as part of the computerisation of land records (CoLR) project (Bhoomi) started by the Ministry of Rural Development in 1991. Karnataka's CoLR programme has attracted widespread recognition in the country as well as internationally. Due to massive efforts of the revenue department of the state, Karnataka's 67 lakh farmers can access their land records (RTCs) at all talukas of the state through the Bhoomi e-governance project. An amendment made to the Karnataka Land Revenue Act 1964 by the state government recognises only the computer-generated RTCs duly signed by the authorised signatory will be valid for all legal purposes and manually written RTCs will have no legal validity. Some of the benefits claimed by the government as a result of this project include, having a centralized repository of rural land records in the state, simple and efficient way to update land records, computerized records make farmers free from harassment by government officials, touts, middlemen and village level leaders as farmers have direct access to all information about their property.

Under the National Land Records Modernization Project (NLRMP) of the Ministry of Rural Development, Karnataka has completed the digitisation of Record of Rights (mentioned above), computerization of land registration system (known as Kaveri Project) and the integration of digitized Record of Rights Data base with Land Acquisition Process and Agricultural Credit system (Banks). Digitization of the old land records and the digitization of survey records are currently underway. The State has also decided to take up a comprehensive resurvey of land and it has been taken up on a pilot basis in two villages in all districts.

Overall, Karnataka has a number of initiatives to improve land administration. This is significant as it points to the fact that the need to invest in improved systems is recognized. However, these initiatives seem to be working in isolation and what seems to be absent is an overall strategy and integrated approach to improve land governance, as brought out in the next section.

## 4. Assessments per panel

### 4.1. Panel 1: Land Rights Recognition

#### 4.1.1. Context

##### *Introduction*

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**K**arnataka, the eight largest state in India, covers a land area of 191791 sq km<sup>4</sup> of which about 75% is privately owned while remaining 25% is under state ownership<sup>5</sup>. Land rights by and large are formally recognized and most of the land is held with full rights (freeholds). Under the land reforms legislation of 1974, a large number of rural farmers cultivating land on lease were conferred the rights on land they had been cultivating. This has substantially strengthened security of tenure in rural areas. Land rights are formally recognized in urban areas also except in the case of slums. Land held under customary tenure seems to be very small and no proper estimate of such land is officially available. Customary rights over use of land and produce from some kind of land are generally recognized. Indigenous people's right to land has been a contentious issue over the years but the Forest Rights Act-2006 has recognized the right of such people to the land they occupy, albeit in a limited sense. A number of measures have been taken to strengthen the women's rights to land. There is a system in place to record land rights and this system, evolved over a period of time, needs some major reforms especially in urban areas. Information technology is being deployed in a big way to address the existing deficiencies in the system with varying degrees of success.

Some of these issues pertaining to land rights recognition are discussed below, followed by a detailed analysis of a set of indicators which address the strengths and weaknesses of the existing legal and institutional and policy related aspects of the security of land rights in Karnataka.

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<sup>4</sup> Census 2011

<sup>5</sup> BHOOMI data base of land records available with the Revenue Department Government of Karnataka

### *Land Rights and Land Reforms*

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The tenure system that historically prevailed in most part of southern India including Karnataka was the ryotwari system under which individual cultivators were recognized as proprietors of their land with rights to sub-let, mortgage and transfer land through sale or as a gift. Tenure of land was secure as long as revenue payment was made directly to the collectors of the colonial administration. In 1850s, the British Government passed laws which enabled farmers to borrow from money lenders on the security of their land holdings. As revenue assessments were high indebtedness grew and this in turn led to the dispossession of land, resulting in rising tenancy. By and large, these tenants had little security against evictions or takeovers by land lords, and thus the pre-independence period was marked with high incidence of tenure insecurity. After independence, this system continued to a large extent although there were some attempts to protect the rights of tenants from time to time. The reorganization of the state in 1956 by integrating Kannada speaking areas from the neighbouring provinces only complicated this problem as a majority of the rural population came under a system of tenancy governed independently in the different Kannada speaking areas of Madras, Bombay, Hyderabad and Coorg states which were integrated with the State of Mysore to form the present state of Karnataka.

In 1961 a Land Reform Act was passed with the intention to provide security to tenants against eviction and to prevent land owners from taking away plots which their tenants had cultivated. The Act was also designed to abolish tenancy, ban on further leases, fix fair rents with respect to the then existing leases and to impose ceiling on land holdings so that surplus land could be redistributed among poor cultivators and needy landless agricultural labourers. However, it was only after the Land Reforms Amendment Act of 1974 that tenancy was done away with. These reforms were carried out uniformly on different tenancy systems in Karnataka and rights of ownership were attempted to be accorded to the tiller of the land and a land ceiling on ownership was also established.

After the commencement of the 1974 Act, the tenure system in Karnataka was strengthened as rights of ownership were conferred to a large number of tenant cultivators. Data from the reports of the

Revenue department show that close to 60% of the applications<sup>6</sup> received from the erstwhile tenants for ownership rights were granted by the land tribunals set up under the Act.

### *Tenure Types and Sources of Insecurity of Land Rights*

With the abolition of tenancy in the state, land came to be owned either privately or by the government. The table 4.1.1 captures various rights associated with these two principal tenure types (Dale & McLaughlin, 2000)

Table 4.1.1 – Tenure Types and Land Rights in Karnataka

Tenure	Types	Nature of Rights				Extent of land (Acres) <sup>***</sup>
		To Alienate*	To Inherit	To Bequeath	To Use	
<b>Private</b> - where individuals have rights of ownership, subject to statutory or contractual limitations.	Purchased	Yes	Yes	Yes	Yes	2,5,336,489
	Granted**	Conditional	Yes	Yes	Yes	
	Inherited	Yes	Yes	Yes	Yes	
	Regularized**	Conditional	Yes	Yes	Yes	
<b>State</b> - All lands wherever situated and which are not the property of individuals or of aggregate of persons legally capable of holding property are declared to be of the state government.	All rights on such properties are vested in the State Government				8,610,267	
<p>* For agricultural land alienation involves only sale and not lease, while for non-agricultural land both sale and lease are allowed.  ** Certain restrictions are imposed on alienation and use of Granted and Regularized lands.  *** figures from the Bhoomi data base of land records available with the Department of Revenue, Karnataka.</p>						

As a result of legal recognition of the tenure types indicated in the table above (and detailed in the next section), there is a general sense of security in land tenure in Karnataka. However, certain individuals and groups continue to face various kinds of insecurity of tenure. There are three main reasons for insecure land rights at present. First, where the type and status of land is not clearly identified, land rights become tenuous. For instance, in one district of Karnataka<sup>7</sup>, land on which the Forest Department has claimed ownership as a Reserve forest, the Revenue Department has allowed for various tenures to be established. Forest Laws require all settlers on this land to be evicted, and

<sup>6</sup> Quoted in Damle (1993)

<sup>7</sup> Chikkamagalur

this has created immense insecurity for land owners<sup>8</sup>. Secondly, insecurity of rights arises when ownership is not clearly captured in land records. Thirdly, insecurity also arises from the absence of legal recognition of encroached land. The government from time to time regularizes encroachments subject to certain conditions but pending such regularization the occupants of encroached land face insecurity of tenure. In urban areas slum dwellers face similar problems.

Another grey area as regards the land rights is the problem of concealed tenancy. Although tenancy in agricultural land has been abolished under the Land Reforms Act – 1974, tenancy continues to exist informally. For example, 81 per cent of respondents of a survey in Gulbarga District in 2006 confirmed that tenancy still existed (Ahuja & Singh 2006). The study noted that even with the computerization of land records, there was no detection of concealed tenancy in the state. Overall, the concealed tenancy has been estimated to be 2 per cent to 8 per cent of holdings<sup>9</sup> against the national average of 15 to 25 percent (Deshpande, 2003).

### *Equity and Land Rights*

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The Land Reforms Act of 1961 stipulated a land ceiling on the amount of land that could be held by landlords. Several studies have shown that these provisions were not adequate to prevent landlords from holding huge tracts of land. According to the 1961 law, a maximum of 27 standard acres of first class wet land was fixed as the ceiling which varied up to 432 acres of dry land that was permissible for a big family (Deshpande & Torgal, 2003). It has been noted that even under the 1974 Amendment to the Land Reforms Act, big landlords could retain vast lands under their ownership by dividing their family into a number of 'units' and also by fraudulent transactions of landed property. Thus, while it is true that tenancy as a form of cultivation has been replaced by peasant proprietorship, the land-ownership pattern continues to remain skewed, especially in the northern regions of Karnataka, indicating need for further ceiling implementation. If the land ceiling is applied more stringently, more surplus land will become free for redistribution among poorer people and land rights can be conferred to a larger section of society.

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<sup>8</sup> Personal Communication with State Department Officials and media reports. At the time of writing this report, unrest was growing in this part of the state.

<sup>9</sup> Development in Karnataka (2007), Planning Commission Government of India, Academic Foundation New Delhi

Karnataka has initiated several programs to reduce inequity in land distribution as well as well as to improve security of tenure of vulnerable groups. These include land grants to the landless (including persons belonging to the scheduled castes and scheduled tribes, ex-servicemen, political sufferers and so on, under the Land Grant Rules – 1969) and regularization of unauthorized occupation of land by the poorer sections. The maximum extent of unauthorized holding allowed to be regularized is 2 hectares of 'D' class land or equivalent (excluding plantation lands, garden lands and forest lands).

The Government has also initiated a number of steps to strengthen women's rights to land. One important move by the government of Karnataka is an amendment of the Karnataka Land Grant rules, wherein for government granted land / housing sites the grant orders would be issued in the names of both husband and wife. While joint ownership of lands purchased during marriage is not recognized under Indian law, Karnataka state policy provides a safeguard to ensure that household land is not sold without the knowledge of the female members. Central and State level housing schemes implemented in Karnataka have also sought to correct the imbalance between male and female access to land. However, under the Indira Awaas Yojana run by the Central government, women constitute less than 40% of the beneficiaries, despite the program statement reading that "houses are invariably allotted in the name of women" (Ministry of Rural Development, 2012). The Ashraya Yojana and Dr. Ambedkar Rural Housing Scheme grant lands jointly in the name of the husband and wife, though this policy is not always followed in practice. Other initiatives include, the **Namma Bhoomi - Namma Thota** (Our Land – Our Garden) Homestead Program, initiated by the Rural Development and Panchayat Raj Department in 2005 which has the objective of "enhancing respect and security of women" by issuing joint titles in the name of husband and wife. The scheme has provided nearly 25,000 landless women and their families with title to small plots of land.

### *Recording of Land Rights*

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The security of tenure is dependent on the quality of records maintained to determine ownership of land. Historically, with land surveys conducted in Karnataka in 1836 and 1840 the name of the caretaker of the land began to be associated with land parcels. All lands surveyed had a person associated with it. If there was no such person that land was recognized as Government Land. However, these surveys did not bestow rights on the caretakers. It was in 1926, with the establishment

of the Record of Rights regulation Act, that the concept of rights got introduced in Karnataka. Here onwards Individual possession was recognized and documentary evidence for the same was created. This was streamlined further under the Karnataka Land Revenue Act – 1964 which provides for issuing the Record of Rights, Tenancy and Cultivation (RTC) as a presumptive ownership document. Karnataka has approximately 6700000 agricultural land owners spread across 176 talukas in nearly 30,000 villages. Together they account for 20 million RTCs. Since the early 2000s these records of rights have been digitized under the Computerization of Land Records (CLR) project, brand named Bhoomi. Digitization of spatial records is under progress.

There are no comparable records for urban land and the rural settlement land (*gramthana*). For these lands, the tax paid receipts are the only available documentary evidence of ownership. Recently, the Survey, Settlement and Land Records Department in Karnataka has taken up the task of creating Urban property Ownership Records (UPOR) in four cities namely Mysore, Hubli-Dharwar, Bellary and Shimoga. UPOR aims to capture all the rights associated with properties in urban areas through the use of modern spatial technology such as Global Positioning Systems (GPS).

#### 4.1.2. Assessment and Score

This section analyses in detail the specific elements related to land tenure recognition in Karnataka, with a focus on legal recognition of rights, their protection in practice and the practice of recording of rights. These elements are divided into Indicators which in turn are broken down into several Dimensions. Indicators provide a relatively exhaustive assessment of relevant land governance issues through specific dimensions which define areas for investigation, quantitative measurement or qualitative assessment.<sup>10</sup>

#### INDICATOR 1: RECOGNITION OF A CONTINUUM OF RIGHTS: THE LAW RECOGNIZES A RANGE OF RIGHTS HELD BY INDIVIDUAL (INCLUDING SECONDARY RIGHTS, RIGHTS BY MINORITIES and WOMEN ETC.)

LGI	Dimension Description	Score	Score Description
1 1(i)	Individual Rural Land Tenure Rights are Legally recognized	A	Existing legal framework recognizes and protects rights held by more than 90% of the rural population.
1 1(ii)	Individual Rural Land Tenure Rights Protected in Practice	B	Existing legal framework protects rights held by 70% - 90% of the rural population
1 2	Customary Land Tenure Rights are Legally Recognized and protected in practice	B	Customary Land Tenure Rights are partly recognized and partly protected in practice
1 3(i)	Indigenous Rights to Land and Natural Resources are Legally Recognized	B	Indigenous Rights to land and Natural resources are partly recognized
1 3(ii)	Indigenous Rights to Land and Natural Resources are Protected in Practice	C	Indigenous Rights to land and Natural resources are hardly ever protected in practice
1 4	Urban Land Tenures are Legally Recognized and Protected in Practice	B	Existing legal framework recognizes rights held by 70% - 90% of the urban population

<sup>10</sup> Land Governance Assessment Framework: Implementation Manual

## Analysis

### Legal Recognition of Individual Rural Land Tenure Rights:

With the advent of the Karnataka Land Reforms Act 1961 (Reforms Act), and the Karnataka Land Revenue Act - 1964 (Revenue Act), the State abolished pre-existing land tenure models (in most cases) by simply classifying all lands as either private or public lands. Private lands, or patta land – named after the legal document issued by the Government in the name of the actual owner (or owners) of a particular plot of land, are of multiple types. Public land is an umbrella term for all lands held by the State. Examples of these lands include forestlands, common lands, lands reclaimed from encroachers, government plots.

Table 4.1.2. – Private land tenure types and corresponding laws

Private Land Tenure Types	Legal Recognition
Purchased Land	Karnataka Land Revenue Act, 1964 as amended
<b>Granted Land</b> <i>Categories of Grantees</i> <ul style="list-style-type: none"> <li>• Scheduled Castes and Tribes</li> <li>• Political Sufferers</li> <li>• Others – landless persons residing in village where the grant land is situated, persons with “insufficient” extent of land in the same village, landless persons residing in other villages, others</li> </ul>	<ul style="list-style-type: none"> <li>• Karnataka Land Revenue Act, 1964 as amended</li> <li>• Karnataka Land Grant Rules, 1969</li> </ul>
Inherited Land	Personal Laws - Hindu Succession Act, 1956, Indian Succession Act, 1925, Muslim Personal Laws
Regularized land originally encroached by poor but later regularized	Karnataka Land Revenue Act, 1964 as amended
Partial Recognition – <i>Saguvili Chit</i> Grant -government allows for cultivation to the poor but the cultivators are not owners of the land	Karnataka Land Revenue Act, 1964 as amended
<i>Bagar Hukum</i> – Unauthorized occupancy for cultivation pending regularization	Not recognized in law unless occupancy is regularized.
Concealed Tenancy - Even after the abolition of tenancy, a large number of farmers continue as tenants but without declaring so.*	Not recognized in law
Tenancy Land - tenancy has been abolished but in Dakshina Kannada, Uttara Kannada and Udupi districts some tenancy land tenures continue as they have been under litigation	The Karnataka Conferment of Ownership on <i>Mulageni</i> or <i>Volamulageni</i> Tenants Act 2011
Land given in lieu of acquisition and/or as part of rehabilitation package	Karnataka Land Revenue Act.

The Revenue Act provides the general controlling guidelines on property ownership including guidelines governing the leases and rentals of urban and rural lands. As per Section 99 of the Revenue Act, an occupant has the right to use and occupy his land for either a fixed period, determined by

tenure, or for an unlimited period of time, subject to timely payment of land revenue and compliance with provisions. If the occupant complies with the provisions of the Revenue Act, the rights that he retains over the land are inheritable in nature, and transferable to another party at the will of the occupant. Further, as per Section 95 of the Revenue Act, an occupier of agricultural land has the right to construct, either by himself or through his legal representatives or subordinates, any structures for the improvement of cultivation of the land.

Section 127 of the Revenue Act also mandates maintenance of a record of Rights with the name of persons who are holders, occupants, owners, mortgagees, landlords or tenants of the land. Further, section 128 makes compulsory the reporting of rights on land acquired by an individual succession, survivorship, inheritance, partition, purchase, mortgage, gift, and lease or otherwise. Section 129A of the Act makes it incumbent upon the state to provide every individual a patta book containing a copy of the record of rights pertaining to such land. Information on rights in agricultural land set out in the Record of rights, tenancy cultivation and crop inspection (RTC) is maintained at the village level with the copy of the RTC maintained in the office of the Tahsildar at the Taluk level.

The private land tenure typology (table 4.1.2) indicates that the current legal infrastructure provides for a comprehensive recognition of rights of rural population.

#### *Protection of Individual Land Rights in Practice*

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Individual tenures, recognized in law are sometimes not protected in practice. This occurs when the status of the land is not clearly identified in government records even while various types of tenures are held on that land. For instance, as discussed above, in one district of Karnataka, land on which the Forest Department has claimed ownership as a Reserve forest, the Revenue Department has allowed for various tenures to be established on the same land. The protection of rights that individuals hold on such lands is not guaranteed in practice as there is a possibility of eviction.

Similarly, while legal recognition of private tenures does not distinguish between male and female individual owners, thus suggesting that individual rights of both men and women are recognized in law, women's right in land is sometime not protected in practice owing to cultural reasons which prioritize ownership rights of men over those of women.

### *Legal Recognition and Protection of Customary Land Rights:*

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There seems to be no significant land ownership based on customary laws in Karnataka and hence the question of recognition of such rights does not arise. Customary rights in general exist with regard to the right to use certain category of land. There are some rare exceptions. For example: in the districts of Dakshina Kannada certain Tulu speaking castes have the concept of “deity land” which under the local customs can be jointly inherited only by the senior most female members of all the families who worship the particular deity. Generally, male members of the family do not make a claim on such land but the question remains whether law would recognize such rights enjoyed exclusively by women if the male members make a claim. However, more important issue with regard to customary rights in the context of Karnataka is a set of privileges which are customarily enjoyed by people on certain kinds of land. These privileges confer only user rights on land. In the district of Kodagu (Coorg) certain privileges are guaranteed under various customary tenure types of which *Jamma-Bane* tenure is well known. *Kumki* land in Dakshina Kannada and Udupi districts and *Soppinabetta* in Uttara Kannada are the principal tenure types which confer some kind of privileges on the farmers owning adjoining agricultural land to use the produce of such land. These lands cannot be alienated as there is no provision for transferring the title of the property. The ownership is jointly held by the family or the clan.

The Karnataka Land Revenue Act, 1964 recognizes these customary rights by stating under section 79 (2) that in the case of regulation of use of forest produce, privileges enjoyed “either by custom or under any order such as privileges in respect of *Kumki* lands, *Bane* lands and *Kane* lands in South Kanara District\*, *Betta* lands and *Hadi* lands in North Kanara District\*\*, *Kane* and *Soppina Betta* lands in Mysore Area, *Jamma* and *Bane* in Coorg District and [*Motasthal* wet lands] in [Gulbarga Area] shall continue.” Thus usufructory rights on customarily held land are recognized by section 79 of the Revenue Act. Further, Section 192-A of the Act states that the provision for categorizing unlawful entry or occupation of government lands as offence shall not apply to *Jamma*, *Bane* lands.

The Indian Easements Act, 1882 recognizes customary easements by stating that “An easement may be acquired by virtue of a local custom. Such easements are called customary easements.”<sup>11</sup> Although

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<sup>11</sup> Section 18 of Indian Easements Act, 1882

provisions of these laws show that customary rights to use certain kinds of land are recognized in law, when such land is acquired for other purposes these rights are not protected in the sense of providing adequate compensation in most cases. Similarly, there is no systematic codification of all such customary rights and privileges.

In the last few years there have been instances reported where customary inalienable rights on land are attempted to be converted into individual ownership rights in order to sell and transfer the land<sup>12</sup>. The Karnataka Land Revenue (third amendment) 2011 which received Presidential assent in early 2014, seeks to allow disposal and the sale of *Jamma* land in Kodagu. The new legislation will confer the title of 'occupant owner' in place of the earlier 'deemed owner' and allows the sale of land. Similarly, in early 2013 the government decided to confer absolute ownership of *Kumki* lands in Dakshina Kannada to farmers, ostensibly to benefit them. The government had intended to introduce an amendment to the Karnataka Land Grant Rules by inserting Rule 17B. However, the government is yet to implement this decision.

Hence, along with certain gaps in the legal recognition of customary rights, those rights guaranteed in law are also sometimes not fully protected in practice. Hence this dimension gets a score of B.

### *Legal Recognition and Protection of Indigenous Rights to Land and Natural Resources*

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The inalienable rights for certain classes of users to collect forest products and rights to nature are recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (also known as the Forest Rights Act) which is a central legislation applicable to all states in India. Section III of the Act establishes the provision for the recognition of, and vesting of, right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers. This section also recognizes rights including community tenures of habitat and habitation for primitive tribal groups and pre-agriculture communities. The section recognizes the right of ownership, access to collect, use, and dispose of minor forest produce (includes

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\* Previous name for Dakshin Kannada district; \*\* Previous name for Uttara Kannada district

<sup>12</sup> <http://www.deccanherald.com/content/346652/permission-sell-kodagu039s-jamma-lands.html>

all non-timber forest produce of plant origin) which has been traditionally collected. Finally, it seeks to recognize any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers. Specifically, the Karnataka Forest Manual lays down the provision for the Recording of Rights of forest tribes by the Forest Settlement officer.

Where land is specifically granted by the government under the Forest Rights Act to all categories of tribal groups, Section 4 of the Karnataka Schedule Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands Act), 1978, upholds the rights of these indigenous groups by prohibiting transfer of any land granted by the Government in favour of a person belonging to the Schedule Caste or Scheduled Tribe. Any such transfer is considered to be null and void and no right title or interest in such land is conveyed by such transfer.

As recently as December 2013, leaders representing tribal groups in Karnataka have alleged that Forest Rights Act has not been properly implemented in Karnataka as applications filed by many claimants seeking lands were rejected on frivolous grounds. Further, it has been alleged that lands allotted to 65 tribal families in one block of the state had been encroached upon. Also, while Section 3 of the Forest Rights Act recognizes the rights of indigenous communities to uses or entitlements of water bodies such as fish and other products, activist group claim that indigenous populations were treated as encroachers and trespassers and reportedly attacked for fishing in the backwaters of the Kabini dam part of the Kabini Reserve Forest.

The cases of loss of forest commons and forest produce in the cases of Amrit Kaval Grasslands, Bellary mining and Nagarhole Tiger reserve suggest that Indigenous rights are not adequately protected in practice although they are mostly legally recognized.

### *Legal Recognition and Protection of Urban Land Rights*

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By and large two tenure forms emerge in urban areas:

- Tenure forms emerging from community-based claims i.e. Community – Based Land Tenure forms
- Tenure forms emerging from claims by individual i.e. Individual-based Land Tenure forms

Within these, specific spatially defined tenure types emerge, such as pavements, slums, residential layouts, Municipal corporations, parks, etc.

In urban areas in Karnataka, the Karnataka City Corporations Act, Bangalore Development Authority Act (In Bangalore), Urban Development Authority Act (in other cities) and Town and Country Planning Act are the laws which recognize land rights in addition to Karnataka Land Revenue Act and Karnataka Land Grants Rules.

The indicative urban tenure typology (table 4.3), points to the fact that the current legal infrastructure provides for a comprehensive recognition of rights of urban population.

**Table 4.1.3 – Urban land tenure types and corresponding laws**

Urban Land Tenure Type	Legal Recognition
Freehold (Individual) -Ownership in Perpetuity	Karnataka Land Revenue Act as amended
Registered Leasehold (individual or community based) - The right to hold or use property for a fixed period at a given price, without transfer of ownership, on the basis of a lease contract.	<ul style="list-style-type: none"> <li>• Karnataka Municipal Corporations Act, 1976</li> <li>• The Bangalore Development Authority Act, 1976</li> <li>• The Karnataka Urban Development Authorities Act, 1987</li> </ul>
Co-operative ownership - Ownership is vested in the co-operative or group of which residents are co-owner	<ul style="list-style-type: none"> <li>• The Bangalore Development Authority Act, 1976</li> <li>• The Karnataka Urban Development Authorities Act, 1987</li> </ul>
Public Rental - Rental Occupation of publicly owned land or house	Karnataka Municipal Corporations Act, 1976
Private Rental- Rental of privately owned land or property	Karnataka Land Revenue Act as amended
Religious Tenure Systems	<ul style="list-style-type: none"> <li>• The Bangalore Development Authority Act, 1976</li> <li>• The Karnataka Urban Development Authorities Act, 1987</li> </ul>
Slum Tenure	Property Rights to Slum Dwellers Act, 2011

For Slum areas under the Karnataka Slum Clearance Board (KSCB) owners or occupiers of every building situated in any slum area can send to the prescribed authority a statement bearing details of the building and the authority on being satisfied about the correctness of the statement, should register the building issue in a registration certificate to the owner or occupier of the building. However, this does not provide security of tenure. More recent attempts to provide security of tenure for slum dwellers in Karnataka have been introduced as part of the Basic Services for the Urban Poor programme under the Jawaharlal Nehru National Urban Renewal Mission (JNNRUM).

While guidelines for housing programmes such as JNURM's Basic Services for the Urban Poor (BSUP) and Rajiv Awaas Yojana (RAY) described in detail above, claim to provide security of tenure to slum dwellers, studies carried out in certain slums of Bangalore by independent researchers (Kamath, 2012), point to the fact that BSUP continues to provide only possession certificates to slum owners as

opposed to the documents that give them rights of use over land. This suggests that slum tenure is not always protected in practice.

#### POLICY RECOMMENDATIONS

- Given the current status of recognition and protection of customary rights, there is a need to clearly document all customary land rights and to review their legal status.
- More awareness needs to generate about the provisions of the Forests Rights Act-2006.
- The rights of the indigenous people over non-forest commons such as fishing etc need to be properly recorded and recognized.
- Reclassifying, identifying and surveying all non-forest and forest common pool and property resources
- Ensuring community rights/ privileges in non-forest Common Property Resources (tanks, Soppinabetta etc.).

**INDICATOR 2: RESPECT FOR AND ENFORCEMENT OF RIGHTS**

LGI	Dimension Description	Score	Score Description
2 1	Accessible Opportunities for Tenure Individualization exist	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.
2 2(i)	Individual agricultural land in rural areas is recorded & mapped	B	Between 70% and 90% of individual land in rural areas is formally recorded & mapped.
2 2(ii)	Individual non-agricultural land in rural areas is recorded & mapped	D	Less than 50% of individual land in rural areas is formally recorded & mapped.
2 3	Individual land in urban areas is recorded & mapped	D	Less than 50% of individual land in urban areas is recorded and mapped.
2 4	The Number of Illegal Land Sales is Low	B	The number of illegal land transactions is low and some are unambiguously identified on a routine basis.
2 5	The Number of Illegal Land leases is Low	C	Existing Legal Restrictions on land leases are clearly identified but not fully justified or accepted by land users, so that compliance is partial
2 6	Recording of Women's Right to Land	C	Between 15% and 35% of land registered to physical persons is registered in the name of women either individually or jointly

*Analysis****Accessible Opportunities for Tenure Individualization:***

In Karnataka there is no legal provision for those holding land under customary or group tenure to fully or partially individualize land rights. However, collectively owned land (by Joint Families or Co-operatives) can be partitioned and land rights over the land can be individualized.

Section 128 of the Karnataka Land Revenue Act, 1964, clearly states the procedure for individualizing rights through partition. According to the Act, any person acquiring by partition any right in the land is required to report the acquisition of such right to the prescribed officer. Further the Act states that acquisition by "any person of a right in partition in respect of the land shall annex with the report a

sketch showing the metes and bounds and other prescribed particulars of such land and such person shall get the sketch prepared by a licensed surveyor.”

On receiving such information, the same is entered in the Register of Mutations. Objections are thereafter invited from all interested persons, and if no objections are received the entries pertaining to the acquisition of rights are transferred from the register of Mutations to the Record of Rights. In the event of any objections being received, an enquiry is conducted into the objections, before transferring the entry into the record of rights.

Section 111 of the Revenue Act states that when any estate paying land revenue to the State Government is to be partitioned under the decree or order of a court or otherwise, expenses properly incurred in making such partition, shall be recovered as a land revenue demand in such proportions as the Deputy Commissioner may think fit, from the sharers at whose request the partition is made, or from the persons interested in the partition.

The Department of Stamps and Registration clearly mentions on its website the procedure for registering a partition-deed as well as the stamp and registration fees applicable for registering various types of partition deeds.

Co-operative farms comprising the land held and possessed by ten or more persons of a village or two or more contiguous villages can be formed through an application to the Registrar of Co-operative societies in Karnataka. On the creation of such a cooperative farm, the possession of all lands in the village or contiguous villages held by a member is transferred to the Co-operative Farm. However, Section 92(4) of the Revenue Act states that “On the withdrawal of membership of a Co-operative Farm by any person, the possession of the lands in respect of which he had become a member shall, subject to such restrictions and conditions as may be prescribed, be transferred by the Co-operative Farm to such person”. This suggests that tenure individualization for cooperative farms exists in Karnataka.

It has been noted that with respect to land held jointly by family members sometimes members do not come forward to individualize their tenures owing to conflicts within the family relating to division of land as well a general fear and awareness of bureaucratic procedures. Thus while the law provides opportunities to fully or partially individualize group rights its implementation in practice is incomplete.

### *Recording and Mapping of Individual Land Rights on Rural Land*

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For individual agricultural land in rural areas, overall, as per current (December 2013) data available with Bhoomi data base, the number of Record of Rights (Record of Rights) across Karnataka is about 16 million while about 12 million land parcels have been mapped. This means there is a lag of about 25 per cent. Hence score B

Individual non-agricultural land, primarily residential properties within the village (known as gramathana) is neither recorded (except for tax assessment registers) nor mapped.

### *Recording and Mapping Individual Land Rights in Urban Areas*

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In Karnataka, there are no ownership records in urban areas except in the case of areas where city survey is in practice. In other places tax assessment registers may be considered to determine ownership records.

Since the Department of Survey, Settlement and Land Records in Karnataka is responsible for preparing, maintaining and preserving spatial and non-spatial data relating to ownership of properties in urban areas, it has been in the process of creating Urban Property Ownership Records (UPOR) in four cities namely Mysore, Hubli-Dharwar, Bellary and Shimoga since 2011. This project is in the initial stages and is being implemented through a Public Private Partnership (PPP) model.

### *Extent of Illegal Land Sales*

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Here Illegal Sales are those in which the sale transaction is completed but the sale deed is not allowed to be recorded in the database.

In Karnataka, only sub registrar offices are source of information as the sub-registries record sale histories. However it is difficult to get segregated data of illegal transactions from these offices as it reflects on their approach to work.

Data from the Bhoomi database provides us with information on the reasons for not recording land sales into the database. Some of the reasons constituting non registration of sale deed are shown in

the table 4.1.4. These reasons largely pertain to anomalies in the sale process which can be understood as an illegal land sale.

**Table 4.1.4 – Number of Transactions rejected during registration**

Reason for rejection	Number of transactions rejected while inserting new owner (2010-Present)
Impersonation during registration	3637
General power of attorney is not registered and invalid	463
General power of attorney does not allow transfer of rights	400
Joint holding and not all joint owners are party in the registration deed	5524
Seller is not an owner in Record of Rights	1586
Transacted property is not part of general power of attorney	301
Person not belonging to family has been included in inheritance transaction	3251
Grant/re-grant/regularization/LR grant document issued on government land seems to be duplicate	388
Value of the property is shown as less than Rs 100 to avoid the registration fee	179
Unregistered oral partition - registration fee not paid	4087
Non-alienation condition period not completed	314
Relinquishment deed not registered	2376
Certified copy of grant order not enclosed	3808
Details of intimation slip of registration and attached deed does not match	440
Will talks about property number instead of survey number	7
Proxy checklist generated	2175

### *Extent of Illegal Land leases*

Private land owners have full rights over the land, including the right to transfer the land except in the case of land granted by the government and in the case of all kinds of agricultural land. Various restrictions have been placed on the rights over agricultural land and granted land under Section 79 of the Reforms Act and the Karnataka Land Revenue Act- 1964.

However, amendments brought in 1995 to the Karnataka Land Reforms Act relaxed some of these conditions as follows,

- I. Agriculture land can be leased for aquaculture for a period of 20 years in the districts of Dakshina Kannada and Uttara Kannada up to 40 units (around 220 acre)
- II. Up to 180 acres of D Class agriculture land can be leased to housing project up to 21.6 acres can be leased for educational institution

III. Up to 108 acres of D Class land can be leased for horticulture, floriculture and agro-based industries.

Even though the restrictions on the lease of agricultural land was justified at the time when they were imposed over the years the conditions on the ground have changed and now there has been a demand for a comprehensive review of such restrictions. Moreover, the restrictions have been violated all over the state and the agricultural land is leased out on a large scale in practice.

Non-agricultural lease transactions mostly in urban areas are considered legal through the creation and registration of a lease deed as per Section 17 of the Indian Registration Act. However, as per a report on land and land planning laws in Karnataka (Alternative Law Forum, 2003), “ingenious parties, with a view to avoid payment of stamp duty often enter into an “agreement to lease” (as against a “lease deed”). The entire lease is thereby governed by the agreement to lease which requires nominal stamp duty and does not require compulsory registration under the law in force. The consequences of non-registration of a transaction which requires compulsory registration is that there exists no document which can be produced as evidence in a court of law. In this sense, such lease transactions could be considered illegal. However data to determine the extent of such transactions does not exist.

Since in both agricultural and non-agricultural land we find that even while legal restrictions are formally instituted, they are violated in various ways both in rural and urban areas either because they are not fully justified in the changed circumstances (restrictions on agricultural land) or they are not fully understood (in the case of urban property lease restrictions).

#### *Recording of Women’s Right to Land*

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Records of rights in the Bhoomi Database show that women owners constitute only about 18% of total recorded owners. Data to determine what proportion of women owners are not recorded in the database is unavailable. However, since Bhoomi Data base is restricted to rural agriculture land, the extent of women’s ownership in urban areas is not known. Fieldwork conducted by Brown, Ananthapur & Giovarelli (2002) in Karnataka on Women’s access and rights showed that in general women in Karnataka were not aware of how the registration process worked and did not seem to be very involved in the registration of land that they might have an inheritance claim to. Second, the study noted that often when the head of household dies the family continued to hold the land in his name. Third, the authors note that this practice of not updating registration records is most likely the

result of the joint- family system in which all males are considered co-owners of ancestral land. Thus they do not see a need to change the ownership records unless there is a dispute and they decide to partition the joint-family property into individual parcels. Fourth, under the Hindu Succession Act joint owners are supposed to partition out the deceased person's share at the time of his death so that it can be divided among female heirs, most importantly the dying person's widow. However, this step is not being taken and by leaving the land in the deceased's name and only partitioning it if there is a dispute, widows do not have the opportunity to assert their rights to their portion of the joint family land.

There have been some attempts by the state government to record land in the name of women. Karnataka Land Grant rules have been amended to make all future land grants in the name of both husband and wife.

#### POLICY RECOMMENDATIONS

- The procedure for individualisation of rights can be further simplified. One specific suggestion is to reduce the current 30-day notice period for confirming change of ownership (mutation) can be reduced to quicken the process.
- There is an urgent need to create digital repository of spatial data (tippans / FMBs) with geo referential co-ordinates for all agricultural lands so that land parcels can be identified and located easily both on satellite imagery and physically. This will help in tracking the developments taking place in land parcels and one can use this to analyse land use pattern and violations of zonal regulations, if any.
- There is an urgent need to create ownership records for the gramthana land on the lines of the urban property ownership records (UPOR) and to strengthen the capacity of the gram panchayat to manage these lands.
- Since there are no ownership records (except for tax assessment registers) as well as spatial data in urban areas, there is an urgent need to create the same. The Government should prioritize the UPOR project discussed above and expand this project to all urban areas across the state.
- Illegal transactions can be controlled by following measures
  - Build electronic integration among the different systems so that fake documents are not used for transacting land parcels.

- Avoid dual identities for same land parcel.
- Stop impersonation during registration using bio-metric credentials of sellers and buyers.
- Government land/ public lands need to be clearly identified in land records database and no transactions on these land parcels should be allowed.
- Restrictions on leasing out agricultural land may be relaxed.
- In order to check leasing out urban land/property without registration, the registration procedure can be simplified.

Urban Property Ownership Records project should be completed on a priority basis and must identify women property owners as a separate category.

## 4.2. Panel 2: Rights to Forest and Common Lands & Rural Land Use

### 4.2.1. Panel Context

#### *Introduction*

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Karnataka state has a geographical area of 191791 sq km of which 43356.47 sq km has been identified as forest, including both notified and deemed forest. The area of Notified Forest is 33331.56 sq km. which includes Reserved Forests, Protected Forests, Village Forests and Private Forests. The remaining is categorized as Deemed Forest measuring about 10024.91 sq km. Non Forest related common lands in Karnataka can be divided into major and minor commons. The management of all types of Forest land comes under the Forest Department of the state. Joint Forest Management programme has been a key intervention in the management of forest lands. The non-forest common lands are managed by the Revenue Department and the local bodies. People's right to the forest land and forest produce, especially in the case of indigenous groups, has been a contentious issue in Karnataka as it was elsewhere in the country. The Forest Rights Act 2006 was a major step taken by the Union Government in addressing this problem and the Act has been under implementation in Karnataka too. The official reports, however, point to a rather slow progress in conferring rights to the claimants under this Act. Karnataka has made some progress in implementing the Joint Forest Management Project. As regards, non-forest common land, there has been a considerable confusion with regard to their identification. The legal and institutional mechanisms which govern such land have also been marred by a lack of clarity. Given this state of affairs, there have been large scale encroachments on and diversion of both forest land and non-forest common lands. Multiplicity of laws and institutions with overlapping jurisdictions has complicated the problems associated with the rights to forest and common land.

Rural land use and planning also seem to be an area in need of urgent attention of the government. There are a series of restrictions on rural land use and these restrictions have been imposed to serve public interest but their enforcement has been generally weak. Rural local self-governments which are vested with the land use planning function do not have the capacity to carry out this function effectively, nor is there any monitoring of plan implementation in rural areas.

Some of these general issues pertaining to forest land, common land and rural land use are discussed in the rest of this section. The next section will analyse a set of indicators focussing on more specific areas of strengths and weaknesses relating to forest land, common land and rural land use.

### *Implementation of Forest Rights Act*

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Before the Forest Rights Act was implemented in 2006, forest settlement officers would declare demarcated areas under the Forest Act and the Wildlife Protection Act as being “settled” to honour the rights of peoples occupying or depending on those areas. This mechanism was found untenable in divesting the large number of claims. The Forest Rights Act was implemented to create a framework to recognize and vest rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers who had been residing in those forests for many generations, but whose rights could not be recorded or formalized.<sup>13</sup>

The administrative authorities under the Act have all been established in Karnataka so far, Gram Sabhas have set up 2,251 Forest Rights Committees across the state. According to the Status Report issued by the Union Tribal Affairs Ministry in September 2013, 1,65,638 individual claims and 3,080 community claims were received under the Forest Rights Act in Karnataka. Of these, 6,487 individual titles and 90 community titles, amounting to a total of 34,856.77 acres of land, have been disposed of.<sup>14</sup> Karnataka ranks very low in the proportion of titles distributed to claims received. While one of the reasons for this could be the large number of spurious claims from “other traditional forest dwellers (OTFDs)” (totaling to 1,41,531 claims), media reports have repeatedly suggested that the implementation in terms of processing and transferring title has been found severely wanting. It appears that the clarification that OTFDs need not prove 75 years of residence on that precise plot of land for which the claim is being made, as opposed to residence in that “area”, has not had any impact on their claims for ownership.<sup>15</sup> Further, the difficulties of community management of land have been exaggerated by the delay in identifying tribal habitats (and on occasion, misidentifying them, as was

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<sup>13</sup> S. Lele, *A Defining Moment for Forests?* 42(25) ECONOMIC & POLITICAL WEEKLY 2379-2383 (June, 2007).

<sup>14</sup> Status Report of the Ministry of Tribal Affairs on the implementation of the Forest Rights Act, found at <http://tribal.nic.in/WriteReadData/CMS/Documents/201311011205276091728MPRforthemonthofSeptember2013.pdf>

<sup>15</sup> M. Ramnath, *Surviving the Forest Rights Act: Between Scylla and Charybdis* 43(9) ECONOMIC & POLITICAL WEEKLY 37-42 (Mar, 2008).

the case with the *Betta Kuruba* community, who were wrongly identified under the generic class of *Kadu Kurubas*) under Schedule V of the Constitution.

### *Joint Forest Planning and Management Programme*

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The National Forest Policy, 1988 shifted the forest conservation debate beyond the sole prerogative of industrials and cultivators by highlighting the urgent need to protect and preserve forests for their own sake with the necessary involvement of village communities in the regeneration of degraded forest lands. Karnataka was one of the earliest states to issue a Government Order in 1993 for the implementation of the programme for the protection and management of degraded forests with a canopy density less than 0.25, and to provide a 50% share in forest produce to Village Forest Committees (VFCs) set up in JFPM areas. Since then, even wastelands that are transferred by the Revenue Department for the implementation of programme, and non-forest land in the control of the Forest Department such as roadsides and canal foreshores, have also come within the ambit of the JFPM. National Parks and Wildlife Sanctuaries fall outside the scheme of the JFPM (Lele, 1998).

Amendments to the JFPM programme in 1996 sought to introduce gender equity by providing co-membership of spouses to Village Forest Committees and also went on to revoke the canopy density limitation for forest areas chiefly inhabited by Scheduled Tribes. As observed earlier, the Karnataka Forest Act was amended to provide a statutory backbone to the JFPM programme. A comprehensively revised G.O. was issued in 2002 to enhance share proportion from 50% to 90% in respect of non-timber forest produce, and 75% in plantation assets.<sup>16</sup> The 2002 order also raised the mandatory representation of women and marginalized groups in VFCs to 50% and 60% respectively. Over the last two decades, nearly 5,200 VFCs were constituted, bringing around 340000 hectare of degraded forests under the JFPM.<sup>17</sup>

Between 1992 and 2000, the JFPM programme was implemented in the Western Ghats largely under the aegis of the British Department for International Development. Of a total plantation area of 56,632 ha, JFPM was implemented in 20,835 ha at a cost of Rs 110 crore, leading to the creation of about 600

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<sup>16</sup>[http://www.karnatakaforest.gov.in/English/joinedforest\\_managenemt/jfpm\\_scheme.htm](http://www.karnatakaforest.gov.in/English/joinedforest_managenemt/jfpm_scheme.htm)

<sup>17</sup>[http://www.karnatakaforest.gov.in/English/joinedforest\\_managenemt/jfpm\\_pre.htm](http://www.karnatakaforest.gov.in/English/joinedforest_managenemt/jfpm_pre.htm)

VFCs. The Japan-funded Eastern Plain forestry project began in 1996 across 23 districts, aiming to cover 1,97,000 ha of forests under 4,000 VFCs at a cost of Rs. 1240 crore.

There are several issues with the JFPM programme as it exists. By restricting the lands that the JFPM would apply to, problems of open access continue to remain in forests with a greater canopy cover and in lands such as gomaalas, assessed wastelands and other lands which are similar in nature to forest lands, but under the control of the Revenue Department (Kolavalli, 1995). A significant portion of forested lands in the Western Ghats are under “individual access” systems (soppina bettas, kumkis, baanes etc.), whereby only certain households have exclusive rights over use. Bringing these lands under the JFPM has been problematic. The common mistake under all these programs is the mantra of “plantations first, JFPM afterwards”, replicating the flaws of the 1980s social forestry projects (Lele, 2001).

### *Rights to Common Property Resources*

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Common lands vary significantly in their location and density across the state, and exact data regarding each of the categories of common land is unavailable at the village-, taluka-, or even district-level.

Constrained by the absence of the direct typological data, the land use data published by the Department of Economics and Statistics is the closest to an approximation of the extent of these lands, but critically this does not portray the range of access rights, being simply divided as forests, pastures and fallow/cultivated wastelands. The mapping of the condition of these lands has been made difficult by the lack of reference points.<sup>18</sup> To quote an example, “a gomaal with zero canopy cover will look ‘degraded’ in the eyes of the forester and will register low on measures of forest cover, but this gomaal may be fully meeting local needs.” As a result, there is widespread misclassification on official maps with say, grasslands getting misclassified as ‘degraded scrub’.<sup>19</sup> The most important consequence of data inadequacy, both in terms of its insufficiency as well as

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<sup>18</sup> Robinson, E. J. Z. (2008). India’s disappearing common lands: Fuzzy boundaries, encroachment, and evolving property rights. *Land Economics*, 84(3), 409–422.

<sup>19</sup> S. Lele, S. Purushothaman and S. Kashyap, *Village Commons, Livelihoods and Governance: An Assessment of Karnataka’s Experience*, in S. Purushothaman and R. Abraham (eds.) *LIVELIHOOD STRATEGIES IN SOUTH INDIA: CONSERVATION AND POVERTY REDUCTION IN FOREST FRINGES* (2014).

inaccuracy, is that the allocation of institutional roles and responsibilities is severely scuttled.

Another consequence of this incompleteness in mapping these land resources is that most transactions in this space are shrouded in informality – either due to improper surveying, or illegality – due to large-scale encroachments. Both the Revenue Department and the Forest Department have taken advantage of this allowing them to claim, illustratively, forest lands in Chikmagalur for coffee planters, and lands reserved for grazing. The reports of the AT Ramaswamy<sup>20</sup> and Balasubramanian Committees<sup>21</sup> have documented the grabbing of more than 10 lakh hectares of Government land. Even after the enactment of the Forest Conservation Act, the last round of forestland regularization in 1997 which was categorized as pre-1980 encroachments, close to 15000 hectares were regularized.<sup>22</sup> In this environment, encroachment of these lands has become so pervasive, as much due to poverty as due to greed, that officials have taken to suggesting that the only effective way to regulate them would be to legislate upon and regularize these illegal encroachments.<sup>23</sup> Nevertheless, there has been a steady decline even in officially recorded figures of encroachment due to land grant programmes as well as mining, dams, wind farming and other industrial activities.<sup>24</sup> Though there is the straightforward economic argument in favour of conversion of common lands to private agricultural plots, i.e., that the yield is much greater when these lands are individually maintained, it does not and cannot accurately take into account the impact of the conversion on the rest of the community also dependent on it. The worst hit of all common land resources are permanent pastures, which are not borne down by proscriptions under the Forest Conservation Act, 1980.<sup>25</sup>

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<sup>20</sup> Part I found here

[http://www.indiawaterportal.org/sites/indiawaterportal.org/files/AT%20Ramaswamy%20JLC\\_Encroachment%20of%20Bangalore%20Urban%20Lands\\_Interim%20Report%201\\_Feb%202007.pdf](http://www.indiawaterportal.org/sites/indiawaterportal.org/files/AT%20Ramaswamy%20JLC_Encroachment%20of%20Bangalore%20Urban%20Lands_Interim%20Report%201_Feb%202007.pdf) and Part II here, [http://www.indiawaterportal.org/sites/indiawaterportal.org/files/AT%20Ramaswamy%20JLC\\_Encroachment%20of%20Bangalore%20Urban%20Lands\\_Interim%20Report%202\\_July%202007.pdf](http://www.indiawaterportal.org/sites/indiawaterportal.org/files/AT%20Ramaswamy%20JLC_Encroachment%20of%20Bangalore%20Urban%20Lands_Interim%20Report%202_July%202007.pdf)

<sup>21</sup> Found here <http://bangalore.citizenmatters.in/docs/2011/GoKVBalaTaskForceReport.pdf>

<sup>22</sup> <http://www.deccanherald.com/content/340783/need-integrated-land-use-policy.html>

<sup>23</sup> S. Lele, *Private Property Rights and Forest Preservation in Karnataka, Western Ghats, India: Comment 75* AMERICAN JOURNAL OF AGRICULTURAL ECONOMICS 492-495 (May, 1993).

<sup>24</sup> Nadkarni, M. V. (1990). Use and management of common lands: Towards an environmentally sound strategy. In C. J. Saldanha (Ed.), *Karnataka state of environment report IV* (pp. 31–53). Bangalore: Centre for Taxonomic Studies, St. Joseph's College.

<sup>25</sup> Menon, A., & Vadivelu, A. (2006). Common property resources in different agro-climatic landscapes in India. *Conservation and Society*, 4(1), 132–154.

The most recent instance of large scale change of land use is the case of the diversion of grasslands in Challakere taluk in the Central Karnataka District of Chitradurga to various research organizations such as the Defence Research & Development Organization and Indian Institute of Science, to a smaller extent to a private investor for a solar plant, and to the Karnataka Housing Board.<sup>26</sup> Predictably, the community of nomadic shepherds who rely on the land, and the government, have locked horns over whether the land was categorized as *amrit mahal kaval*, which falls under the category of district forests, or unassessed wasteland, maintained by the Animal Husbandry department.<sup>27</sup> It has been reported that these grasslands, spanning 4,856 ha are the largest remaining contiguous grasslands in the state. Since Independence, the extent of grasslands has fallen from nearly 1,61,874 ha to a mere trifle of 18,210 ha.<sup>28</sup> This instance simply reiterates the collateral damage that results from relying on “bad” data to govern over land, and raises the urgent need to clarify on the distribution of these public and semi-public lands.

Another recent issue has been the amendment to the Karnataka Land Revenue Act to permit the alienation of *jamma* land, a type of a common property resource, in the Kodagu district.<sup>29</sup> The ownership of these lands was in the hands of the clan, and it was managed by the *pattedara*, the head of the clan. Previously, the cultivator of these lands was only a ‘deemed owner’, but the new legislation has conferred him the title of ‘occupant owner’ and allows the sale of land. The legislation would legitimize the large-scale denudation of trees, and the increased human habitation that would result from this move would severely impact the flora and fauna of the adjoining forestlands. The alienation of these lands deeply disrupts local livelihoods, displacing indigenous communities that had collectively enjoyed the benefits of these lands for several centuries.<sup>30</sup>

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<sup>26</sup> <http://www.downtoearth.org.in/content/graziers-protest-land-diversion>

<sup>27</sup> Krishna Murthy, T. S. (1989). History of Amruth Mahal Kaval Lands in Karnataka. Proceedings of the Workshop on Rangelands Revegetation Project. Bangalore.

<sup>28</sup> <http://www.downtoearth.org.in/content/graziers-protest-land-diversion>

<sup>29</sup> <http://www.deccanherald.com/content/346652/permission-sell-kodagu039s-jamma-lands.html>

<sup>30</sup> See also G.K. Karanth, *Privatization of Common Property Resources: Lessons from Karnataka* 27(31/32) ECONOMIC & POLITICAL WEEKLY 1680-1688 (Aug, 1992).

### *Rural Land Use: Restrictions and Public Interest*

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The Karnataka Land Revenue Act lays down the land revenue administration in Karnataka, which includes the assessment and settlement of revenue, the procedure for collection of revenue, the creation of necessary authorities, determinations on the status of certain public lands, a framework for grant of land and the procedure for conversion of agricultural land into non-agricultural land. Over time, the Act has been amended several times to create and preserve green belts around towns and cities, to vest minerals in the State to curb illegal mining, for enabling the Revenue Department to update village, taluka and district boundaries, and on many separate occasions, regularizations of unauthorized occupation and conversion. The Act is supplemented by the Land Grant Rules that determine the beneficiaries of the grant programmes of the State.

The Karnataka Town and Country Planning Act was enacted to set up a uniform law for the regulation of planned growth of land use and development by making and executing town planning schemes in the state. The legislation mandates the maintenance of a land use map, and establishes planning authorities to develop outline development plans and master plans, and enables them to execute these plans by empowering planning authorities to acquire lands as necessary, subject to the prior approval of the plans by the state government.

#### 4.2.2 Assessment and Score

This section analyses in detail the specific elements related to the rights to forests and common lands; and rural land use in Karnataka. These elements are divided into Indicators which in turn are broken down into several Dimensions. Indicators provide a relatively exhaustive assessment of relevant land governance issues through specific dimensions which define areas for investigation, quantitative measurement or qualitative assessment.<sup>31</sup>

##### **Land Governance Indicator 1. Rights to forest and common lands**

LGI	Dimension Description	Score	Score Description
1	1(i) Forests are clearly identified in law and responsibility for use is clearly assigned	B	Forests and common lands are clearly identified, responsibility for land use is clearly identified but implementation is ambiguous.
1	1(ii) Common lands are clearly identified in law and responsibility for use is clearly assigned	D	Common lands are not clearly identified and responsibility for land use is not defined
1	2 Rural group rights are formally recognized and can be enforced	D	The tenure of most groups in rural areas is not formally recognized
1	3 Users' rights to key natural resources on land (incl. fisheries) are legally recognized and protected in practice	D	Users' rights to key natural resources are not legally recognized and often not protected in practice
1	4 Multiple rights over common land and natural resources on these lands can legally coexist	C	Co-existence is possible by law but rarely respected in practice.
1	5 Multiple rights over the same plot of land and its resources (e.g. trees) can legally coexist.	C	Co-existence is legally possible but rarely respected in practice
1	6 Multiple rights over land and mining/ other sub-soil resources located on the same plot can legally coexist	C	Co-existence is possible by law but rarely respected in practice
1	7 Accessible opportunities exist for mapping and recording of group rights	D	Although there is demand, the law provides no opportunities for those holding group land under customary, group, or collective tenures to record and map land rights
1	8 Boundary demarcation of communal land	C	10-40% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated claims recorded

<sup>31</sup> Land Governance Assessment Framework: Implementation Manual

## Analysis

### *Identification of Forest Land and Responsibility for its Use*

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**Forests**, as such, are not defined under a central or state legislation. In T. N. Godavarman's case ((1997) SCC 267), the Indian Supreme Court held that "the word forests must be understood according to its dictionary meaning [the Oxford English Dictionary defines 'forest' as an extensive tract of land covered with trees and undergrowth, sometimes interlined with pasture]. This description covers all statutorily recognized forests, whether designated as reserve, protected or otherwise ... The term will not only include forest as understood in the dictionary sense, but also any area recorded as forest in government record irrespective of the ownership." The **KARNATAKA FOREST ACT, 1963**, which is in pari material with the INDIAN FOREST ACT, 1927, creates a four-fold classification of forests, namely **Reserved Forests, Protected Forests, Village Forests** and **District Forests**.

Under Section 3, the State Government may constitute land that is the property of the Government, of any part of forests over whose produce the Government is entitled as a **Reserved Forest**. The Forest Settlement Officer will then publish the limits of the proposed forest area so as to facilitate the raising of claims over the use of that land. The Officer then assesses entitlements of rights of way, pasturage, produce and water resources made by the claimants, and disposes of them by providing some other reasonably convenient means of realizing these rights on another plot of land or by excluding those lands from the purview of reserved forests, or permit the claimants to continue to enjoy these rights to an admitted extent according to such rules framed by them. Under Section 20, no right can be acquired in or over a reserved forest, except by succession, grant or a contract by the Government or a person in whom the power to create such a right was vested by the Forest Settlement Officer while settling claims over the land. Under Section 21, no alienation by sale, lease, mortgage or otherwise can be carried out without the sanction of the State Government, except when such land is appendant to any land or building that is being sold. Acts prohibited in Reserved Forests are enumerated under Section 24. Broadly, these cover the destruction of the forest resources, clearance of forestland, damages forest fencing so on and so forth, in contravention of the rules set by the State Government. The State may also grant privileges for *use*, as opposed to export or merchandizing.

The State Government may constitute lands at the disposal of the Government as a **Village Forest** for the benefit of a village community, or a group of communities. The State Government may make rules

to regulate the management of these forests under Section 30 by prescribing conditions under which the *community or a group of communities* may avail of forest produce or pasture. **District Forests** include all land at the disposal of Government not included within the limits of any reserved or village forests nor assigned at the survey settlement as free grazing ground or for public or communal purposes. Privileges and rules are assigned to *persons* in the same manner as they are in the case of Village Forests. Some district forests may be deemed as **Protected Forests** in view of their subsequent settlement and constitution as a reserved forest, with conditions placed on their use. In protected forests, the rights over use shall continue as they were before the assignment, unless changed by the State Government. On occasion, the Wildlife Protection Act is invoked to demarcate forest lands as national parks, sanctuaries or tiger reserves.

The **SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006** is a Central legislation that was implemented to create a framework to recognize and vest rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers who had been residing and cultivating in those forests for many generations, but whose rights could not be recorded or formalized. Section 3 of the Act endows these forest inhabitants with *title rights* over land that is already being farmed by tribal or forest dwellers (subject to a maximum of 4 h.a.), *use rights* over minor forest produce and pasturage, *rehabilitation rights* that protect them against forced displacement and involves them in community forest management. It is important to clarify that no new lands are allocated to these communities, but simply recognizes their rights over lands they are already cultivating. The Karnataka Forest Manual directs the Forest Settlement Officer to update the Record of Rights to reflect the vesting of forestlands to members of these communities.

Karnataka was one of the earliest states to issue a Government Order in 1993 for the implementation of the programme for the protection and management of degraded forests with a canopy density less than 0.25, and to provide a 50% share in forest produce to Village Forest Committees (VFCs) set up in JFPM areas. Since then, even wastelands that are transferred by the Revenue Department for the implementation of programme, and non-forest land in the control of the Forest Department such as roadsides and canal foreshores, have also come within the ambit of the JFPM. National Parks and Wildlife Sanctuaries fall outside the scheme of the JFPM (Lele, 1998).

Amendments to the JFPM programme in 1996 sought to introduce gender equity by providing co-membership of spouses to Village Forest Committees and also went on to revoke the canopy density

limitation for forest areas chiefly inhabited by Scheduled Tribes. As observed earlier, the Karnataka Forest Act was amended to provide a statutory backbone to the JFPM programme. A comprehensively revised G.O. was issued in 2002 to enhance share proportion from 50% to 90% in respect of non-timber forest produce, and 75% in plantation assets.<sup>32</sup> The 2002 order also raised the mandatory representation of women and marginalized groups in VFCs to 50% and 60% respectively. Over the last two decades, nearly 5,200 VFCs were constituted, bringing around 3,40,000 ha of degraded forests under the JFPM.<sup>33</sup>

Between 1992 and 2000, the JFPM program was implemented in the Western Ghats largely under the aegis of the British Department for International Development. Of a total plantation area of 56,632 ha, JFPM was implemented in 20,835 ha at a cost of Rs 110 crore, leading to the creation of about 600 VFCs. The Japan-funded Eastern Plain forestry project began in 1996 across 23 districts, aiming to cover 1,97,000 ha of forests under 4,000 VFCs at a cost of Rs 1240 crore). Around twenty odd minor state- and centrally sponsored schemes are also under implementation (Rao, 2002). There are several issues with the JFPM programme as it exists. By restricting the lands that the JFPM would apply to, problems of open access continue to remain in forests with a greater canopy cover and in lands such as *gomaalas*, assessed wastelands and other lands which are similar in nature to forest lands, but under the control of the Revenue Department (Kolavalli, 1995). Furthermore, a significant portion of forest lands in the Western Ghats are under “individual access” systems (*soppina bettas*, *kumkis*, *baanes* etc.), whereby only certain households have exclusive rights over use. Bringing these lands under the JFPM has been problematic. The common mistake under all these programs is the *mantra* of “plantations first, JFPM afterwards”, replicating the flaws of the 1980s social forestry projects (Lele, 2001).

#### **POLICY RECOMMENDATIONS:**

- All types of forest and non-forest common property resources need to be surveyed and boundaries clearly demarcated.
- The rights of various indigenous and non-indigenous groups to the forest and non-forest commons should be clearly enumerated and recognized.

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<sup>32</sup>[http://www.karnatakaforest.gov.in/English/joinedforest\\_managenemt/jfpm\\_scheme.htm](http://www.karnatakaforest.gov.in/English/joinedforest_managenemt/jfpm_scheme.htm)

<sup>33</sup>[http://www.karnatakaforest.gov.in/English/joinedforest\\_managenemt/jfpm\\_pre.htm](http://www.karnatakaforest.gov.in/English/joinedforest_managenemt/jfpm_pre.htm)

### *Identification of Common Land and Responsibility for its Use*

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**Common lands** broadly cover all lands under common use. There is no single category or classification of land use that corresponds to *all* of these lands. Various, they are classified as forestland, grazing land, gram Sabha land, gram panchayat land, or simply, “wasteland”, with the only common feature that unites all of them being that they are government-owned (Gopalakrishnan, 2012). Depending on the type of common land in every individual case, they may either be governed by forest laws or revenue laws. The **KARNATAKA FOREST RIGHTS ACT, 1963** does not explicitly refer to customary rights over the use of land, except in the context of permitting them in the case of private forests, without prejudice to the power of the State Government to legislate over them if the need arises. In the case of other forests, a forest settlement officer records and assigns rights over the use of forest land or produce to individuals. The Act is silent on the basis for the right claimed by an individual, though ostensibly these rights may be customary. However, the Act has the detrimental effect of reducing a customary right over the use of these lands to individualized lands, without recognizing them as common property resources.

Under Section 67 of the **KARNATAKA LAND REVENUE ACT, 1964**, all lands that are not the property of individuals or an aggregate of persons, and all public roads, paths, rivers and streams, are declared to be the property of the State Government. Most common lands fall under this category. Section 71 empowers the Survey Officers and the Deputy Commissioner to set apart lands that are the property of the State Government for free pasturage for village cattle, for forest reserves or for any other public purpose. Specifically regarding certain types of common lands, Section 79 recognizes and ratifies privileges that are enjoyed by custom or any other order in respect of *Kumki* lands, *Bane* lands and *Kane* lands in South Kanara District, *Betta* lands and *Hadi* lands in North Kanara District, *Kane* and *Soppina Betta* lands in Mysore Area, *Jamma* and *Bane* in Coorg and *Motasthal wetlands* in the Gulbarga areas, exempting them from rulemaking addressed at the regulation of the supply of firewood and timber for domestic or other purposes (subject to special orders). Thus, we see that these common lands are neither identified in law, nor does any statute clarify the responsibility for their use.

Broadly, the table 4. 2.1 illustrates the range of forests and common lands in Karnataka, with their use described as understood customarily –

Table 4.2.1: Forest and non forest common land in Karnataka

"Pure" Forests	For instance, wildlife sanctuaries, biodiversity reserves and national parks.	The general public usually does not have any access or use rights.
<b>Forest-related commons</b>	Reserve forests (primarily in Southern and Northern <i>maddur</i> of Karnataka), minor forests (primarily in Uttara Kannada) or protected forests. Individual or group-access forest lands such as – <ul style="list-style-type: none"> <li>• <i>Soppina Bettas</i></li> <li>• <i>Kumkis</i></li> <li>• <i>Jamma-Baane</i></li> </ul> Parts of sanctuaries and national parks.	Users have rights as stipulated by the Forest Settlement Officer or the State Government. <ul style="list-style-type: none"> <li>• <i>Soppina bettas</i> are patches of forest assigned to arcane cultivators in the Western Ghats. Cultivators collect the biomass necessary for its cultivation from these lands. Sometimes, they may be open to the village community for cultivation.</li> <li>• <i>Kumkis</i> are government wastelands where the entire community may collect minor forest produce. There is a pending proposal to vest these lands absolutely to poor farmers by amending the Land Revenue Act.</li> <li>• <i>Baane</i> lands are forest lands adjacent to <i>jamma</i> land that was hereditarily granted to wet-rice farmers in the Coorg district. Minor forest produce may be collected by groups of households.</li> </ul> Users have rights to minor produce on conditions stipulated by the State Government.
<b>Major non-forest commons</b>	<ul style="list-style-type: none"> <li>• <i>Gomaala</i></li> <li>• <i>Amruth Mahal Kavals</i></li> <li>• <i>Hullu-Banni</i></li> <li>• Assessed Wastelands</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Gomaala:</b> These are grazing lands primarily found in the Shimoga district which feature open community access.</li> <li>• <b>Amruth Mahal Kavals:</b> Originally meant for grazing by a special breed of cows brought by the Mysore king, these lands are usually reserved for state use, but may sometimes be open for community access.</li> <li>• <b>Hullu-Banni:</b> Grasslands with the 'banni' trees, i.e. <i>prosopis spicigera</i>, which are considered sacred, found mainly in the Northern plains, available for community access.</li> <li>• <b>Assessed Wastelands:</b> Primarily found in Dakshina Kannada, these lands are usually used as pasturage.</li> </ul>
<b>'Minor' non-forest commons</b>	<i>Parambog</i> (areas permanently open to public use, e.g. rivers, roads), <i>gundu-thopu</i> (small plantations), <i>gramthaanas</i> (settlement areas), <i>kere-angala</i> (lake foreshores), <i>smashaana</i> (graveyards, crematoriums), etc. which are typically administered by the <i>gram panchayats</i> . These lands are not typically "used" as pasturage or for biomass unlike the other categories.	
<i>Source: DES Nine-fold Classification of Land Use (Saldanha, 1986)</i>		

Chapter X of the **KARNATAKA FOREST MANUAL, 1976** recognizes customary privileges that forest villagers enjoyed, cautioning that these privileges are *not* to be understood as rights, classing them into two categories – general privileges that extend to all districts, and special privileges that apply to North Karnataka, Shimoga, Chikmagalur, Mysore and Hassan. The produce that is removed in the exercise of these privileges cannot be bartered or sold. Special privileges are granted for cultivation in areas that are otherwise restricted. A full list of extant privileges and villages to which it extends is found in

the Manual.<sup>34</sup> The enjoyment of these privileges cannot be understood as enforceable entitlements, and do not improve the security over the use of these lands.

### POLICY RECOMMENDATIONS

- The overlapping jurisdictions between the forest and revenue departments over certain kinds of common land should be cleared once for all.
- The forest common pool and property resources should be identified and surveyed with clear specification of different community uses of each type of commons.

#### Recognition and Enforcement of Rural Group Rights

As discussed in the previous section, the **KARNATAKA LAND REVENUE ACT** recognizes the existence of common property land resources whose use is regulated by custom. Under custom, access to these lands is largely open and rights have evolved to vest with the *entire* village community around the commons. Section 72 clarifies that in the context of free pasturage, only herders from that village, and no other, shall have the rights of grazing. In some commons, such as *soppina bettas*, which are usually privately held, the use is sometimes restricted to a few households that cultivate areca-nut on nearby plots (Lele, Purushothaman and Kashyap, 2013). Group rights over common lands, understood in the sense of rights belonging to a particular community, are therefore not *formally* recognized or enforced.

The stated purpose of the **FOREST RIGHTS ACT, 2006** is to recompense the historical injustice faced by Scheduled Tribes and other forest dwelling communities, arising from the sustained threat they were facing in the use and enjoyment of rights over land that they had been inhabiting over several generations. While one legacy of the Act has been the individualization of these customary rights, it is significant to note that many of the rights recognized by Section 3 are in the nature of community rights. Not only is the right to hold and live claimable for common occupation, it includes the right over minor forest produce, and community rights over fishing and grazing. Most importantly, these communities are indispensable in conservation and management of these forests, and their right to participate in this process is codified under the Act (Section 3(i) and 5), independent of existing Joint

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<sup>34</sup> Available at [http://bandipurrtigerreserve.in/docs/KFD\\_Manual\\_1976.pdf](http://bandipurrtigerreserve.in/docs/KFD_Manual_1976.pdf).

Forest Planning & Management Programmes. However, the status report for the implementation of the Act published by the Tribal Affairs Ministry in September 2013 reveals community rights are hardly ever realized in Karnataka.<sup>35</sup> In fact, they constitute only 2% of the total applications received (i.e. 3,080 community claims as opposed to 1,65,638 individual claims) and only 90 such titles have been granted under the Act. As State Governments have primarily viewed the Act as one that settles land *title* claims, the realization of community rights over land resources has been severely under-realized, as predicted by scholars in the early days of the Act (Ramnath, 2008).

Thus we see that rural group rights are almost formally absent in the case of customary lands, but do exist in the case of some forestlands under the Forest Rights Act, though only in the Statute books.

### POLICY RECOMMENDATIONS

- There is a need to create awareness about the means of formalizing group rights over common land under the Forest Rights Act, 2006

#### *Recognition and Protection of Users' rights to key natural resources on land (incl. fisheries)*

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Common property resources exist to ensure community access to key natural resources, be it for grazing, collection of biomass towards cultivation, for minor forest produce subject to levies by the Revenue or Forest Department, as appropriate, or for fuel wood and fodder for personal consumption. As stated earlier, the existing framework of revenue laws implicitly accepts these rights and only explicitly lays down provisions that either, (i) empower the State Government to facilitate the regulation of their use, through the offices of the Deputy Commissioner (or the local Grama Panchayat under the **PANCHAYATI RAJ ACT, 1993**), or (ii) restrict the use of certain common resources - for instance, Section 72, **KARNATAKA LAND REVENUE ACT**, holds that the right of grazing on free pasturage lands only extends to cattle of the village or villages to which those lands have been assigned and will be subject to rules made, generally or for particular instances, by the State Government. The unauthorized

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<sup>35</sup> The Ministry of Tribal Affairs - Government of India, Status Report on Implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending in September, 2013], available at <http://tribal.nic.in/WriteReadData/CMS/Documents/201311011205276091728MPRforthemonthofSeptember2013.pdf>

removal of natural resources from these lands is punishable under Section 74. The definition of “land” under Section 2 of the Karnataka Land Revenue Act includes fisheries, though the rest of the Act does not contemplate any specific regulation in that regard. The Forest Rights Act formalizes some customary fishing rights for selective communities under Section 3. All other inland fishing is regulated by the **KARNATAKA INLAND FISHERIES (CONSERVATION, DEVELOPMENT AND REGULATION) ACT, 1996**. Under Section 3 of the Act, no person is entitled to fish in any waters except under the terms and conditions stipulated by the license granted for that purpose by the local authority.

Therefore, users’ rights to key natural resources in common lands are not statutorily validated, but rules framed by administrative authorities under some statutes *facilitate* the enjoyment of these rights, without any provisions that specially uphold a right over these resources (except in the Forest Rights Act which are limited in their scope only to certain classes of users, and only in respect of certain classes of rights).

**POLICY RECOMMENDATIONS:**

- Amendments should be made to all the relevant statutes to recognize community rights/privileges in non-forest Common Property Resources (tanks, *Soppina bettas* etc.)

Table 4.2.2: No of RTCs with more than one rights recorded in various districts

District	Total No of RTCs	No of RTCs with one or more rights recorded	Percentage of RTCs with one or more rights recorded
Belgaum	1095927	477376	43
Bagalkot	418798	81829	19
Bijapur	580759	149430	25
Gulbarga	468430	65208	13
Bidar	306406	52649	17
Raichur	450353	56251	12
Koppal	315945	36141	11
Gadaga	278581	63800	22
Dharwad	371871	71458	19
Uttara Annada	567113	282533	49
Haveri	443068	167094	37
Bellary	574632	101868	17
Chitradurga	476041	48767	10
Davanagere	457825	48269	10
Shimoga	370143	35686	9
Udupi	917931	237356	25
Chikmagalur	450830	148021	32
Tumkur	1133623	71587	6
Kolar	538976	49325	9
Bangalore Urban	275476	44170	16
Bangalore Rural	312341	63808	20
Mandya	1466080	174941	11
Hassan	957088	62913	6
Dakshina Kannada	911659	390534	42
Kodagu	270241	23046	8
Mysore	684771	86634	12
Chamarajnagar	337445	23969	7
Chikkaballapur	454742	40326	8
Ramanagar	406763	55923	13
Yadgir	258241	23519	9

### *Co-existence of Multiple rights over common land and natural resources*

Multiple rights arise from the variety of uses that accrue from a common property land resource. These have been discussed in previous sections in the context of commons resources on open-access government land - where these various rights are not addressed, and forests – where these rights are enumerated in the context of the Forest Rights Act. In both case, the management of rights takes place through orders passed by local authorities. Besides these rights, easement rights such as the right of way, right to fruit are protected in common law. Thus, disputes if any are resolved against the local

government, as these multiple rights are individualized to each user or aggregate of users. Data is not at hand to make conclusive remarks about the rate of resolving disputes concerning the existence and exercise of these rights. The Bhoomi database provides details of Records of Rights registered in the name of more than one user (Table 4. 2.2). While that is not directly translatable into an affirmation of rural group rights, the data illuminates our understanding of collective ownership.

#### *Co-existence of Multiple rights over the same plot of land and its resources (e.g. trees)*

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Multiple rights exist over the same plot of land to an individual or an aggregate of individuals, insofar as certain resources in the land are deemed to vest with the state government, while others continue to remain with the occupant of the land. The Right to Trees under the Karnataka Land Revenue Act offers a case study. Under Section 74 and 75, the right to trees will vest in the occupant *except* when these trees are reserved by the Government or a Survey Officer, or are standing on Government property. The multiplicity of rights over the same plot arises when the Government specially reserves trees at the time of survey settlement. Such a situation also arises under Section 77 in the context of road-side trees. When trees are planted on lands held by a private owner under the orders and expense of the local authority, they vest in the State Government. In the event of such trees dying, or being cut down under a Tehsildar's order, the timber becomes the property of the holder. The lopping of these trees can only be carried out with the authorization of the Tahsildar. The State Government, through the Deputy Commissioner is empowered to frame rules under Section 79 to regulate the availing firewood and timber to trees reserved under Section 75. Hence, the existence of multiple rights over a property of land is an eminent possibility, though there is limited data to infer the efficiency of dispute resolution.

#### *Co-existence of multiple rights over land and mining/ other sub-soil resources located on the same plot*

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Multiple rights over land and sub-soil resources can legally coexist. The **MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957** lays down a framework for the management and mining of mineral resources. The rights to mines, minerals and mineral products vests *absolutely* with the State Government, and the State Government is the administering authority for the disposal and enjoyment of rights over these mines. The Act recognizes three kinds of mineral concessions issued to private parties interested in mining an area –

- Reconnaissance Permit – which is granted for preliminarily prospecting minerals by surveying and mapping the area;
- Prospecting License – which is granted to explore, locate and identify mineral deposits;
- Mining Lease – This is granted for the extraction of the mineral resource.

The State Government issues these permits as appropriate, except in the case of minerals included in the First Schedule of the Act, which requires the approval of the Central Government. The Central Government notifies 'minor' minerals from time to time, which is under the exclusive prerogative of the State Government through all stages, from deciding procedures, determining conditions for granting concessions, fixing rates of royalty so on and so forth. The Karnataka Minor Mineral Concessional Rules, 1994 governs this aspect, with Sections 32-35 specifically addressing the mining of minor minerals and quarrying on *patta*, or privately held lands. Here too, there is a clear demarcation between the licensee and the owner/occupant of the land in question. Neither the Act nor the Karnataka rules recognize any preferential right of those who have surface rights, thus creating a regime where multiple rights operate over the same plot of land.

Since the dimension takes into account the status in practice, it must be noted that much of the mining happens on improperly acquired land, or on land where surface rights do not exist. Thus the provisions of the law are not respected in practice.

#### POLICY RECOMMENDATION

- There is a need for greater clarity on the legalities of mining minor minerals and sand

#### *Accessible opportunities for mapping and recording of group rights*

There is no existing legislative structure in place that recognizes group rights over common lands. The **FOREST RIGHTS ACT, 2006** comes closest to recognizing the rights of certain communities that have historically inhabited certain forestlands. As discussed earlier, the implementation of the Act has been poor in respect of recognizing community rights. In most of these communities, there is very little awareness about the means of formalizing their rights over land that comes in the way of realizing these rights, let alone recording them. However, if and when they are recognized, the Forest Settlement Officer is expected to record such an allotment.

#### *Boundary demarcation of communal land*

Communal lands straddle many administrative and land use classifications, with their only common feature being that they are government lands. In Karnataka, the Survey, Settlement and Land Records Department deals with land surveys and maintenance of historical land records in the form of maps that depict the boundaries and extent of individual properties, and textual records that relate to ownership, use and other land particulars. The computerization of these records was pioneered in 2002 as the Bhoomi project, having achieved nearly 100 percent mapping of rural land parcels with landowners. By exclusion, some estimate of government lands may be arrived at. However, this information does not allow us to draw up accurate estimates of the extent of common lands.

Constrained by the absence of the direct typological data, the land use data published by the Department of Economics and Statistics is the closest to an approximation of the extent of these lands, but critically this does not portray the range of access rights, being simply divided as forests, pastures and fallow/cultivated wastelands. To quote an example, “a gomaal with zero canopy cover will look ‘degraded’ in the eyes of the forester and will register low on measures of forest cover, but this gomaal may be fully meeting local needs.” As a result, there is widespread misclassification on official maps with say, grasslands getting misclassified as ‘degraded scrub’ (Lele, Purushothaman and Kashyap, 2013). Hence, one can conclude that there is no clear demarcation of common lands. However, there is some information about the demarcation of public lands. Though GIS technology has been in use to demarcate forest cover, communal lands are not precisely demarcated and due to the absence of reference points, there is great miscalculation. Individual forest rights are yet to be mapped.

#### POLICY RECOMMENDATION

All common lands should be surveyed and demarcated with proper fencing with a view to preventing encroachment of such land.

**Indicator 2: Effectiveness and equity of rural land use regulation:**

LGI		Dimension Description	Score	Score Description
2	1	Restrictions regarding rural land use are justified and enforced	B	Regulations regarding restrictions on rural land use effectively serve public purpose but enforcement is weak
2	2	Restrictions on rural land transferability 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
2	3	Rural land use plans are elaborated/changed via public process and resulting burdens are shared.	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
2	4	Rural lands, the use of which is changed, are swiftly transferred to the destined use	Not Graded	-----
2	5	Recognizing of rural land use follows a public process that safeguards existing rights.	B	Processes for rezoning are public and clear but mechanisms to safeguard existing rights are not fully effective
2	6	Use plans for specific rural land classes (forest, pastures, wetlands, national parks etc.) are in line with actual use	C	C: The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is between 30% and 50%.

*Analysis**Justification and Enforcement of Restrictions regarding rural land use*

Rural land use is driven by the social purpose of the land reforms undertaken by the Karnataka government beginning from the 1960s. These reforms intended to allay chronic poverty, low yield and landlessness by abolishing tenancy and allotting land to the ultimate cultivator. Restrictions on the use of land have since evolved to prioritize agricultural use, personal cultivation and disadvantaged groups, both those that faced historical injustice and those from weaker financial sections. Broadly,

restrictions are also framed to ensure that there is fidelity to the purpose to which the land was to be put to use.

The Karnataka Land Reforms Act- 1974 (Sections 79A, 79B and 79C) imposes various restrictions on the purchase of agricultural land by non-agriculturists with the objective of regulating the use of agricultural land. The **KARNATAKA LAND GRANT RULES, 1969** lays down the framework and procedure for the grant of land by the government to individuals. Rule 9 prescribes certain conditions on the use of the land, the violation of which shall operate to terminate his grant. The grantee is expected to bring the land granted under cultivation within three years from the date of taking possession over the land; the grantee shall cultivate the land personally; the grantee shall not appropriate the land for any purpose other than that for which it is granted, except with the prior approval of the granting authority. Rule 9 prescribes certain conditions on the use of the land, the violation of which shall operate to terminate his grant. The grantee is expected to bring the land granted under cultivation within three years from the date of taking possession over the land; the grantee shall cultivate the land personally; the grantee shall not appropriate the land for any purpose other than that for which it is granted, except with the prior approval of the granting authority. These restrictions place entry barriers on those who may avail of agricultural land. Similar provisions and penalties are also found in the **KARNATAKA LAND REVENUE ACT, 1964**. Section 95 prescribes the procedure for the use of agricultural land for certain *specific* non-agricultural purposes by attaining the permission to convert such land from the Deputy Commissioner. Section 96 lays down the penalty for using agricultural land without appropriate permission. A notice may be served to the offender directing him to use the land for its original purpose, and may require that he remove the structures built, or excavations undertaken in contravention of these conditions. The Deputy Commissioner may also impose fines and further penalties as fit. If no action is undertaken, the Deputy Commissioner himself may take steps to effectuate those demands. The restrictions under Section 95 and 96 are also made applicable as appropriate to non-agricultural lands held for specific purposes by Section 97. Section 192A also imposes punishment for the sale of agricultural land for non-agricultural purposes without prior approval from the competent authority.

These restrictions justify the purposes behind their existence, but data needs to be manually collected to draw meaningful conclusions about the extent of enforcement, though media reports have consistently highlighted severe issues of corruption in the allotment and selective persecution of those

found to be in violation of land use restrictions. Conversations with revenue department officials also reveal that enforcement of restrictions is weak.

### *Restrictions on rural land transferability and public policy objectives*

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Restrictions are placed on rural land transferability so that land may be used for the purpose it is sought to be used, and so that the grantees, most of whom are intended to be poor, landless farmers, would not be beguiled out of their rights over the land. In a large number of cases, landholders from disadvantaged backgrounds are often cheated of their land or are simply not able to prioritize the long-term interest of land security over short-term cash gains that could result from such transfer. To balance the decision-making agency of impoverished grantees against being able to ensure financial stability, these legislations stagger the time periods beyond which alienation may be possible subject to administrative oversight.

The **KARNATAKA LAND GRANT RULES, 1969** imposes restrictions on the alienation of land. Under Rule 9, the grantee shall not alienate agricultural land for a period of twenty five years from the date of taking possession. However, he may seek the permission of the Deputy Commissioner if he wants to alienate the land after five years. The Deputy Commissioner shall only grant the permission if he is satisfied that the alienation is for the purpose of acquiring other land or improving the remaining land and the grantee credits fifty percent of the market value of the land to the Government. A grantee who has obtained such permission becomes ineligible for the grant of Government land. Similarly, housing sites granted under Rule 18 cannot be tenanted for a period of five years from the date on which the grantee takes possession, and cannot alienate it for a period of fifteen years. After five years, the grantee may alienate the site with the approval of the Deputy Commissioner and after crediting the Government with an amount equal to fifty percent of the market value of the site. In all of these instances, alienation is understood broadly to cover all forms of disposing of the property, but an exception is made for mortgages to select Government Boards or Banks, so as to obtain a loan so that the land may be put to optimal use. In respect to grants for industrial purposes, the grantee cannot alienate the land for thirty years from the date of grant. If he intends to alienate it after that, the industrial concern will first offer it to the State Government. The **KARNATAKA LAND REFORMS ACT** generally prohibits transfer of agricultural property to non-agriculturists, and persons having source of income more than Rs 2 lakh (average for last five years income), from non-agricultural sources.

The **KARNATAKA SCHEDULED CASTES & TRIBES (PROHIBITION OF TRANSFER OF CERTAIN LANDS) ACT, 1978** is an overriding legislation that seeks to create land security for disadvantaged groups. It was enacted when it was found that the non-alienation clause in the Land Grant Rules and the provision for cancellation of grants were not sufficient to protect SC/ST grantees. It imposes a ban on the transfer of lands allotted to landless, agricultural labourers who are SC/STs. If it is found that the land is alienated with or without the knowledge of the grantee, the transaction will immediately be voided and the land will be returned to the original holder, without any compensation to the purchaser. Land transferred despite these provisions are prohibited from being registered under Section 6 of the Act. The remaining restrictions on alienation in the Land Grant Rules continue to operate. The Karnataka High Court intervened in the operation of the Act in 2011 to direct criminal action against grantees who sell and re-sell granted lands, pleading ignorance of law, making off with profits from each “sale”.

As with the previous indicator, the stated aims of these legislations are laudable, but an accurate conclusion regarding its effectiveness cannot be made without data regarding the implementation of these rules in practice. Conversations with revenue department officials also reveal that enforcement of restrictions is weak.

#### **POLICY RECOMMENDATIONS**

The restrictions placed on the use of rural land need to be reviewed in the light of changed socio-economic conditions and agrarian relations. There are reports that the restrictions imposed for non-agricultural use of agricultural land (Sections 79A, 79B and 79C) have not served the purpose and they need to be re-looked. The possibility of regulating the land use by strictly imposing zone regulations rather than preventing sections of people from buying agricultural land can be examined. The possibility of addressing the problems associated with conversion using zone regulations can also be examined.

#### ***Process of Rural land use planning and sharing of resulting burdens***

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The processes for the formulation of rural land use plans arise from the **KARNATAKA TOWN & COUNTRY PLANNING ACT, 1961**. Planning Authorities constituted under the act sets aside minority representation of members of local self-governing institutions such as gram panchayats. Before the planning authority begins carrying out a survey to prepare the Outline Development Plans, Section 9, KT&CP Act, mandates them to declare their intention to prepare such a plan, showing the boundary of the area

proposed to be included in it. For two months, a member of the public may communicate a suggestion regarding its use, which may or may not be accepted by the planning authority. Once the State Government returns the Master Plan to the planning authority, the authority is expected to invite public comments for a period of sixty days, after which they may once again resubmit a plan for approval under Section 13. The final plan is then permanently displayed in the offices of the Planning Authority. Though the legislation includes a few representatives in the process of creating land use plans, the structure for this is very much top-down. It is also doubtful whether simply notifying the public, without involving them in the process consultatively, connotes to a public process.

#### *Transfer of Rural lands to their destined use following change of their use*

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There is no information present at hand to rank this dimension. Data needs to be manually collected. Changes reflected in the updating of databases across different government departments including, but not restricted to, the Revenue Department, Forest Department, the Directorate of Town and Country Planning, Directorate of Industries and Commerce, etc. can be used to infer some conclusions regarding the duration to effectuate a changed land use.

#### *Process of Rezoning of rural land use and safeguards to existing rights*

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Under Section 14A, **KARNATAKA TOWN & COUNTRY PLANNING ACT**, a proposal for change of land use from outline development plan needs to be published, inviting objections from the public for a period of at least fifteen days. Similarly, draft variation in the final scheme to correct an erRecord of Rights or irregularity, is displayed at the office of the planning authority so the public may inspect them. Sections 23 and 24 of the Planning Act substitute the equivalent provision under the Land Acquisition Act that lays down the matters to be considered in determining compensation to be awarded to the owner of the property. Illustratively, these include the market value, the use to which the land was put to use, and the potential injury to other property as a consequence of severance. Matters that are not considered of relevance under Section 24 include any change in land value that results from the use that it would be put to when acquired, degree of urgency of acquisition or any special suitability of the land. While these safeguards address compensation, it does not tackle the issue of the owner's livelihood that would be detrimentally affected by this process. The process for rezoning is hardly public, as it is merely notified for persons who are interested in finding out about it, and does not involve them in the decision making process.

## POLICY RECOMMENDATIONS

The Rural Land Use regulations need to be enforced strictly and the capacity of the local self-governments to plan and implement rural land use needs to be enhanced.

### *Plans for Protected Rural Land Use (forest, pastures, national parks etc.) and the actual use*

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This data is not available as the available Survey Data is dated and not updated. However, there is anecdotal evidence to suggest that the land set aside for specific use has been diverted to non-specified purposes over the years. This diversion has taken place either in the form of encroachments or in the form of allocation of land overlooking the existing norms. A recent example is allocation of *Amrut Mahal Kaval* land in Challakere Taluka of Chitradurga District by the Deputy Commissioner to various public purposes including setting up a campus of the Indian Institute of Science. The allocation of Amrut Mahal Kaval land was in contravention of the government order (RD 47 LGP 96) which clearly states that Kaval land should not be diverted to any other purpose. Similarly, the Comptroller and Auditor General (CAG) which did a performance audit report (2011) of the Karnataka Industrial Areas Development Board (KIADB) observed that “there was no prior consultation by the Board with the Planning Authorities to ensure that land earmarked for non-industrial use was not notified for industrial areas.” Similarly, a committee appointed by the government in 2011 under the chairmanship of former additional chief secretary Balasubrahmanian listed a number of instances where the land set apart for specified purposes such as grazing, burial ground etc. having been allotted to private individuals. In a few instances, the government has initiated measures to recover such land in the past three years. The Government of Karnataka has also been planning to conduct a fresh survey of land in view of this anecdotal evidence, although it is not possible to estimate the exact percentage of such diversion. With respect to encroached forest land the following official figures indicate about 5% of all forests (44 lakh acres) are encroached (2.06 lakh acres) in the state for various non-forests purposes<sup>36</sup>.

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<sup>36</sup> Forest Minister’s Answer to a member’s question in the Karnataka Legislative Assembly

## 4.3. Panel 3: Urban Land Use, Planning and Development

### 4.3.1. Context

#### *Introduction*

Land use planning and development is a State subject under the Constitution, allowing respective States to formulate policies and legislation to govern and plan urban areas. Legally, for all towns and cities in India, there exists an urban local body. In Karnataka they are typically classified based on the size of these settlements and specifically as per the provisions of Karnataka Municipalities Act and Karnataka Municipal Corporations Act. The number of urban local bodies in Karnataka is given in the table 4.3.1

Table 4.3.1 No of urban local bodies in Karnataka

	<b>Urban Local Bodies</b>	<b>No</b>
1	Municipal Corporations	8
2	City Municipal Councils	43
3	Town Municipal Councils	68
4	Town Panchayats	94
	<b>Total</b>	<b>213</b>

The 74th Constitutional Amendment Act passed in 1993 mandates the urban local bodies for administering, managing and preparing master / development plans. Instead, planning in the form of land-use planning and zoning regulations are vested with a parastatal agency created by an act of State legislature. Significant decision-making powers in these areas with regard to delivery of various services rest with various parastatal organisations. Apart from the urban local bodies represented by the local elected representatives, the other organizations responsible for essential services can be parastatals or private sector companies. Besides a limited level of autonomy they are largely within the control of the State government. .

A critical aspect in the regulated development of urban areas is through proper implementation of master plans / development plans. Although master plans / development plans for towns and cities

have been prepared, their implementation has not been satisfactory due to a variety of reasons, which in turn have resulted in mushrooming of slums and squatters, unauthorised and haphazard development and above all environmental degradation and transportation problems within and around the urban areas.

### *Types of Urban Planning in Karnataka*

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Planning in the form of land-use zoning and regulation in the major urban areas of Karnataka are vested with various Urban Development Authorities like Bangalore Development Authority (BDA), Mysore Urban Development Authority (MUDA), Tumkur Urban Development Authority, Hubli-Dharwad Urban Development Authority (HDUDA). These authorities are parastatal agencies but have been designated as the Local Planning Authority under provisions of Karnataka Town and Country Planning (KTCP) Act of 1961 and are responsible for the preparation and revision of the master plans. Despite the KTCP Act itself being subjected to numerous amendments and ordinances to facilitate 'urban development', debates have been raised on the effectiveness of these master plans. Until 2004, Karnataka had a three-tier system of urban planning. The three tiers refer to planning being done at three levels varying in their scope and details. The Karnataka Town and Country Planning Act, 1961 outlines this approach. The three tiers are -

1. Outline Development Plan: This is meant for local planning area. This is prepared first. It indicates zoning of land use for residential, commercial, industrial, recreational, educational and other public purposes, proposed circulation pattern and a set of zoning regulations.
2. Comprehensive Development Plan - This follows ODP. This includes details of zoning of land use. It also includes zoning regulations, complete street pattern, improvements to existing road patterns, reservation of areas for public purpose such as parks, playgrounds and other recreational uses, public buildings, institutions, areas for housing, etc.
3. Town Planning Schemes - these are prepared for the defined planning areas in order to implement proposals of Comprehensive Development Plan.

An amendment to the Karnataka Town and Country Planning Act, 1961 was made in 2004. The amendment prescribed preparation of Master Plan by all the planning authorities together. The amendment removed Comprehensive Development Plan and Outline Development Plan from the three tier system and consolidated it to a single Master Plan. The Master Plan is made in a two-step

process beginning with an Interim Master Plan which includes regulation of land use pattern and road pattern. The amendment has also made it mandatory to revise the Master Plan once every ten years.

The development plans / master plans are mostly documents prepared with limited forecasting capabilities without capturing the entire dynamics. Besides this, these plans mostly restrict to demarcate only land-use zones with little or no effective enforcement of the same. Further, with planning authorities restricting to mostly land-uses, efforts to involve or integrate transport, housing, water and sanitation, etc. in the planning process is limited. This results in, organisations involved or catering to different services (transport, housing, health, water, energy, etc.) does not work in integrated manner to address basic amenities. Lack of coordination among many agencies poses challenges in sustainable use of land and other resources. For instance, one of the principal problems in Bangalore's governance is the mismatch in territorial jurisdiction of the planning and regulatory institutions and the territory within which rapid commercial and residential development is presently taking place. This mismatch results in a perpetual time lag between land development and the arrival of regulatory and governance oversight.<sup>37</sup>

The problem of planning is compounded by the fact that power to regulate conversion of land from agriculture to non-agricultural use lies with the competent authority under section 95 of the KLR Act. The existence of this power has led to several distortions which have had adverse impact on the development of the land markets and resulted in unplanned growth in the urban and peri-urban areas in the BMR. The High Courts have commented upon the redundancy of this provision in areas covered by a Master Plan, but the amendments carried out in the KLR Act have continued the operation of the provisions relating to land conversion to non-agricultural use in LPAs.<sup>38</sup>

A stark contrasting fact with the planning authorities is its lack of acknowledgement of any city functions: mobility, jobs, economy, energy, etc. On the one hand, planning authorities are focussed on land-use plans and its regulation alone, accepting supplements of integrating land-use with transportation for enhancing mobility. On the other hand, the local administration has to resolve

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<sup>37</sup> Report of the Expert committee - Governance in The Bangalore Metropolitan Region and Bruhat Bangalore Mahanagara Palike, 2008

<sup>38</sup> Report of the Expert committee - Governance in The Bangalore Metropolitan Region and Bruhat Bangalore Mahanagara Palike, 2008

overnight about daily operations management with little realisation on the implications of the planning organisation ignoring the city functions.

The dispersal of the land planning functions by conferring zoning power on unelected development authorities and land use power on the state government authorities makes the local level planning framework envisaged by the constitutional provisions a non-starter as the power to regulate the supply of urban land and the manner of its development is conferred on the state government and not the local government.<sup>39</sup>

One notable issue on the master plan and its amendments has been with respect to the 'regularisation of unauthorised construction and development' pursued by an amendment (under Section 76-FF of KTCP Act) and the notification its rules subsequently. Though devolution of planning function is one of the mandatory reforms to be fulfilled under JnNURM, the state government skirts this by issuing a Government Order directing the planning agency to send the draft and final versions of the master plan 'for vetting and comments' before the formal approval. However, only recently the Government of Karnataka issued a draft notification for constituting a Metropolitan Planning Committee (MPC) for the Bangalore Metropolitan Region required by one of the mandatory reforms under JnNURM.

### *Urban Development and Housing*

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Realizing the importance of shaping the urban areas better, Government of Karnataka has come up with an Urban Development Policy for Karnataka during November 2009. In line with the Union Government's National Urban Housing and Habitat Policy – 2007, Government of Karnataka has also prepared a draft housing and habitat policy during 2009. Both the national and state policies on housing and habitat follow similar approaches and has raised concerns inviting comments from different quarters. Notable among them is the critique on the state's policy by *Slum Janandolana*. Notwithstanding with prevalent policies, the MHUPA has prepared a 'Model State Affordable Housing Policy for Urban Areas' recently (September 2013).

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<sup>39</sup> Report of the Expert committee - Governance in The Bangalore Metropolitan Region and Bruhat Bangalore Mahanagara Palike, 2008

Following suit, the Department of Housing, Government of Karnataka has notified its version of 'Affordable Housing Policy, 2013'. This policy sets clear guidelines and calls for private participation in housing. With this, the State Government of Karnataka intends to formulate an Affordable Housing Policy to augment affordable housing stock, particularly for Economically Weaker Section (EWS) and Lower Income Group (LIG) categories. The policy will help operationalise the strategy envisaged in the National Urban Housing and Habitat Policy (NUHHP) 2007 of promoting various types of Public Private Partnerships - of the Government sector with the Private sector, the State undertakings, Urban Local Bodies etc - for realizing the goal of Affordable Housing for all. The basic aim of the policy is to increase affordable housing stock by encouraging affordable housing developers through incentives and concessions.

For the state government to access funds from the centre, it needs to mend laws, craft policies and implementing mechanisms in the process of fulfilling the requirements of the reforms agenda.. The local bodies with limited capacity have to assimilate all of this and implement. Government of Karnataka in one of the smart moves has established the Karnataka Urban Infrastructure Development and Finance Corporation (KUID & FC - <http://www.kuidfc.com/>) as a public limited company during 1993. One of the key roles the KUID & FC has been performing is being the 'conduit' for most funds received by the state from the Centre or any multilateral agencies as loans or grants. In the process, it has been spearheading and leading the efforts pushing for any reforms and mechanisms towards availing the grants. Given the prevalence of schemes like JnNURM and RAY along with their reforms agenda, the KUID & FC has been working closely with the Urban Development Department, Government of Karnataka in driving these reforms.

### *The Context of Bangalore (the largest city in the state)*

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Bangalore has a population of 8,499,399<sup>40</sup> and an area of 741 square kilometres. Bruhat Bangalore Mahanagara Palike (BBMP) is the 'urban local body' (ULB), the local governmental structure representing and responsible to the citizens for the city and outlying areas. Notified in December 2006, the new Corporation replaced the erstwhile local bodies, Bangalore City Corporation (Bangalore Mahanagara Palike), eight neighbouring councils (seven City Municipal Councils and one Town

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<sup>40</sup> As per Census of India 2011

Municipal Council) and 111 outlying villages. Independent of the BBMP, which is governed by locally elected representatives, several parastatal bodies controlled by the State government are responsible for many essential services (see Table 4.3.2).

**Table 4.3.2: List of various bodies providing urban services in Bangalore**

Organisations	Functional Areas (Scope of Work)
<i>Bruhat Bangalore Mahanagara Palike</i> (BBMP)	Urban local body responsible for overall delivery of services — Roads and road maintenance including asphaltting, pavements and street lighting; solid waste management, education and health in all wards, storm water drains, construction of few Ring roads, flyovers and grade separators
Bangalore Development Authority (BDA)	Land-use zoning, planning and regulation within Bangalore Metropolitan Area; Construction of few Ring roads, flyovers and grade separators
Bangalore Metropolitan Region Development Authority (BMRDA)	Planning, co-ordinating and supervising the proper and orderly development of the areas within the Bangalore Metropolitan Region, which comprises Bangalore urban district and parts of Bangalore rural district. BDA's boundary is a subset of BMRDA's boundary
Bangalore Water Supply and Sewerage Board (BWSSB)	Drinking water – pumping and distribution, sewerage collection, water and waste water treatment and disposal
Bangalore Metro Rail Corporation Ltd (BMRC)	Public transport system – Rail-based
Karnataka Urban Infrastructure Development and Finance Corporation (KUID&FC)	Urban infrastructure and Finance; handhold, coordinate and manage several central / multilateral projects
Karnataka Housing Board	Provisioning affordable housing
Karnataka Slum Development Board	For the welfare and improvement of slums

The BDA has been pursuing urban development for formation of layouts or construction of ring roads mostly through 'land acquisition' under the BDA Act. With the slow pace of formation and development of layouts by the BDA, private players have been aggressively developing layouts on revenue lands. This has also resulted in significant applications and subsequent permit to change of land-use. Further the existence of many parastatal organisations, each of them acting in its own jurisdiction area, leading to challenges in coordinating different activities. Apart from the issue of a common jurisdiction and the lack of coordinated effort, even basic information related to different sectors is extremely difficult to collect, collate and to correlate. For effective planning it is imperative

that all the basic information is gathered across a common jurisdiction with the effect of creating a robust city information system.

### *Slum Development*

The Karnataka Slum Development Board (KSDB) previously known as Karnataka Slum Clearance Board has been specifically established under the Housing Department to address the development of slums in partnership with various stakeholders like the Urban Local Bodies and Water Supply Boards, etc.

**Table 4.3.3: Distribution of slums across Bangalore (BBMP, 2006)**

Agency / Authority	No of slums	No of Households	Remarks
Karnataka Slum Development Board (KSDB)	218	106,266	Declared
Greater Bangalore City Corporation	324	110,991	310 Undeclared & 14 Declared
Grand Total	542	217,257	

The Revised Master Plan 2015 for Bangalore Metropolitan Area doesn't indicate even a single designated slum. There is no institutional mechanism to coordinate the planning and implementation between the Karnataka Slum Clearance Board and the BBMP. The division of roles and responsibilities between these two institutions needs further clarity and, perhaps, redefinition. The institutional mechanism within the BBMP to deal with basic services to the urban poor is weak. The BBMP has a welfare department that is not actively involved in slum redevelopment.<sup>41</sup> After redevelopment by the KSCB the slums are handed over to the BBMP for operation and maintenance. According to the figures available with the KSDB, there are 542 slums in the state of which 324 are in Bangalore (Table 4.3.3)

<sup>41</sup> Report of the Expert committee - Governance in The Bangalore Metropolitan Region and Bruhat Bangalore Mahanagara Palike, 2008 (Note: Estimates are based on 2001 Census)

### 4.3.2. Assessment and Score

This section analyses in detail the specific elements related to urban land use and planning in Karnataka. These elements are divided into Indicators which in turn are broken down into several Dimensions. Indicators provide a relatively exhaustive assessment of relevant land governance issues through specific dimensions which define areas for investigation, quantitative measurement or qualitative assessment.<sup>42</sup>

#### **Indicator 1: Land rights are not conditional on adherence to unrealistic standards**

LGI		Dimension Description	Score	Score Description
1	1	Restrictions on urban land ownership/transfer effectively serve public policy objectives	A	There are a series of regulations that are for the most part serve public purpose and that are enforced
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 enforce

### Analysis

#### Restrictions on urban land ownership/transfer and public policy objectives:

Karnataka does not have any general restriction on land ownership and transfer but there are certain specific, limited restrictions in operation. In order to ascertain if the restrictions on urban land ownership and transferability effectively serve public policy objectives, the actual restrictions must be discussed. Some of the restrictions are as follows -

1. When an Urban Development Authority (UDA) allots sites or houses to beneficiaries, it is usually given on a lease period. It should be noted that the provision of sale or lease is a result of the allotment rules framed by these Authorities – there is no statutory requirement that this should be adopted in every case and many authorities have moved away from this. The

<sup>42</sup> Land Governance Assessment Framework: Implementation Manual

ownership right is not given; instead in such cases the allotted plots are bound by conditions of transfer which do not allow transfer or sale of the property to any other individual. Since these are encumbrance free properties with clear titles they fetch higher value in the market compared to the amount collected during allotment. Therefore in the absence of restrictions on sale, the allottees are likely to sell them and apply for a new site. The restrictions on sale and transfer prevent such misuses.

2. Certain restrictions on transfer are stated in the Karnataka Land (Restriction on Transfer) Act, 1991. This was passed to prevent large scale unauthorized transfer of land which has been already been acquired or notified to be acquired by the Government under the Land Acquisition Act, 1894. Under Section 3 of the Karnataka Land (Restriction on Transfer) Act, 1991, a person is prohibited to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which has been acquired by the Government under the Land Acquisition Act, 1894 (Central Act 1 of 1894) or any other law providing for acquisition of land for a public purpose.

As far as housing site allotment is concerned the transfer effectively serves public purpose because due to the restrictions the sale deeds are not executed and therefore no illegal transfer of land takes place. However, there is no unique identification mechanism to track beneficiaries.

#### *Enforcement of Restrictions on urban land use and the public interest*

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Restrictions on urban land use can be examined under the following ways based on the Acts that define such restrictions:

1. Restrictions by the KTCP Act – It allows for the Local Planning Authority to make provisions in the town planning scheme to impose conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the number, size, height and character of buildings allowed in specified areas, the purposes to which buildings or specified areas may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs.

The objectives of the zoning regulations and other restrictions on urban land use are to safeguard the public interest and to respond pro-actively to the future needs of the city. However, their enforcement has often been not effective. Despite the restrictions, buildings do come up on tank beds and other risk prone areas. Moreover, frequent change in zoning also defeats the very purpose of such restrictions. Successive master plans have altered the green belt to cope with population and income pressure. One study (Venkataraman 2013)<sup>43</sup> observes like this in the context of Bangalore, the state's largest city: ...

When organically developed outgrowths are absorbed periodically into the city and infrastructure extended to service these areas, there is a perception created that the planning authority has not only fallen short of adequate planning measures on the land use side, but that the laws are also elastic and there are various levels of subversion possible at the time of enforcement. This led to an increase in speculative activity in green belt areas, based on the assumption that the administration would continue to deal with unplanned development by regularising unplanned and illegal construction within the green belt area.

#### POLICY RECOMMENDATIONS

There should be stricter enforcement of restrictions on urban land use and conversion of greenbelt should be discouraged.

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<sup>43</sup> Venkataraman, Madalasa, Analyzing Urban Growth Boundary Effects in the City of Bengaluru (2014). IIM Bangalore Research Paper No. 464. Available at SSRN: <http://ssrn.com/abstract=2464946> or <http://dx.doi.org/10.2139/ssrn.2464946>

**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:**

LGI	Dimension Description	Score	Score Description
2	1	C	Information on planned urban expansion and infrastructure development process is transparent and respects existing rights
2	2	C	Changes in urban land use plans are based on a clear public process and input by all stakeholders
2	3	C	Changes in assigned urban land use are swiftly followed by actual land use change

## Analysis

### *Transparency in urban expansion and respect for existing rights*

Urban expansion and infrastructure development in Karnataka is largely guided by the KTCP Act. The Department of Town and Country Planning, Urban Development Authorities and Local Planning Authorities together are responsible for urban planning. These also ensure that the citizens have access to the master plans, zonal regulations and new projects that are developed.

**Transparency:** The process for approving new housing layouts and plans are not transparent because had they been transparent urban areas and large cities in particular would not have increasing number of “revenue layouts”. A transparent process would have meant that the new layouts are proposed and approved in a clear and open manner. Towards this a new system is being developed where statuses of new layouts will be updated on a web-based system under the project *eVinyasa*. This will include new layout approvals which are digitally signed and lists of released and unreleased layouts.

**Rights protection:** Rights of land holders and other stakeholders are protected only when the layouts are developed and approved legally. Divergences from master plans are rife in case of revenue layouts.

#### POLICY RECOMMENDATION

There is an urgent need to regulate the haphazard growth of infrastructure in the urban periphery and there should be coordination among various agencies involved to check such unplanned expansion.

#### *Is the process of urban land use change transparent and participatory?*

Until the last master plan (Revised Master Plan 2015) the BDA invited comments or responses from the public only after the draft plan is prepared. During 2007, the Government did constitute a committee chaired by a retired senior bureaucrat, which looked into the comments received by the public and gave its recommendation for the final plan. However, given that it is the prerogative of the Government to accept the comments and address them in the final approved plan, many criticized the Government for not taking into view of all the comments received after the public consultation on the draft master plan.

Given that the BDA has initiated the process of revising the master plan, from the Terms of Reference for the same, this now envisages public stakeholder consultation at multiple levels starting from formulation of objectives for the plan to choosing the appropriate scenario for 2031 aided by an Oversight Committee that not only supervises the Consultants during plan preparation but also looks into its implementation.

#### POLICY RECOMMENDATION

The Master plan is prepared under the provisions of the KTCP Act which was enacted in the 1960s and the Act does not have provisions for enabling citizens' participation during the preparation of the plan. The Act should be amended to make public participation mandatory and to lay down the form and manner in which public participation can be ensured.

#### *Changes in assigned urban land use and actual land use*

Land use changes in the state can be of two types-

- a) Land use change in the Master Plan: This means that a land is changed from one zone to the other. When such conversions are made they are done through due process and the land is

finally put to intended use. The land use post conversion is not recorded but it is generally understood that an interested party undertakes the conversion because it has a clear intended use.

- b) Conversion of land category from agricultural land to non-agricultural land: When this type of conversion is done it usually has varying intentions. Changes are done to either bypass land ceiling limits or to bypass Sec 79 AB of Land Reforms Act. In such cases, change in the assigned land use need not be followed by actual land use change.

In the outer conurbation, opening of green belt has permitted conversion of agriculture land to non-agriculture purposes leading to real estate development. Most of these prevailed before the notification of Revised Master Plan 2015. However, by and large, the subsequent master plans seem to acknowledge the changes and consider them as 'current land use' and prepare the revised master plan with 'proposed land use'. Given the poor implementation of the master plan, their effective compliance has been a concern. The master plan making doesn't quantify the exact proportions of such violations. There is no mechanism to track whether the transferred land has been put to intended use or not.

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

LGI	Dimension Description	Score	Score Description
3	1	B	Policy to ensure delivery of low-cost housing and services exists and is progressively implemented
3	2	C	Land use planning effectively guides urban spatial expansion in the largest city
3	3	C	Land use planning effectively guides urban development in the four next largest cities.
3	4	C	Planning processes are able to cope with urban growth

*Analysis:*

*Policy to ensure delivery of low-cost housing and its implementation*

At the national level, the Government of India has already formulated the National Urban Housing and Habitat Policy 2007 (NUHHP, 2007) keeping in view of the changing socio-economic aspects in urban areas and rising demands of housing and allied amenities and infrastructure. In tune with most contemporary policies, this also envisages a fair amount of 'public private partnerships' for realizing the goal of 'affordable housing for all' with special emphasis on urban poor. On the similar lines, Government of Karnataka too has come up with a draft Karnataka Housing and Habitat Policy in 2009. Need for Karnataka Housing and Habitat Policy emerges from the growing requirements of shelter and related infrastructure both at rural and urban centers as also the continues the changing economic and social environment, growing urbanization, mismatch in demand and supply of developed land and houses at affordable prices and inability of poorer sections of the population to have access to formal land markets and finances from financial institutions.

Both the national and state policies on housing and habitat follow similar approaches and have raised concerns inviting comments from different quarters. Notable among them is the critique on the state's policy by *Slum Janandolana* and various other organizations. Notwithstanding prevalent policies, the Department of Housing, Government of Karnataka has notified a version of 'Affordable Housing Policy, 2013'. This policy is to augment affordable housing stock, particularly for Economically Weaker Section (EWS) and Lower Income Group (LIG) categories. It sets clear guidelines and calls for private participation in housing.

Evidently, some of the statements in the policy strike right chords even outlining the various schemes right from their origins and their mechanisms. It emphasizes the use of GIS in monitoring, prevention of encroachments, and map 'slum prone' areas. Notably, it stresses that land title will remain with the government when the land is allotted to State Government for construction of housing for the poor.

On progressive implementation it can be said that the pace of welfare programs has not kept up with the speed of urbanization. There is no synchronization between the two and therefore the city sees rising number of illegal layouts.

#### *Does Land use planning guide spatial expansion in the largest city?*

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Bangalore being the largest city has hierarchical planning agencies. There exists Bangalore Metropolitan Region Development Authority (BMRDA) that is technically the super structure encompassing an area of 8000 sq. km. Within the BMRDA, is the Bangalore Development Authority (BDA) as the local planning authority (LPA) for Bangalore metropolitan area which has an area of 1279 sq. km. As per the existing policies, the planning though carried out by the local planning authority has to be vetted and forwarded to the government through the BMRDA. The BMRDA prepares a macro structure plan that outlines a broad framework for urban expansion. However, given that BDA undertakes planning independently, their adherence to the structure plan is minimal or notional. Given that master plan mostly focuses on land use plans, provisioning of infrastructure and other services rests with other state run agencies (parastatals) raising serious concerns on coordination. Hence most of these are post facto – follows urban spatial expansion.

### *Does Land use planning guide development in the four next large cities?*

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The next four large cities in consideration are – Mysore, Hubli-Dharwad, Belgaum and Mangalore. Land use planning is carried out separately by respective cities' local planning authorities, according to the provisions of the Karnataka Town and Country Planning Act. Only for Bangalore the local planning authority's (BDA) plan notionally attempts to adhere to the BMRDA's structure plan. The next four largest cities of the state are out of BMRDA and hence there is no need for these cities and their plans to adhere to the structure plan. However, all these plans are taken up for revision once in every ten years. Given that master plan mostly focuses on land use plans, provisioning of infrastructure and other services rests with other state run agencies (parastatals) raising serious concerns on coordination. Hence most of these are post facto – follows urban spatial expansion.

### *Does planning processes cope with urban growth?*

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As noted above the master plans are prepared according to the provisions of the KTCP Act, which stipulate the revision once every 10 years. Despite this, given the dynamic nature of urban evolution, adaptation to newer planning methods are minimal barring the use of GIS, has resulted in them lag significantly cope with urban growth. As a consequence provisioning of housing, infrastructure and services have lagged behind driving informality.

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

LGI	Dimension Description	Score	Score Description
4	1	C	Requirements to obtain a building permit are technically justified but not affordable for (and not complied by) the majority of those affected
4	2	A	All applications for building permits receive a decision within 3 months.

## Analysis

### *Effectiveness of residential building permit process*

The building permits are approved by the town planning department of the urban local body. This is mostly based on technically justified building bye-laws laid out or notified during the revision of master plans. The bye-laws very clearly specify the requisites and norms to be adhered during the construction of residential building based on size of the plot and width of the street. Accordingly, it specifies the permissible floor area ratio (limiting the no of levels) and requisite setbacks, among other such norms that are applicable.

Bangalore has introduced Automatic Building Plan Sanction called as *Suvarna Paravanige - Gruha Nakshe*.

However, while the conditions for obtaining building permissions seem appropriate and affordable, the compliance of such bye-laws and construction of dwelling units in compliance with the approved building plan is far from reality. Owing to this there has been widespread violation either in terms of FAR or leaving adequate setbacks apart from land uses as well. As noted elsewhere, this is pardoned off almost once in every two decades through regularization and collecting a nominal penalty. This has raised concerns on the effective implementation and regulation of the bye-laws.

### *Cost and time required for obtaining a building permit for a residential dwelling*

The Government of Karnataka recently introduced Karnataka Guarantee of Services to Citizens Act-2011 (Sakala), according to which a host of services offered by the Government is acknowledged to be serviced in a specified time. One such service is also the approval of building plans up to 2400 sq. feet. The applicant needs to adhere to the requisite forms and apply under this. This will now mostly ensure that the permits are obtained between 15 and 30 working days. The cost of obtaining permission includes payment of a variety of fees which include license fees, ground rent, development charges, commencement certificate charges, labor welfare cess and so on. The total cost depends on the size of the proposed building and fees are calculated per square metre. The rates were substantially revised in 2007 but cost is generally considered to be reasonable.

**Indicator 5: Tenure regularization schemes in urban areas**

LGI	Dimension Description	Score	Score Description
5	1	D	Formalization of urban residential housing is feasible and affordable The requirements for formalizing housing in urban areas are such that formalization is deemed very difficult.
5	2	C	In cities with informal tenure, a viable strategy exists for tenure security, infrastructure, and housing Strategies to deal with urban informality exist but focus only on either land or services but not both.
5	3	C	A condominium regime allows effective management and recording of urban property Common property under condominiums is recognized but the law lacks clear (or regulations) for management and publicity of relevant records.

*Analysis**Feasibility and Affordability of Formalization of urban residential housing*

Formalizing informal housing is complex activity marred by political interventions rather than clear policies. Though a variety of policies and schemes exist to ensure provisioning housing for urban poor, their implementation has been lacking. The urban local body along with the state's Slum Development Board of the Housing Department notifies slums or informal settlements based on duration of occupancy and size of such settlements. However, the process is not clearly defined and ad hoc giving raise to political manipulations. With the JnNURM and RAY, they lay down certain guidelines in characterizing the informal settlements, guidelines to formalize within the local bodies are lacking.

*Tenure security, infrastructure, and housing in the case of informal tenures*

As noted earlier there exist many policies and schemes for housing and urban development in general. Additionally, the state government does provide services like access to power, community sanitation, street lighting, etc. Among these housing and land tenure take the back seat. Mechanisms to provision housing exist but the supply so short and not affordable. Formalizing land tenure rests with government invoking amendments or provisions within the Karnataka Land Revenue Act.

For the urban poor, with inadequate access to shelter and housing, slums have become an inseparable aspect of any urban area across the globe. In recognition of this, the Government of Karnataka has recently approved the amendment to Karnataka Land Revenue Act 1964 inserting Section 94 CC to 'grant land in case of construction of dwelling house in occupied land in urban area'. Despite several laws and policies favoring rights and access to housing and their tenure, their implementation has been dismally poor.

### *Condominium regime*

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In Karnataka, management of common property resources rests with respective line departments owning the concerned land. For instance parks in metropolitan area are mostly with the urban local bodies and only a few with development authorities and the Horticulture Department. Similarly tanks are with the minor Irrigation Department or the Forest Department. Yet, their management at times has been a challenge, especially the tanks. Most tanks in the metropolitan area are only recently transferred to the local body. Owing to ineffective enforcement there have been widespread encroachment and changes to land use especially for tanks and tank beds. Karnataka Apartment Ownership Act, 1972 provides for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property and for matters connected therewith. It also provides a detailed outline of dealing with common property resources for condominiums. Overall, there seems to be a lack of clarity with regard to condominium rights.

## 4.4 Public Land Management

### 4.4.1. Panel Context

#### *Introduction*

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Management of public land has emerged a major challenge in Karnataka. There are two main reasons for this. First, there is an ever increasing demand for allotment of public land for both public and private purposes. Second, in the absence of proper records and physical demarcation of public land, there has been rampant encroachment of such land. The Government has initiated a number of steps to rationalize the allotment and to arrest encroachments. However, the success of such efforts has been limited so far in the absence of (i) a clear policy with regard to the allotment of public land and (ii) proper land records to establish the government ownership of land under encroachment.

#### *Defining Public Land*

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With the advent of land reforms in the ryotwari areas, uncultivated lands which were not part of any holdings held by the farmers were vested in the State. Karnataka Land Revenue Act – 1964 states that all lands which are not property of others belong to the government. The emphasis is to the term “owned”. In other words, for the purpose of this panel, the land owned by various individuals and entities which include even the government entities are not considered. The lands which the revenue department and local bodies own and manages directly, which include all types of common land excluding forest land is considered here. The land owned by religious institutions and boards are also excluded from this definition.

Public land under this definition, i.e., the land which both the state and local self-governments own and manages directly can fall under two broad categories. First, category of public land one which is owned and managed by the government but the people may have some user rights on such land. The second category of public land is the land owned and managed by the government on which the people have no such user rights. Under the former category some kind of land are available for the use of the individuals and some other kind are available to the community as a whole. Public land on which user rights are available to individuals are generally adjacent to the private land and the owners

of the private land either cultivate that land or only collect its produce for cultivating their private land. The public land on which people have rights collectively include lands such as grazing land, burial lands, lake beds and so on. Some of these lands were used for grazing and other common purposes and became common property resources over time. These include: Gomal lands (those used for grazing the cattle); Gundu thopu (those used for planting trees for common use); Poramboke (or the cultivable waste); uncultivable waste lands; lands used for public utilities including lakes and roads etc. The land on which the people have no such rights is commonly known as government land.

#### *Extent of Public Land*

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The extent of public land under these two categories in Karnataka were determined at the time of initial survey settlement and since then their size has been declining since the government has been transferring these land (barring some kind of public land in the first category above) to various other public and private entities. The extent of public land has also been dwindling because of rampant encroachment of public land across the state. The district-wise extent of land available under the two categories of land is given in table 4.4.1.

#### *Disposal of Public Land*

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Disposal of lands or other property belonging to State Government under section 67 — subject to such rules as may be made in this behalf, the State Government, the Regional Commissioner, the Deputy Commissioner, the Assistant Commissioner in-charge of a Taluk or Taluks and the Tahsildar, may dispose of land or other property belonging to the State Government under section 67 or otherwise, for purposes of agriculture, industry or any public utility and subject to the provisions of construction of buildings. The process involves submission of an application by the applicant containing the details of the proposal, purpose etc. The DC after appraising the proposal, if satisfied can transfer the land invariably by lease. Though the Section 69 A, states that, the state can auction any such land to fetch higher price, it is rarely used these days. Moreover though the DC is empowered, of late every such case is placed before the cabinet for approval.

Table 4.4.1 Extent of public land which includes common land in various districts of	5
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Karnataka as of January 2014		
No.	District	Public lan ( in acres)
1.	Bangalore( Urban)	83114
2.	Bangalore Rural	128901
3.	Ramnagar	286070
4.	Bagalkot	223747
5.	Bellary	592329
6.	D.K.Dt	625380
7.	Haveri	139084
8.	Davangere	274725
9.	Shimoga	1197361
10.	Mysore	413246
11.	Hassan	419297
12.	Gulbarga	163443
13.	Bidar	110940
14.	Bijapur	77053
15.	Belagam	398301
16.	Chitradurga	446797
17.	Dharwad	86076
18.	Kolar	327107
19.	Raichur	173700
20.	Kodagu	4 37739
21.	Udupi	442432
22.	Tumkur	572800
23.	Chikballapur	446247
24.	Chamarajnagar	228962
25.	Chikmagalur	845206
26.	Gadag	102342
27.	Koppala	171144
28.	Mandya	196558
29.	UttaraKannada	16211586
30.	Yadgir	106843
Total		<b>11576967</b>

The Deputy Commissioner also has powers to grant public land in his jurisdiction to certain marginalized sections of society. Further, the government from time to time regularizes certain kind of encroachment on public land which also involves transfer of the ownership of the land from the government to the occupant of such land. Such regularization is subject to various restrictions, both in rural and urban areas. However, certain kind of public land which falls in the category of common land is not allowed to be disposed of in any manner.

**Section 71** deals with the powers of the state to assign any public “land for special purposes and when assigned, shall not be otherwise used without sanction of the Deputy Commissioner.”

#### *Restrictions on the disposal of Public Land*

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There are several restrictions on disposing of certain kinds of public land if the land in question falls into the category of common land. There are also restrictions on regularizing the encroachment of public land by the poor if the land in question falls within a certain distance from the city limits.

The Karnataka Land Revenue Act as amended in 1991 prohibits regularization of unauthorized cultivation of public land within 18 kms of Bangalore Municipal Corporation limits, 10 kms from the limits of the Corporations of Hubli-Dharwad, Mysore, Belgaum, Mangalore and Gulbarga and 5 kms of every city municipality in the state. With effect from July 1994, the 5 km limit was extended to all towns with a population of more than 50,000.

#### *Encroachment of Public Land*

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Encroachment of public land can take place in two ways. Sometimes people who do not have shelter or any means of livelihood may occupy the public land for the purposes of housing or cultivation. Generally, such encroachments or occupation of public land is regularized from time to time subject to restrictions. The other kind of encroachment which is known by the name of land grabbing happens when private individuals or entities create fake documents and claim the public land. Karnataka has witnessed a spurt in this kind of encroachment on public land in the past decade.

A **Task Force for Recovery of Public Land and its Protection**<sup>44</sup> was set up in 2009 to investigate the issue. The Task Force unearthed rampant encroachment of public land especially in the urban periphery. Its report, titled “Greed and Connivance”<sup>45</sup> reveals that 11.07 lakh acres of public land has been encroached upon in Karnataka, which is 10 per cent of all government land. The report also concedes that this is a grossly under-reported figure. The Task Force had tabulated the data based on government sources and also complaints filed by the general public.

The report takes particular note of encroachments in and around Bangalore. It states: “This scramble for land (in Bangalore) has resulted, especially during the past 20 years, in encroachments on government and public land and land grabbing by powerful builders and land mafia with active involvement of persons in power – in politics, administration and real estate.”

A recent document submitted to the Karnataka Legislature by the Karnataka Public Land Corporation gives a revised estimate of 13.05 lakh acres of public land having been encroached. The report also details the steps taken by the government to recover such land and the extent of land recovered from encroachers. The table 4.4.2 below gives district-wise break-up of the extent of public land and the extent of encroachment of such land. The figures in the table show that besides Bangalore, the adjacent districts of Bangalore Rural, Chikkaballapur and Ramanagar have witnessed large scale encroachment of public land. As regards the removal of encroachment, Bangalore Urban district tops the list, where over 28% of government land has been encroached and 42% of the encroachment has been removed.

In encroachment removal process, Bangalore Urban has about 34% land under trial process. In contrast to this Bidar which has the highest government land encroachment rates has over 64% of land in trial process. Also, Gadag appears to have near 100% encroached land under trial. These figures can be used as a measure of departmental effectiveness in removal of encroachment and reversal of the acquisition.

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<sup>44</sup> Task Force Report available here:

<http://bangalore.citizenmatters.in/docs/2011/GoKVBalaTaskForceReport.pdf>

<sup>45</sup> Frontline Magazine – In No Man’s Land. Available:

<http://www.frontline.in/static/html/fl2816/stories/20110812281603600.htm>

While there are a number of Central and State-level Acts – such as the Karnataka Land Revenue Act, 1964; the Karnataka Land Reforms (Amendment) Act, 1986; the Forest Conservation Act, 1980; and the Wakf Act, 1993 – to check encroachment of public land, the glaring non-compliance witnessed in Karnataka suggests that these laws have been ineffective.

Table 4.4.2 District-wise break-up of public land encroachment

Divisions	Name of the District	Encroachment in acres	Encroachment cleared ( acres)
Bangalore			
1	Bangalore Urban	34111	14280
2	Bangalore Rural	14393	3229
3	Ramanagara	74611	964
4	Chikkaballapura	79563	1085
5	Tumkur	13062	2165
6	Kolar	56405	1127
7	Shimoga	149604	1020
8	Davanagere	31838	2831
9	Chitradurga	25859	3550
	<b>Total</b>	<b>479446</b>	<b>30251</b>
Mysore			
10	Mysore	34652	2584
11	Hassan	67388	476
12	Mandya	32719	2972
13	Chikballapur	104280	169
14	Dakshin Kannada	195638	272
15	Kodagu	47104	33
16	Chamarajanagar	11184	468
17	Udupi	85969	681
	<b>Total</b>	<b>578934</b>	<b>7655</b>
			<b>Contd...</b>

Divisions	Name of the District	Encroachment in acres	Encroachment cleared ( acres)
Belgaum			
18	Belgaum	9979	1938
19	Dharwad	6445	310
20	Bijapur	4178	690
21	Uttar Kannada	2730	487
22	Bagalkote	794	324
23	Gadag	6441	923
24	Haveri	61679	39474
	<b>Total</b>	<b>92246</b>	<b>44146</b>
Gulbarga			
25	Gulbarga	29738	6580
26	Bellary	64018	9836
27	Raichur	7080	147
28	Bidar	38742	128
29	Koppal	4232	1359
30	Yadgiri	7794	442
	Total	151604	18492
<b>Grand Total</b>		<b>1302230</b>	<b>100544</b>
Source: Karnataka Public Land Corporation			

In view of this problem, the Karnataka Legislature passed the Karnataka Land Grabbing (Prohibition) Act 2007 which provides for measures to curb organized attempts to grab lands belonging to the Government, Wakf or Hindu religious institutions and charitable endowments, local authorities or other statutory or non-statutory bodies owned, controlled or managed by the Government. According to the Karnataka Land Grabbing Prohibition Bill, 2011, the Government may, to institute speedy enquiry into alleged land grabbing and trial of cases, by notification, constitute a special court.

### *Land Acquisition in Karnataka*

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Land acquisition is the process wherein agricultural and/or non agricultural lands are acquired by government for various activities such as village/town extension, roads, culverts, reservoirs, canals, military camps, railways, industries etc. Regular Assistant commissioners in the revenue sub-divisions also act as Land Acquisition Officers along with special Land Acquisition Officers appointed by the government, urban development authorities, Industrial development authorities, The National Highways Authority etc. As it has been the case in other states, land acquisition in Karnataka was also governed by Land Acquisition Act – 1894 till December 31, 2013. The Act lapsed with a new land acquisition act titled The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force on January 1, 2014. Karnataka January 1, 2014. Karnataka is in the process of finalizing the rules at the time of writing this report.

Under the Land Acquisition Act - 1894 (LAA) the State had full powers to acquire land. The only restriction placed upon the acquisition process was that the project for which the land was being acquired should have been for some “public purpose”. A certificate of “existence of public purpose” by the government is not required if the property is acquired under some Special Act which does not provide for such certificate directly or by implication. The following procedure was generally followed at the time of land acquisition.

#### *The procedure*

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- a) The acquiring body concerned files an application before the Deputy Commissioner (DC), giving the details of extent of land, sketch, survey numbers and details of the owners of the lands.
- b) Considering the application the DC issues a preliminary notification under section 4 of LAA 1894 and asks the acquiring body to deposit 80% of the probable cost.
- c) In the meanwhile the Deputy Commissioner generally designates an Assistant Commissioner as LAO. After scrutiny of all available documents including the proposal/ application the DC issues a notification under 6(1) calling for objections and simultaneously he seeks opinions from various depts., like forest, agriculture, PWD, Horticulture to assess the valuation of various assets and arrive at compensation.
- d) After the stipulated time, the DC conducts a public hearing and for those who file an objection, a separate individual enquiry is also held. After the enquiry and obtaining the reports from various

competent departments the compensation amount is fixed. Additional compensation as per certain norms is also added to this compensation.

- e) The affected land owner is allowed to receive the compensation 'Under Protest', and is eligible for any additional compensation as per the court verdict.
- f) However the land is taken possession by the state and handed over to the acquiring body after getting the full payment of the acquired land. If the acquired land is considered excess to the proposed project of the acquiring body, only the state govt. (here the cabinet) had the powers to de notify the land.

**Compensation:** Compensation paid to the land owners has repeatedly been a bone of contention between the government and land owners in Karnataka as it has been the case in other parts of the country. Generally, compensation is fixed by the price-fixation committee headed by the Deputy Commissioner. The committee would include special land acquisition officer concerned and representatives of the land owners.

While this is the general procedure, slightly different procedures for payment of compensation is followed when the land is acquired for industrial purpose by the Karnataka Industrial Development Board (KIADB) the Bangalore Development Authority (BDA) and Karnataka Highways Improvement Project, Krishna Bhagya Jala Nigam. According to the existing norms of the KIADB, for example, a land loser will get 9,583 square ft of developed land per every acre of land acquired by the KIADB. (The provisions relating to this are discussed in detail in the next panel). The entire gamut of compensation payment is now being reviewed according to the provisions of the new Act.

#### 4.4.2 Assessment and Score

**Indicator 1: Identification of public land and clear management: public land ownership is justified, inventoried, under clear management responsibilities, and relevant information is publicly accessible.**

LGI	Dimension Description	Score	Score Description
1 1	Criteria for public land ownership are clearly defined and assigned to the right level of government	A	Public land ownership is justified by the provision of public goods at the appropriate level of government and such land is managed in a transparent and effective way.
1 2	There is a complete recording of public land	B	Between 30% and 50% of public land is clearly identified on the ground or on maps.
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.
1 4	The management responsibility for different types of public land is unambiguously assigned	B	There is some ambiguity in the assignment of management responsibility of different types of public land but this has little impact on the management of assets.
1 5	Responsible public institutions have sufficient resources for their land management responsibilities	C	There are significant constraints in the budget and/or human resource capacity but the system makes effective use of limited available resources in managing public lands.
1 6	The key information on public land allocations to private interests is accessible to the public	C	The 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 recorded or partially recorded but is not publicly accessible.

#### Analysis

##### Criteria for public land ownership and assignment of responsibility

Karnataka Land Revenue Act, 1964, defines public land and establishes the state government as the sole custodian of all public land. The state through various other Acts assigns different kinds of public land to various agencies. While the forest land is under the Department of Forests, all other kinds of public land are generally in the custody of the Revenue Department. The ownership of certain kinds of public land in urban areas is assigned to the urban local bodies. Following large scale encroachment of public land in Karnataka, the State Government set up the Karnataka Public Land Corporation in 2006 to demarcate and manage the public land.

Section 67 of the Karnataka Land Revenue Act – 1964 defines public land as all land which are not property of others. Section 67(1) elaborates this as follows:

All public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nallas, lakes and tanks and all canals and water-courses and all standing and flowing waters, and all lands wherever situated which are not the property of individuals or of aggregate of persons legally capable of holding property are....declared to be the property of the government.

Section 68 of the Act confers on the state powers to extinguish the right of public or individual on certain road etc., which is the property of the state, thereby becoming the sole owner of such land. However the law ensures that any individual who lawfully establishes certain rights over such land shall be suitably compensated.

The district is the administrative unit under which the land ownership of each district is defined and the deputy commissioner of a district is the custodian of the public land within a district.

#### POLICY RECOMMENDATION

The departments charged with the responsibility of managing the public land should systematically identify public land and maintain a data-based which should be publicly accessible and updated from time to time. A portal can be created to make this information available to the public

#### *Recording of public land*

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In the original survey settlement all public land was recorded and mapped manually. However, over the years following the transfer of public land for various private purposes and encroachments of public land, the records available with the government might not reflect the real extent of land held by the government. At the time of computerizing the land records under Bhoomi project the existing records were digitized, however these records are subject to inaccuracies in the absence of regular

updating. The Government of Karnataka is now planning to undertake a fresh survey of land which when completed is expected to give up-to-date inventory of public land.<sup>46</sup>

Chapter V, Section 18, of KLRA, 1964, refers to the authority that is authorized to survey, assessments and settlements of land revenue and the settlements of boundaries and connected matters. At executive level the state has created a directorate of survey settlement and land records, which has a structure of officers' right up to village level.

From KLRA, 1964:

18. Survey Officers—(1) For purposes of survey, assessments and settlements of land revenue and the settlements of boundaries and connected matters provided for in this Act, the State Government may, by notification, appoint such officers as it may deem necessary. Such officers shall be designated 1[Director of Survey Settlement and Land Records], 2[Joint Director of Land Records, Joint Director for Settlement, Deputy Director of Land Records, Deputy Director for Settlement, Assistant Director for Settlement, Assistant Director of land Records], Settlement Officers and Assistant Settlement Officers, or otherwise as the State Government may deem fit. Each such officer shall be subordinate to such officer or officers as the State Government directs.

Overall, although public land in Karnataka is recorded, there may be some discrepancy between the situation on the ground and the maps available with the Survey and Settlement Departments.

#### *Public Accessibility of Information on public land*

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Information on public land inventory is available but it is neither consolidated nor is it publicly accessible. Various agencies seem to possess this information in a scattered manner. The Revenue Department owns and manages the largest chunk of public land in the state but the department does not have the information centrally available in its state headquarters. **Bhoomi** data base has figures for the extent of public land available in rural areas but the land held individually by various agencies of the government is not included in this. There is also the problem of defining various kinds of public

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<sup>46</sup> The Revenue Minister recently announced that the resurvey with modern technologies will be undertaken on a Pilot basis in 4 districts and will be extended to the whole state in a time bound manner.

land categories such as forests, minor forests, and common land attached to private land, common land available to the general public and so on. The information available with these agencies also is not totally reliable because the records are not updated regularly. At the village level, the Village Accountant is expected to maintain records of all the available public and private land in his or her jurisdiction. However, because of rampant encroachment of public land and in the absence of strict annual *jamabandi*<sup>47</sup> until a fresh survey of all the land is taken up to update the records, the reliability of the inventory of public land will remain a matter of concern.

#### *The management responsibility for different types of public land*

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There is no apparent ambiguity in assigning the responsibility of managing public land. Various kinds of public land are assigned to various departments/agencies as indicated in the table 4.4.3

However, these institutions do not seem to be properly equipped to manage the land assigned to them. As pointed out by the Task Force for Recovering the Encroached Public Land (V. Balasubramanian Committee) in its report, none of the departments concerned could show an inventory of land that they were supposed to be managing.

#### *Sufficiency of resources for public land management?*

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Institutions charged with public land management face considerable resource and capacity constraints. As mentioned in the earlier section, KPLC is a relevant case which reflects the state of affairs in the management of public land. The corporation till recently did not have a full-time managing director, whose post was specially created to recover encroached government land and protect such land. The government has been posting an IAS officer, holding other posts, as in-charge managing director KPLC.

In a PIL against the corporation a Division Bench of the Karnataka High Court was also told that more than 50 per cent of sanctioned posts are vacant in KPLC.<sup>48</sup> In addition to this there is also a shortage of staff at the field-level. Important executive level posts such as those of Tehasildars have remained

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<sup>47</sup> Annual land audit which was conducted with great seriousness in the past but not in the recent years.

<sup>48</sup> The Hindu. *Karnataka Court seeks action plan on land recovery*. Available: <http://www.thehindu.com/news/national/karnataka/karnataka-court-seeks-action-plan-on-land-recovery/article5218150.ece>

vacant for a number of years for various reasons including the delay in the annual state civil service recruitments. Serious shortage of surveyors has hampered the survey work of both public and

. Table 4.4.3 Types of Public Land and Institutions Responsible for their Management			
Type of Land	Dept./Institution	Relevant Law	Other relevant details
Forest land (including Minor Forests)	Dept. of Forests	Karnataka Forest Act Forest Conservation Act	The state can transfer certain lands for development of forestry, but cannot take it back except with the permission of GOI, Ministry of F&E
Tanks and Tank Beds	Dept. of Minor Irrigation, GPs under Dept. of RDPR and Town and Municipal Councils/ City Corporations	Karnataka Land Revenue Act Karnataka Panchayat Raj Act	Lakes bigger than 40 acres are handed over to Minor irrigation and below are transferred to RDPR
Mining areas	Revenue Dept.	Karnataka Land Revenue Act	Department of Mining and Geology is the recommending authority
Orchards	Dept. of Horticulture	The Land is transferred for better upkeep and public Purpose	
Grazing Lands and Commons	Revenue Dept.	Karnataka Land Revenue Act	Villages can enjoy certain privileges
Other kinds of public land	Revenue Department	Karnataka Land Revenue Act	These are lands on which public have no user rights

private land. In January 2014<sup>49</sup>, the State Legislative Assembly has been informed by the Revenue Minister that the surveyors' posts have been recently filled and they will be available for work from this year.

#### *Accessibility of Information on Public Land Allocation*

The Deputy Commissioner is the competent authority to allocate public land for private use. In certain cases, the DC will have to take approval of the government. The deputy commissioner's office

<sup>49</sup> Revenue Minister V. Srinivas Prasad's answer to a Legislative Assembly question on January 27, 2014

maintains the records of all such allotments and the districts regularly send updates to the state revenue department. However, the information is not readily accessible to the public. Moreover, even the RTI applications filed in the Revenue Department which is supposed to maintain consolidated figures of all such public land allocations are routinely transferred to the district and taluk offices. Although the information is recorded at some level; they are neither consolidated nor readily available for reference.

**Indicator 2: Justification and time-efficiency of expropriation processes: the state expropriates land only for overall public interest and this is done efficiently**

LGI	Dimension Description	Score	Score Description
2	1	C	Between 30% and 50% of land expropriated in the past 3 years is used for private purposes.
2	2	A	More than 70% of the land that has been expropriated in the past 3 years has been transferred to its destined use.
2	3	B	In some cases

*Analysis*

*Extent of transfer of acquired land to private interests:*

According to the statistics provided by the Karnataka Industrial Area Development Board (KIADB), a total of 24284.13 acres of land has been acquired and transferred for private purposes in the past three years. However, to calculate what percentage of total land acquired this constitutes, we should have the details of all the land acquired in the past three years – both for public and private purposes. Since no single government agency maintains the figures of the land acquired by multiple agencies for various purposes, it is difficult to calculate the proportion of the total acquired land having been transferred to private purposes.

The non-Industrial purpose land acquisitions include, lands acquired for highways, irrigation projects and housing purpose. The Government has been especially acquiring huge amount of land for the past few years for its irrigation projects in the northern parts of the State. Once the land acquisition for

major irrigation projects end, the proportion of the acquired land used for public purpose may decrease. As of now, in the absence of accurate figures one can guess that between 30 per cent and 50 per cent of land might have been used for private purposes in the past three years.

### *Timely Transfer of Acquired land to destined use*

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As the acquisitions by definition are done on demand by the agencies or organizations vested with the mandate of public purpose, the process of land acquisition begins with clear proposal by the agency intending to take up the project (NHAI, GAIL, etc.)

### *Threat of Acquisition and Pre-emptive Action*

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Cases of pre-emptive actions have been reported from time to time. In order to address this, the government of Karnataka has enacted the Karnataka Land (Restriction on Transfer) Act, 1991 which checks for this sort of pre-emptive action by private parties.

This Act is to impose certain restrictions on transfer of land which have been acquired by Government or in respect of which acquisition proceedings have been initiated by the Government, with a view to preventing large scale transaction of purported transfer, or as the case may be, transfers of such lands to unwary public.

- Under Section 3 of the Act, a person is prohibited to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which has been acquired by the Government under the Land Acquisition Act, 1894 (Central Act 1 of 1894) or any other law providing for acquisition of land for a public purpose.
- Further, under Section 4 of the Act, previous permission of the competent authority is required where a person transfers or purports to transfer, by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which is proposed to be acquired in connection with the Scheme in relation to which the declaration has been published under Section 19 of the Bangalore Development Authority Act, 1976 or section 19 of the Karnataka Urban Development Authorities Act, 1987.

In addition to these legal provisions, recently the Bhoomi data base is linked to land acquisition process to reflect the initiation of the land acquisition process on the Record of Rights. All these measures have by and large ensured that no such pre-emptive actions are taken. However, there are

anecdotal evidences of such cases having been reported from time to time. No specific data is available as the cases are mostly in the private domain. However the very preamble of the Act gives ample evidence of persons trying to transact the notified land.

**Indicator 3: Transparency and fairness of expropriation procedures: expropriation procedures are clear and transparent and fair compensation is paid expeditiously**

LGI	Dimension Description	Score	Score Description
3	1	D	Compensation, in kind or in cash, is paid, however the level of compensation where rights are not registered does not allow for maintenance of social and economic status
3	2	C	Where people lose rights as a result of land use change outside the acquisition process, compensation in cash or in kind is paid such that these people do not have comparable assets and cannot continue to maintain prior social and economic status.
3	3	D	Less than 50% of acquired land owners receive compensation within one year.
3	4	C	Avenues to lodge a complaint against acquisition exist but are somewhat independent and these may or may not be accessible to those affected.
3	5	A	A first instance decision has been reached for more than 80% of the complaints about acquisition lodged during the last 3 years.

### Analysis

#### *Is compensation paid regardless of the registration status?*

As the acquisitions are done as per the Land Acquisition Act 1894, the compensations are paid as per the provisions of the Act. The acquisition procedures are clear and transparent, however the term 'Fair Compensation' is subject to debate. The compensation is decided by the valuations based on certain indicators which solely ignore the rehabilitation aspects generally the compensation is not considered fair by the persons who lose land. Moreover in certain acquisitions like, for NHAI or GAIL or Canals under irrigation projects, only certain strip of land is acquired. Compensation based on the

sq meters of land acquired, ignoring the rest of the land mass which are likely to be affected by the loss of strategic strip of land.

#### *Compensation for land use change resulting in selective loss of rights*

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Existing laws in general do not provide for such compensation. However, in Karnataka when the land was acquired for major irrigation projects and for high way expansions etc, the government made some provisions for paying compensation to people who were indirectly dependent on land although they are not land owners themselves. Krishna Bhagya Jala Nigam, the special purpose agency which acquired land for Upper Krishna Irrigation Projects formulated a rehabilitation and resettlement policy which covered the selective loss of rights too. A similar policy was adopted while acquiring land under Karnataka Highways Improvement Programme. However, there is no guarantee that the affected persons or families are paid adequately to maintain their previous social or economic status.

#### *Acquired owners are compensated promptly*

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Section 11.2(1) of LAA describes the aspect of procedures to award compensation. The Law stipulates that the DC shall award the final compensation within two years from the notification. If not the entire notification process shall lapse. However, no data is available on how long it has been generally taking for the payment of compensation. Going by media and popular reports it is unlikely that the owners are compensated promptly. The CAG report on BDA mentions the following aberration of non-payment.

“In 63 cases, BDA, instead of paying compensation for the entire area covered by the award, had restricted the payment to a reduced area. BDA did not furnish the information about the period to which these cases related. The area excluded from payment of compensation in these 63 cases aggregated 16-20 acres. As per Sec 31 of the LA Act, the Deputy Commissioner, upon making of the award, is bound to tender payment of compensation to the persons interested and entitled to receive the same under the award. Where he is unable to do so due to any of the contingencies referred to in Sec 31(2), the DC is required to deposit the amount of compensation in the Court. Withholding the payment of compensation after passing of award lacked lawful justification. On the ground of non-payment of compensation, BDA had not taken possession of these lands which did not, therefore, vest with BDA. Thus, the land owners in these cases continued to enjoy possession of the land for which

award had been passed.<sup>50</sup> Experience in Karnataka is that, very few land owners receive compensation within one year.

*Independent and accessible avenues for appeal against acquisition*

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The legal frame work provides avenues for appeal. Reference to Court and Procedure There on (LAA 1894)

18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector<sup>51</sup>, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Land Acquisition process can also be challenged and appealed on the grounds of fairness and the public purpose involved. Appeal to the court of law, however, may be sometimes expensive and therefore some accessibility constraints on this count cannot be ruled out. The courts operate independently while deciding such cases but the appeals to the revenue authorities sometimes may not very unbiased towards the land owners, especially considering the fact that courts have overruled the decisions of the revenue authorities in a number of cases.

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<sup>50</sup> . Ch.13, CAG report on BDA

<sup>51</sup> Deputy Commissioner

### *Timely decisions regarding complaints about acquisition*

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Since the first instance decision is made by the revenue authorities, generally the complaints are disposed of quickly.

## 4.5 Panel 5: Transfer of Land to Private Use

### 4.5.1. Panel Context

#### *Introduction*

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The state facilitates the transfer of land, both public and private, to various private projects, mainly industrial and housing projects. To facilitate and accelerate certain activities like housing and industrialization through the transfer of land to private use, the Government has enacted two Acts: Bangalore Development Authority Act (BDA) 1976 and Karnataka Industrial Areas Development (KIAD) Act 1966 for transfer of land for private use. The Karnataka Industrial Area Development Board (KIADB) is the principal agency which transfers the land for private industrial use whereas the Karnataka Housing Board and the Bangalore Development Authority are the two agencies which facilitate the transfer of land for private housing purposes. All the three agencies acquire land for this purpose and in some cases use the available public land.

Although the transfer of huge tracts of land by these agencies for the private purpose has contributed to a great deal toward industrialisation and the expansion of housing infrastructure, the process has been marred by controversies and public protests. Some of the main issues associated with the transfer of land to private use are: (i) the absence of a system to decide the actual land requirements of a prospective investor, resulting in transfer of excess land; (ii) lack of a uniform policy to compensate and rehabilitate land owners; (iii) absence of any provision to compensate dependents of land other than the owners; (iv) absence of a system to monitor whether the land allotted is being used for the purpose specified; (v) allotment of land with sometimes without considering environmental and social costs and (vi) regional imbalance in land allotment with southern parts of the state accounting for a majority of land transfers to industries. Some of these issues, especially those relating to compensation, environmental and social impact are likely to be addressed by the new land acquisition act – the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act – 2013 which is being implemented in Karnataka.

#### *Land Transfer to Industries through KIADB*

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Large scale acquisition and transfer as a policy was initiated in the state of Karnataka with the establishment of KIADB in 1966. This was the second such legal initiative in the country after Maharashtra IAD act of 1962. The Karnataka Industrial Areas Development Board was established under the Karnataka Industrial Areas Development Act, 1966 to promote and assist in the rapid and orderly establishment, growth and development of industries in the State. Apart from acquiring land for industrial areas, KIADB also acquires lands to cater to the specific needs of individual industrial units (Single Unit Complexes) and public infrastructure projects.

The KIADB facilitates transfer of land to private sector in the following ways:

- a) Land can be given to private industries from the KIADB-owned land (land banks or industrial areas).
- b) Partial KIADB involvement: negotiate with land owners to obtain consent for 70% of required land; KIADB helps with acquisition of the rest for a service fee (10% of land price).
- c) Direct acquisition: Buy land directly from owners and obtain permit from Deputy Commissioner in district for industrial use (if land to be acquired is agricultural land).

Table 4.5.1 presents the district-wise break up land acquired and transferred by the KIADB to the industry between 2009-10 and 2013-14.

### *Single Window Clearance for Industries*

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Karnataka *Udyog Mitra* is a 'single contact point' for all investors who are looking at setting up businesses in Karnataka. As the nodal agency, its role is to facilitate investments and execute initiatives to enable a smooth transition, from receiving an investment proposal to the eventual implementation of the project. It functions as the Secretariat for grant of approvals and sanction of infrastructure facilities for approved projects.

Project proposals that require approval are invited for the single-window committee meetings and asked to make a presentation. Since the committee includes members from all the departments whose approval would be required for the investor to set up his firm, this meeting serves as a one-stop place for all the departments to obtain all relevant information from the investor. In case a project is appearing before the State high level committee (investment greater than Rs.50 cr), it is screened by a screening committee beforehand. After the meeting, in case additional documents are required

by various departments, the investor is asked to produce them at *Udyog Mitra* which forwards them to the requisite departments. Once all the departments grant their in-principle agreement, *Udyog Mitra* approves the project.

**Table 4.5.1: Land acquired and transferred to private interests by KIADB (2009-10 to 2013-14)**

S.No.	District	2009-10 (in acres)	2010-11 (in acres)	2011-12 (in acres)	2012-13 (in acres)	2013-14 (in acres)	Total (in acres)
1.	Bangalore	117.26	11.06	15.06	36.15		180.13
2.	Bangalore Rural		167.10	60.07			227.17
3.	Ramnagar	55.25	9.25				65.10
4.	Bagalkot	18.04	4.21	41.31	63.05		128.21
5.	Bellary	634.15	10126.1	2072.11	3482.23		16315.10
6.	D.K.Dt	104.28	53.29	11.17	1.19		171.13
7.	Koppal				6.14		6.14
8.	Davangere	2.21					2.21
9.	Shimoga	48.24	136.21				185.05
10.	Mysore	165.04	262.31				427.35
11.	Hassan	35.34	175		177		387.34
12.	Gulbarga				27.35	1821	1848.35
13.	Bidar	201.25					201.25
14.	Bijapur	135.26	2938.36	107.10			3181.32
15.	Belagam	125	53.33	13.16			192.09
16.	Chitradurga	27.30	4.08	1.10			33.08
17.	Dharwad	39.38					39.38
18.	Kolar	-	-	-	117.13	7.06	124.19
19.	Raichur	-	-	-	166.17		166.17
20.	Kodagu	17.27	10.33				28.20
21.	Udupi	141.10	--	40.05	-	-	181.15
22.	Tumkur	-	66.32	-	60.27		127.19
23.	Chikballapur	-	-	-	70.23	-	70.23
Total		1871.17	14021	2362.32	4205	1828.06	24284.13

The approval granted by the single window committee only denotes in-principle agreement by all the departments involved. Once the project begins, the investor has to apply to all the departments separately as per their procedures and obtain formal approval. However, obtaining the in-principle approval beforehand through *Udyog Mitra* has two benefits:

- (1) All the departments process the application faster as they have already given their in-principle agreement.
- (2) *Udyog Mitra* follows up with various departments in case of delays

Three committees have been established under the Industrial Facilitation Act, 2002 in order to examine and approve various types of projects:

Category I (Investment less than Rs. 3 Crore): A district-level single window committee with members from all departments involved in clearing the project is formed. The Deputy Commissioner of the district heads this committee. The committee meets once a month or more frequently when necessary.

Category II (Investment 3-50 Crore): State-level single window committee headed by the Minister for Industry. The committee meets once a month or more frequently when necessary.

Category III (Investment greater than 50 Crore): High Level Clearance Committee (HLCC) under the Chief Minister. Includes minister for industrial development, principal secretary etc. The committee meets once in 3 months.

With the establishment of the Single Window Clearance System through *Udyog Mitra* the process of giving clearance for industries has been expedited. The clearance comes with the necessary approval for the land sought by the industry. Since there is a competition among the states to promote industrialisation, the government has been taking special interest in ensuring that this system works well. However, with the acceleration of industrialization and ever increasing demand by private investors for land, several issues have arisen.

First, in the process of land acquisition to create a land bank, the Acquisition process faced the following problems: a) gap between preliminary notification and final notification; b) delay in final notification and disbursement of compensation; c) gap between actual demand and the extent acquired; d) de-notification due to extra legal considerations; e) disparity in compensation amount.

Second, while high power committees receive, scrutinize and approve proposals for industrial enterprise based on the demand made in each proposal, KIADB acquires land as per the mandated provisions. In practice, KIADB, in several instances, as noted by the Comptroller and Auditor General's report, acted in violation of the norms. Three notable areas of violation captured in the report are:

- e) *Acquisition of land*: here the Board has either acquired land in excess to the demand or acquired in an erratic fashion.
- f) *The payment of compensation*: here it is either excess payment or without the scrutiny of the mandated documents.

- g) *Transfer of land*: there have been several instances of violations of rules that hindered transparency in transfer of lands. Restriction of publicity, unauthorized transfer and reduction of allotment price are some of the violations.

The Karnataka Industrial Policy 2006-11 and 2009-14 aims at reducing the regional imbalances and ensuring overall socio-economic development of the State. Streamlining land acquisition process through inclusive development, improved management of industrial areas/estates, creation of quality Infrastructure etc., are some of the strategies envisaged in the industrial policy to create enabling environment for robust industrial growth.”

However, the available data speaks of lopsided industrial growth. Regional imbalances in establishing industrial areas continue to persist and Northern Karnataka accounted for only 9 per cent of the industrial area acquired by the Board during 2006-11 (Table 4.5.2)

Table 4.5.2: Land Acquired in Karnataka state from 2006 - 2011

Particulars	Extent of land acquired (in acres) 2006-11	Proportion to total
Northern Karnataka	<b>2378 acres</b>	<b>9%</b>
Southern Karnataka	<b>24246 acres</b>	<b>91%</b>
Total	<b>26624 acres</b>	<b>100</b>

## 4.5.2. Assessment and Score

**Indicator 1: 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)**

LGI	Dimension	Score	Score Description
1	1	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).
1	2	B	Between 70% and 90% of total the agreed payments are collected from private parties on the lease of public lands.
1	3	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).
1	4	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.
1	5	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

### Analysis

#### *Openness in public land transactions*

Public land in Karnataka is either leased or sold. Leases are generally given when use involves equity objectives, such as educational institutions. However, these transactions are not disposed of either by way of auction or open tender<sup>52</sup>. The specific processes and detailed procedures for such transactions are laid out in the Karnataka Revenue Act 1964 and the Land Grant Rules 1969. At the district level, Deputy Commissioners are empowered to decide on transfer of land for specific private purposes

<sup>52</sup> In an exceptional case, some public land recovered from encroachers was auctioned in 2007 but it is not a general practice.

taking into consideration the merit of the application. The extent of public land so disposed of is not readily accessible. Even when public land in Karnataka is leased or sold, it has not been through public auction or open tender in most cases. Thus, since the process of lease or sale of public land for private use has an element of discretion in the process, this dimension gets score D.

#### *Collection of Payments for public leases*

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The agreed payments are generally collected at the time of the transfer of such land. However, in the case of lease, indictments in the CAG report and media reports suggest that if the payments are to be paid periodically, in some cases the agencies concerned fail to keep a tab on the defaulters. Normally, such dues are cleared when the possessors of such land apply for a renewal of the lease or while obtaining a license relating to land use. So, one can say the payments are collected by and large.

#### *Is public land transacted at market prices unless guided by equity objectives?*

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Generally, the market prices are not charged for such lands. A committee decides the price for such land. The government has a lot of discretion in this area and the investor or the buyer may influence the pricing decision.

#### *Do the public capture benefits arising from changes in permitted land use?*

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The existing law does not provide for any mechanisms by which the public can have a share in the gains from land use change. The new land acquisition Act as applicable to Karnataka needs to be studied to ascertain this. At the time of writing this report the draft rules for Karnataka were being prepared by the government.

#### *Policy to improve equity in asset access and use by the poor*

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There are various policies in place to grant preferential allotment of certain categories of land to certain disadvantaged sections along with restrictions on the sale of such land to individuals from marginalized sections. The deputy commissioner has the powers to take such decisions. However, there is no formal mechanism to monitor the progress. A certain proportion of available public land is set aside for distribution among marginalized sections. However, in most parts of the state the demand far exceeds the available land under this quota.

**Indicator 2: Private investment strategy**

LGI		Dimension Description	Score	Score Description
2	1	Land to be made available to investors is identified transparently and publicly, in agreement with right holders	B	A policy to identify land that can be made available to investors exists, based on ad hoc assessment of land potential but with community consultation and agreement, and is applied in more than 90% of identified cases.
2	2	Investments are selected based on economic, socio-cultural and environmental impacts in an open process	C	Process is in place but many investments go ahead that are either not according to the policy or despite unfavourable outcomes.
2	3	Public institutions transferring land to investors are clearly identified and regularly audited	A	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 in a way that minimizes transaction costs.
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 and coordination to ensure that decisions on land use and land rights are well coordinated across sectors, and is applied effectively.
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.
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.
2	7	The scope for resettlement is clearly circumscribed and procedures exist to deal with it in line with best practice	C	Resettlement policy exists, but is only in part of the cases applied.

## Analysis

### *The process of identifying land to be made available to investors*

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According to the Land Acquisition Act 1894, which is the basic act governing all acquisitions the process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is mandatory before the exercise of any further powers under the Act.

The object of issuing a notification is to have a public announcement by the government and a public notice by the Deputy Commissioner to the effect that the land, as specified therein, is needed or is likely to be needed by the government for the "public purpose" mentioned therein; and thereby anyone affected by such acquisition may file objections. The notification also authorizes the departmental officers or officers of the local authority to carry out their responsibilities as mentioned in the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be informed. The objections filed by the interested persons have to be placed on record and oral hearing has to be given to them. Acquiring officers have to consider such objections and give reasons either for accepting the objections or for rejecting the same in a report to the government. The Government after evaluating the report will decide whether to go ahead with the acquisition or not. The final notification under Section 6 will be made thereby further necessitating award enquiry. The compensation and the documents for it will be considered for making award. After passing of award, the party will have the opportunity to file application under section 18 seeking reference to civil court for fixing the compensation. On the question of community consultation, it is to be noted that this is in the form of public notice and not a direct consultation with the stakeholders involved.

### *Criteria for and the process of selecting investments*

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The process of identifying investment in Karnataka is multi-layered. The state was the first to bring the industrial facilitation act to investors. Karnataka has a single window which acts as a one stop shop for investments in the State of Karnataka.

There is a state high level clearance committee (SHLCC) chaired by the Chief Minister of the State of Karnataka to approve projects with investments above Rs. 5 cr.

The State Level Single Window Clearance Committee (SLSWCC) chaired by Minister for Large and Medium Industries and meets every month to approve projects with investments between Rs.3 cr to Rs.5 cr.

The District Level Single Window Clearance Committee (DLSWCC) is chaired by the Deputy Commissioner of the District approves projects with investments up to Rs.3 cr.

### *Identifying and auditing institutions transferring land to investors*

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The Karnataka Industrial Areas Development Board (KIADB) was established under the Karnataka Industrial Areas Development Act, 1966 to promote and assist in the rapid and orderly establishment, growth and development of industries in the State. The Board acquires land, both Government and private, develops industrial areas and makes these available for undertakings to establish themselves. The Board also functions as an agency for acquisition of lands for Single Unit Complexes and Special Economic Zones.

In terms of capacity, the board is adequately resourced with senior government officers in their ex-officio capacities leading it. The Board has several functional wings, including, acquisition, engineering, allotment, projects finance and accounts and administration.

KIADBs key objectives derive from the incentive of promotion of industries as well as to acquire lands for government and its various organizations for implementation of their projects, as well as schemes of public importance.

### *Do agencies transferring land to investors share information and coordinate to minimize and resolve overlaps (including sub-soil)?*

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KIADB is a specialized exclusive agency of the Government of Karnataka not only to acquire private land and form industrial areas but also to provide land to stand alone industries. The Board works in close coordination with the Revenue Department and the Industries Department. No overlap is generally seen.

### *Monitoring of compliance with contractual obligations*

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With the idea of ensuring compliance of all the statutory provisions of different Acts and Rules, the Department of Labour, and the Karnataka State Pollution Control Board (KSPCB) conduct random

inspection of establishments. This inspection is not intended for fault finding but to ensure compliance. To avoid repeated inspections by these departments at different levels and also to avoid discretionary choice of establishments for inspection, a mechanism for randomized selection of the units for inspection has been evolved. Further, surprise inspections are conducted based on written complaints, with the approval of higher authorities. With the objective of imposing self-discipline and compliance within entrepreneurs, the concept of 'Self Certification' is accepted both at entry and operational levels.

However, it is to be noted that the CAG Audit conducted in 2010 states that KIADB acquired land in a restricted zone, developed it and allotted plots to industries "without obtaining prior Consent for Establishment (CFE) from the KSPCB and prior environmental clearance from the State Level Environment Impact Assessment Authority."<sup>53</sup>

#### *Safeguards to reduce the risk of negative effects from large scale land-related investments*

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Certain types of projects require environmental clearance. The Special Economic Zones (SEZs) are covered under the purview of State Environmental Clearance Committee (SECC) and would require Environmental Impact (EIA) studies to be conducted and environmental clearance obtained from SECC (read at – 3 above). However, individual units proposed to be set up in the SEZ do not require environmental clearance from SECC except those units in the purview of Schedule – I of the EIA notification (read at-2 above). These units require environmental clearance from Ministry of Environment and Forests, Government of India. Consents for establishment and operation for such units would be issued by the Karnataka State Pollution Control Board. Public Hearing is mandatory for establishing these industrial units listed under Schedule –1 of the EIA notification.<sup>54</sup>

#### *The scope for resettlement*

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In the existing laws in Karnataka, there is no clear re-settlement policy though in certain cases like the displacement of people under irrigation projects resettlement has been provided. However, the scenario is bound to change with the implementation of The Right to Fair Compensation and

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<sup>53</sup> Pg. 10 CAG Audit Report 2010

<sup>54</sup> Government Order No. FEE 32 ENV 2001, Bangalore, Date: 5.5.2003.

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which includes a revised resettlement policy.

**Indicator 3: Policy implementation is effective, consistent and transparent and involves local stakeholders**

LGI	Dimension Description	Score	Score Description
3	1	B	Investors provide sufficient information to allow rigorous evaluation of proposed investments
3	2	A	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.
3	2	A	Approval of investment plans follows a clear process with reasonable timelines
3	3	B	Those holding rights to land with potential for investment have clearly defined rights and incentives to properly negotiate but opportunities to obtain relevant information and assistance at reasonable cost are limited.
3	4	C	Contractual provisions regarding benefit sharing are publicly disclosed. Modalities for benefit sharing included in a significant share of relevant contractual arrangements and affected parties are aware of these and of ways to enforce them even though there is limited public disclosure.

*Analysis:*

***Do Investors provide sufficient information to allow rigorous evaluation of proposed investments?***

The Government has made significant efforts in making the state appear investor friendly and ensuring that processing of new investment proposals is done in the shortest possible time. It has set up the Karnataka Udyog Mitra, which is a 'single contact point' for all investors who are looking at setting up businesses in Karnataka. As the nodal agency, role of the Udyog Mitra is to facilitate investments and execute initiatives to enable a smooth transition from receiving an investment proposal to the eventual implementation of the project.

The procedures under this arrangement make it mandatory for the investors to provide necessary information. However, the stringency of the information required and degree of scrutiny from the competent authority is found to vary and would be difficult to comment upon.

It is to be noted that in order to simplify the regulatory frame work and to remove procedural impediments at the entry and implementation level and also to reduce maintenance and submission of repetitive documents during the operational level, several reform measures have been introduced by the Government in the form of a single point clearance committees for facilitating new investments , and a Combined Application Form (CAF) in order to reduce the number and duplication of application forms required to be filed at entry level

*Does approval of investment plans follow a clear process with reasonable timelines?*

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Single window clearance system of Karnataka Udyog Mitra enables a clear process as well as a reasonable timeline. It provides information on land, building regulations, tax regime, and incentives etc., to enable investors to firm up with their investment decisions. Investors are also facilitated by the Udyog Mitra to obtain necessary clearances / approvals from Government Departments / agencies for their projects. Investors get information on policies and procedures from the Udyog Mitra. This Nodal Agency closely monitors the implementation of projects.

*Do right holders and investors negotiate freely and directly with full access to relevant information?*

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The investors do not negotiate directly with the right holders. This negotiation is mediated by state departments and agencies responsible for industries promotion and investments, like KIADB. The compensation too is generally below the prevailing market prices. However, of late the Government has allowed investors to deal with the right holders directly. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 also follows the same principle.

*Public disclosure of contractual provisions regarding benefit sharing*

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Benefit sharing is built into the land acquisition terms and conditions. These are pre-defined by the land acquiring agency of the state and are done in accordance with the guidelines of the Land

Acquisition Act 1894. To this extent there is public disclosure of benefits. However, whether or not this is affected in practice does not always become part of the public discourse.

**Indicator 4: Contracts involving public land are public with agreements monitored and enforced**

LGI	Dimension Description	Score	Score Description
4	1	C	Spatial information and temporal information is available to relevant government institutions but not accessible on a routine basis by private parties.
4	2	C	There is little third-party monitoring of investors' compliance with safeguards and mechanisms to quickly and effectively ensure adherence are difficult to access for affected communities.
4	3	C	There is little third-party monitoring of investors' compliance with contractual provisions and mechanisms to quickly and effectively reach arbitration are difficult to access for affected communities but work for investors.

*Analysis**Public availability of information on spatial extent and duration of approved concessions*

This kind of information is not publicly available although they can be obtained under the right to Information law. The CAG audit report of Karnataka in 2010 lists out the following irregularities:<sup>55</sup>

A list of lands that is required for ascertaining the availability of Government lands was not prepared by the Tahsildars. Consequently, in the absence of such a database, Government was not in a position to know the exact extent and status of land available for grant/auction/lease. Guidelines were not prescribed to determine the market value of land granted to statutory bodies. Criteria were not prescribed for determination of eligibility of institutions for relaxation of norms to grant land at concessional rates and land had been allotted at concessional/incorrect rates to these bodies. Rules prescribing procedures for auction of land were not framed. Guidelines were not issued for fixation/periodical revision of lease rent. There was huge pendency in the disposal of applications received for regularisation of unauthorised occupation of land for agricultural purposes.

<sup>55</sup> CAG Audit Report. Available:

[http://saiindia.gov.in/english/home/Our\\_Products/Audit\\_Report/Government\\_Wise/state\\_audit/recent\\_reports/Karnataka/2010/Revenue/Chapter\\_4.pdf](http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/state_audit/recent_reports/Karnataka/2010/Revenue/Chapter_4.pdf)

Several irregularities were observed in the cases that were regularised by the Committees formed for the purpose.

*Is compliance with safeguards on concessions monitored and enforced effectively and consistently?*

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The state's New Industrial Policy lists that:

1. Inspections by various authorities of different departments shall be minimized and regulated through a random annual inspection and inspections only on the basis of complaints.
2. Providing for a scheme of self-certification by the entrepreneur confirming compliance of the extant laws and rules. Such self- certification is to be supported by a stringent penalty structure for default.

*Do avenues to deal with non-compliance exist and obtain timely and fair decisions?*

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As discussed in the preceding dimension third party monitoring is not routine as a consequence of the mandates in the Karnataka Industrial Policy (KIP).

Several other areas of land transfer administration and regulation need to be formalized before the state can monitor and track the non-compliance in this area. As of now, there is no established third party mechanism to monitor this, while some form of self-regulation forms a part of the land transfer policy.

## 4.6. Panel 6: Public provision of land information: registry and cadastre

### 4.6.1. Context

#### *Introduction*

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The central government's Computerization of Land Records project has been enthusiastically pursued in Karnataka under the name Bhoomi since the early 2000s. As a result, the registry of rural land records have been made available in a digitized format allowing for relatively easy access by farmers. However, since the existing manual records ridden with errors were digitized without first carrying out corrections the accuracy of the accessible data continues to be an area of concern. The state has also computerized the land registration process resulting in faster transactions and easy access of registered documents and encumbrance. The registry and the registration process have been integrated to facilitate faster updating of records.

As far as the cadastre is concerned, in rural areas, nearly 75% of land parcels have corresponding cadastral maps. However, an upgraded version of the Bhoomi Project which is likely to be launched mid-2015 aims to update all the existing records in the data base besides developing a robust land information system covering all aspects of land governance.

For urban property records, Karnataka is in the process of implementing an Urban Property Ownership Records (UPOR) project using latest available technology. At present, since tax accounts maintained by local bodies are being used as property records in the absence of proper ownership documents, no cadastre is maintained for urban properties.

#### *The Land Registry*

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In Karnataka, registry encompasses land records database managed directly by both the Revenue Department and the Survey and Settlement Department. In 2002, the Revenue Department introduced *Bhoomi* in which textual records of rights, tenancy and cultivation (RTC) of 20 million

records of land ownership of 6.7 million farmers in the state were computerized. These records have been made available through *Bhoomi* kiosks across 176 *taluks* in nearly 30,000 villages.

According to evaluation reports on *Bhoomi*, the time taken for processing RTC had come down dramatically. A request for an RTC was addressed within 5-30 minutes as compared to the 3-30 days earlier. A farmer needs to pay a smaller fee Rs. 15 for an online printed copy of the RTC by providing the name of the owner or plot number at the computerised land record kiosks. Significant reduction in corruption and bribery have also been reported though surveys conducted on the implementation of *Bhoomi*.

The other department involved in managing the registry is the Survey, Settlement and Land Records Department which deals with the land surveys and maintaining the historical land records. The department is also the custodian of cadastral maps. The survey records are a prime reference for the land administration systems. While there is no program for systematic registration of land rights in Karnataka, information on rights are initially gathered during settlement surveys. In rural areas, the survey records are maintained at a village level, and a unique parcel number is assigned to each surveyed parcel in a village. In urban areas, City Survey Plans are prepared and a unique parcel is assigned to each parcel on a City Survey Plan. The survey number is used to describe the parcel when dealings are registered. If the dealing is a subdivision, the department conducts cadastral surveys to re-establish boundary marks and to carry out subdivisions. When a deal in land is registered, notice is given to local authorities and a period of public notice is required. If there is no objection, the records are updated - the RTC records in rural areas or the Property Card in urban areas. The surveys conducted by this department also play an important role for the allocation of public land under the Karnataka Land Grant Rules 1969 to landless in the village, people residing in the village with insufficient land and landless people residing in nearby villages.

For urban property records, the revenue department is in the process of implementing an Urban Property Ownership Records project using latest available technology. The project which began in 2011, aims to create an accurate record of both spatial and textual ownership data of urban properties. Further, this database is planned to be used to provide speedy land related services to urban residents. At present, since tax accounts maintained by local bodies are being used as property records in the absence of proper ownership documents, no cadastre is maintained for urban properties.

One weakness of the Bhoomi project is that the manual records were digitized without first determining whether these records reflected the actual details of the land parcel or not. As a result, the data in Bhoomi may not reflect the true situation on the ground. As far as the cadastre is concerned, in rural areas, nearly 75% of land parcels have corresponding cadastral maps. Karnataka has brought amendment to Karnataka Land Revenue Act making pre-mutation sketch compulsory for all ownership-related changes (mutation) on the textual records. *Bhoomi* has been enhanced to capture the details of pre-mutation sketch and surveyors has been introduced in the mutation process to ensure that proper division (*podu*) takes place simultaneously along any other type of transaction. While this process has been appreciated at several levels, its dependence on the *Bhoomi* database which as discussed above does not truly reflect the situation on the ground affects the quality of the pre-mutation sketch.

However, an upgraded version of the *Bhoomi* Project which is likely to be launched in mid-2015 aims to update all the existing records in the database besides developing a robust land information system covering all aspects of land governance. The state has also taken up fresh survey of all land parcels on a pilot basis but its scaling up has been hindered because of conflicting claims being made on a large number of land parcels arising from discrepancies in the existing textual and cadastral records.

### *Registration and the Registry*

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The District Registrars and the Sub-district registrars of the Department of Stamps and Registration have the responsibility of registering all land sale deeds submitted to them and issuing a Registered/Certified copy of the sale/purchase document. In addition, sub-registrars also have the responsibility of issuing Encumbrance certificates which are used in property transactions as an evidence of free title/ownership.

The programme related to the computerization of the process of registration of land documents with the Department of Stamps and Registration in Karnataka is known as the Karnataka Valuation and e-Registration Programme (*Kaveri*) and was also introduced in 2002. By 2003-2004 the department had computerized all 235 Sub-Registrars offices and 33 District Registrar offices in the state. Under the manually registering process, the documents registered were copied manually in specified books. After they were verified with the original document, the hand written document was used for authentication by registering officers. The registered book would become the permanent public document and certified copies of these records would provide evidentiary value. Since the procedure

involved hand writing each document that was registered, the time taken to hand over the original registered document to the person registering the document would take anywhere between 2 to 3 months. Moreover it also meant 2-3 trips to the registration office to check if the document was ready. This cumbersome process led to undesirable practices. In the Kaveri programme, a software system carrying the existing registration procedure, property valuation and all associated activities was created. Care was taken not to change the existing five stage process of registering documents that citizens were familiar with.

Reports on the outcome of *Kaveri* have mentioned that despite the Government of Karnataka reducing the rate of stamp duty on conveyance from 10% to 8% and Registration fee from 2% to 1%, in 2003 there is significant growth in revenue as the *Kaveri* system calculated the valuation of property automatically eradicating the discretionary power of the Registering officer in accessing the valuation of property.

#### *Integration of the registry with other land related transactions*

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In a significant step to keep land records updated with all the changes related to land rights, the government has integrated the registry with at least three different transactions relating to land handled by three different agencies. First, now the Bhoomi data base (the textual data) is integrated with Kaveri (registration) and whenever an ownership change is registered that is automatically communicated to the registry to initiate the process of updating the textual records accordingly. Similarly, the Bhoomi data base is integrated with the process of lending by various banks and financial institutions so that whenever a loan is raised against a parcel of land the records reflect the liability. The Bhoomi data base is also integrated with the process of land acquisition in such a way that whenever the acquisition process is initiated with respect to a parcel of land the same is reflected in the record of rights. This helps prevent any transactions on the land which has been identified for acquisition by the government.

## 4.6.2. Assessment and Score

This section analyses in detail the specific elements related to the land registry, with a focus on its transparency and accessibility. These elements are divided into Indicators which in turn are broken down into several dimensions. Indicators provide a relatively exhaustive assessment of relevant land governance issues through specific dimensions which define areas for investigation, quantitative measurement or qualitative assessment.

### Land Governance Indicator 1. Mechanisms for recognition of rights

LGI	Dimension	Score	Score Description
1	1	B	Land possession by the poor can be formalized in line with local norms in an efficient & transparent process There is a clear, practical process for the formal recognition of possession but this process is not implemented effectively, consistently or transparently.
1	2	D	Non-documentary evidence is effectively used to help establish rights Non-documentary forms of evidence are almost never used to obtain recognition of claims to property.
1	3	B	Long-term unchallenged possession is formally recognized Legislation exists to formally recognize long-term, unchallenged possession but applies only to one specific type of land (e.g. either public land or private land).
1	4(i)	A	First-time registration on demand has proper safeguards & access is not restricted by high fees – Agricultural lands On-demand registration includes proper safeguards to prevent abuse and costs do not exceed 0.5% of the property value.
1	4(ii)	B	First-time registration on demand has proper safeguards & access is not restricted by high fees - Non-agricultural lands On-demand registration includes proper safeguards to prevent abuse and costs do not exceed 2% of the property value.

## Analysis

### *Formalization of land possessed by the poor*

There is a need to understand the difference between unauthorized occupation (possession) and encroachment while analysing this indicator. Possession is unauthorized occupation of government land which is not public land such as lakes, lake beds, water streams, forests etc. Further, if the unauthorized occupier doesn't own land of class 'D' of more than two hectares including land which is

part of unauthorized occupation, if such government land is situated away from the prescribed distances from urban area and the purpose of occupation is for agricultural, such an occupation is also termed as possession. If any of these factors are absent then such an unauthorized occupation becomes an encroachment. There are enough laws to formally recognize the possession and also to evict the encroachments. Section 94A of Karnataka Land Revenue Act 1964 provides for formalization of unauthorized occupation through a taluk level committee of five members. The committee can grant possession subject to following conditions:

- a. The committee shall have powers to grant to the person liable to be evicted under that section, the land which he had unauthorized occupied prior to the fourteenth day of April, 1990 (hereinafter referred to as the said date) or any portion thereof, if he satisfies the prescribed conditions (including the extent of the land held and unauthorized occupied by him) and makes within a period of six months from the date of commencement of the Karnataka Land Revenue (Amendment) Act, 1990 (hereinafter referred to as the Amendment Act), an application for such grant in such form along with such fees as may be prescribed and on payment of the amount payable under sub-section (5).
- b. Provided that the land so granted together with the land already held by such person, shall not exceed two hectares of 'D' class (Schedule I to the Karnataka Land Reforms Act, 1961) of land or its equivalent thereto.
- c. Provided further that no land shall be granted in the areas lying within the limits of cities and city municipalities
- d. Provided that nothing in this section shall apply to Forest lands, plantation lands or lands referred to in sub-section (2) of section 79.

As explained above, any person who has unauthorized occupation has been directed by the government to give application for regularization of the same and the time period has been extended to provide opportunity for the needy to make use of the facility provided by the government. Last amendment to extend the period was extended to three years from the date of commencement of the Karnataka Land Revenue (Amendment) Act, 2000 (Karnataka Act 15 of 2000). The said period of three years has lapsed on 27<sup>th</sup> April 2003. Since 55267 applications in Form 50 and 753727 applications in Form 53 are still pending, it is considered necessary to extend the period further for one more year.

Under section 94C of Karnataka Land Revenue Act, there exists provision to regularize the unauthorized construction of dwelling house with conditions such as date should not be later than 14<sup>th</sup> April 1998 and that the house is not constructed on forest land and doesn't attract the provisions of Karnataka Regularization of Unauthorized Constructions in Urban Areas Act, 1991.

The government of Karnataka has adopted the following procedure to formalize the possession by slum dwellers

- Karnataka Slum Development Board (KSDB) will identify and prepare the list of persons who may be issued title deeds after a survey of notified slums.
- To be eligible, the applicant must be living in a slum area for 10 years from the date of application and be in possession of a valid ration card or voter ID. The applicant's dwelling unit must have a minimum carpet area of 20'x30' and not greater than 30'x40'.
- For slums on government land, the KSDB will take up redevelopment in consultation with the government agency owning the land.
- For slums on private land, KSDB will pay the land owner a compensation amount equal to 300 times the property tax for the area used for redevelopment of slums.
- The land owner would also be allowed to utilise the Transfer of Development Right (TDR) on the land over which the development has been undertaken.
- Development of slums could be undertaken by KSDB either on its own or through public-private partnership.

There are enough provisions in the various laws to confer the rights to poor holding possession of the land. However, when it comes to implementation, there are many challenges. As mentioned above the Karnataka Land Revenue Act 1964 provides for formation of committees which looks into requests for regularization. These committees are constituted by the state government and get dissolved automatically when ruling party loses power. It has also been observed that while appointing nominees, the ruling party keeps political interests and appoints members; this sometimes leads to prejudiced decisions and nepotism. When it comes to the formation of committee for regularizing unauthorized occupation, it is not consistently constituted and there are instances where the ruling government did not constitute committee for a period of four and a half years and constituted it just when it was left with a remaining term of six months. Further, while regularizing, all the norms are not kept in view as there are no software systems which can verify and validate the data before taking decision. Even in case of agricultural lands wherein software like *Bhoomi* is in place, one can monitor

the mutation transaction after grant / regularization is done by committee. Though laws are in place to formalize the land possession by poor, but it will be difficult to say that implementation process is effective, consistent and transparent.

### *Use of Non-documentary evidence to establish rights*

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The need for non- documentary evidence arises where there is no physical or electronic evidence available in the form of hand written documents, maps, government orders, electronic documents, photographs, etc. Further when it comes to claiming ownership, one cannot become owner just by paying a tax and tax receipts cannot be used to prove the ownership of the property. Similar is the case with informal purchase agreements. Though this system is in practice in some remote areas of the state, the government discourages any such transaction and doesn't provide legal status to such informal papers. These informal agreements result in great loss to the state revenue as registration fee and stamp duty forms the major chunk of the state revenue. For analysing this indicator there is need to discuss the issue under two different categories namely,

- Inheritance, family partition and regularization of unauthorized occupation.
- Transfer of rights / properties outside the family

Regularization of unauthorized occupation has been discussed at length in LGI 6.1.1. While regularizing unauthorized occupation, the person in possession will not have any document to prove rights but still the law provides for formalization of the rights. Under Section 128 of Karnataka Land Revenue Act 1964, one can also intimate the concerned officer orally about the acquisition of right to get the property transferred in one's name. In cases of inheritance and family partition, no documentary evidences are necessary expect for some self-declarations such as a family tree and partition details in order to get the property transferred to legal heirs.

When it comes to transfer of rights outside the family, only registered deeds are recognized as instrument for effecting ownership change. No non-documentary evidences such as informal purchase notes can be used to establish rights. Even the civil courts don't recognize such informal notes as such practice instead of enabling public to establish the rights might be misused for evading tax. Encouraging informal agreements will result in non-updating of record of rights thus resulting in outdated land records.

### *Recognition of long-term unchallenged possession*

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The Limitation Act, 1963 is the legislation that governs the period within which suits are to be filed to take the advantage of adverse possession. As far as Public Land is concerned, the Limitation Act may not be useful as public properties such as lakes, lake beds, forest, footpaths, bull-cart paths, canals, natural water streams etc., which cannot be regularized or adverse possession can be formally recognized as per various amendments to Acts based on Supreme Court judgments.

Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act, 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of 12 years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, at the determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner. As far as the Government (Central or State) property is concerned, the period of limitation for any suit (except a suit before the Supreme Court) is 30 years and the starting point of limitation is the same as in the case of a suit by a private person (vide Article 112, Schedule I of Limitation Act).

The legal position as regards the acquisition of title to land by adverse possession has been succinctly stated by the Judicial Committee of the Privy Council in *Perry vs. Clissold*<sup>5</sup>: "It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title."

One can say that in case of private lands the Limitation Act 1953 would help in getting land formally recognized. There are some disadvantages also with respect to adverse possession, illegal encroachments of private properties by neighbours or anti-social elements for long time may deny

justices to real owners who are not in a position to oppose money and muscle power or people staying away from the place where property is located (ex. Non Residential Indians).

### *First-time registration: safeguards & cost of access (Agricultural Land)*

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Introducing new names into the Record of Rights (Record of Rights) is covered under section 128 and 129 of Karnataka Land Revenue Act 1964. Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the prescribed officer of the village within three months from the date of such acquisition, and the said officer shall at once give a written acknowledgment of the receipt of the report to the person. Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the prescribed officer.

The *Bhoomi* project has implemented this aspect through workflow based software. As mentioned above under this project about 20 million RTCs of 6.7 million farmers of Karnataka State have been digitized. All these records have been verified and certified by the revenue authorities before making digital database as the only source of land records. Manual records have been invalidated through amendment to Karnataka Land Revenue Rules 1964. Any changes to record of rights will happen through online mutation application (as part of *Bhoomi*) only. Changes to RTCs may be due to sale, partition, inheritance, pledge, release, government order, court order, podi etc. Online mutation application handles all type of mutation so that no manual intervention in updating land records database. Workflow based user-friendly software designed and developed by National Informatics Centre, Bangalore has bio-metric authentication to take care of non-repudiation and scanning interface to scan important documents as evidence for electronic transaction. PKI (Public Key Infrastructure) enabled *Bhoomi* database and application with integration of digital signatures is in place to adhere to IT Act 2000.

Further *Bhoomi* has implemented all the provisions of section 129 of Karnataka Land Revenue Act 1964 wherein revenue officer after making entry in mutation register, post up a complete copy of the entry (form-12 as generated by *Bhoomi*) in a conspicuous place in the chavadi (village community Centre) and shall give issue intimation (form-21 as generated by *Bhoomi*) to all persons appearing from the Record of Rights or Register of Mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein. *Bhoomi* provides for raising objection

as facilitated in the Revenue Act and if objection is raised, case will be taken into dispute register for hearing the affected parties before taking the final call. On approval of mutation by Revenue Inspector on *Bhoomi*, transfer of entries from registers of mutation are transferred automatically to record of rights thereby updating the Record of Right instantaneously.

Official cost of mutation for per survey number is Rs. 35 only which is very nominal and definitely less than 0.5% of property value.

Table 6.1.1: Report on number of transactions carried out to insert new owner

Year	Total Number of transactions	Number of transactions through which new owners inserted into Record of Rights											Percentage of new owner insertion into Record of Rights transactions	
		Grant	Regularization	Re-Grant	Inheritance	Partition	Sale	Gift	Will	LR Grant	Donation	Release of rights		Total
2010-11	1435011	2765	1645	240	178525	12569	184650	12266	4263	1513	12153	4316	414905	28.91
2011-12	1552372	3781	2432	339	259438	16305	194592	16008	4536	1484	15925	5259	520099	33.50
2012-13	1503376	3026	2525	293	257272	17291	177258	16754	4428	1195	16727	6242	503011	33.46

### *First-time registration on demand: safeguards & cost of access (non-agricultural land)*

The law makers of Karnataka have realized the importance of maintaining property records in village sites and cities and have brought relevant provisions in Karnataka Land Revenue Act 1964 pertaining to maintaining property records for building and building sites. The City Survey manual of Karnataka derives powers from these provisions of Karnataka Land Revenue Act 1964. Government of Karnataka after realizing the importance of maintaining property records for village sites and cities had taken up survey in cities like Bangalore (as it existed in the year 1965-70), Mysore, Davanagere, etc. Totally there are 48 towns in Karnataka where city survey is in practice. A document called property card is

maintained by the survey wing of revenue department in these cities where city survey is in practice. These property cards are record of rights for property with reference to cadastre data for each property card. Property cards are maintained as per city survey manual which has been derived using provisions of Karnataka Land Revenue Act 1964.

Due to unabated urbanization and lack of government's initiative to expand the city survey operations in these 48 towns, city survey has been limited to about 30-40% of city area at the time of writing this report. Further, the government did not extend the city survey activities to other parts of the state. Due to this limited coverage, property cards started losing their importance as the situation on the ground was not updated on the record and property cards were not available to every property. This led to situation where tax accounts maintained by local bodies replaced property cards while executing registered deeds for ownership transfers. As far as the registration department is concerned, they were only bound by section 21 of Transfer of property Act 1882 wherein some document which uniquely identifies the property is mandatory for registration of immovable properties. In this fashion tax account of local bodies become ownership documents for the purpose of property transfers and availing loans from financial institutions. A tax account maintained by local bodies doesn't have corresponding spatial data and cannot be used while resolving disputes. Since local bodies are concerned about collecting property tax rather than ensuring legality in creation of property, one cannot depend on these records to confer rights.

**Table 6.1.2: Report on number of property cards generated in pilot cities under UPOR**

Sl.No.	City	Total estimated properties	Total number draft property cards ready	Total number of Final property cards ready for issue
1	Mysore	298583	67285	11079
2	Shimoga	81859	5335	21101
3	Hubli-Dharwad	220943	11428	0
4	Mangalore	80942	2087	0

In Belgaum division which comprises of seven out of 30 districts of Karnataka, there exists a system called *Kammi Jasthi Patrike* (KJP) which is basically a process of reducing total area under agriculture and transferring same to non-agricultural usage in the record of rights. This is done every time an agricultural land is converted for non-agricultural purposes, separate Record of Rights are created for

each of the sites / plots created in non-agricultural areas for identity purpose and they are used for property transfers. That essentially means that due to non-availability for proper mechanisms to maintain non-agricultural properties, agricultural property registers are used for maintaining non-agricultural land parcel details.

The Revenue Department has taken up the task of creating Urban Property Ownership Records (UPOR) in 4 cities namely Mysore, Hubli-Dharwar, Bellary and Shimoga. This project is being implemented on Public Private Partnership (PPP) model. Service Providers have been chosen through tendering process to implement this project. Following are some of the advantages of the UPOR system:

- Accurate spatial and updated ownership data of all properties.
- Secured ownership documents.
- Confidence in transactions in the mind of property owners.
- Speedy land related services.
- Reduced property disputes due to fair handling of ownership records.

The salient Features of the UPOR Project are:

- The property details will contain both the building and land on which the building stands.
- The Property details captured will include :-
  - Spatial Details - Coordinates of the boundary points of land plot.
  - Area of the land, Building details - built up area, number of floors.
  - Rights on the property-Ownership, Mortgage, lease, Easement.
  - History of Transactions on the property.
- The Department has ensured that property ownership will remain confidential and shall be shared to only those parties that have an interest in the property.
- All mutations and changes to the property records will be certified through a PKI mechanism and biometrics by the authorized government officials.
- Different types of existing urban properties related data available with various government agencies such as urban local bodies and urban development authorities will be used as reference data in the project.
- The Project will be implemented through PPP Model where the Private Partners will be responsible for first time spatial data creation, creation of IT infrastructure and delivery of

services. The Department will continue to discharge its core responsibility including title enquiry of the properties and approve any change to the property Record(Mutation)

- Use of Modern spatial Technology- Global Positioning System (GPS), Total Station (TS), for ground based Survey and use of ICT (Information and Communication Technology) for data management, MIS Reports, and GIS tools for Mapping of data.

**Table 6.1.3: Report on number of property documents generated through e-SWATHU since 14-06-2013**

Sl.No	District Name	Form - 9				Form - 11
		Within Village limits	Approved layout	Sanctioned under schemes	Total	
1	Bidar	21	59	0	80	0
2	Uttara Kannada	4	224	15	243	8
3	Dakshina Kannada	111	1506	124	1741	113
4	Haveri	0	59	0	59	0
5	Bagalkot	35	1590	37	1662	0
6	Mysore	162	3912	89	4163	48
7	Raichur	14	478	6	498	4
8	Bellary	112	174	10	296	0
9	Kodagu	1	78	1	80	18
10	Belgaum	76	414	1	491	0
11	Chickmagalore	204	259	218	681	43
12	Gadag	13	147	26	186	0
13	Kolar	122	2287	4	2413	9
14	Shimoga	129	758	271	1158	42
15	Bangalore Rural	7	2489	118	2614	33
16	Dharwad	21	45	23	89	1
17	Koppal	8	2333	53	2394	0
18	Ramanagara	259	2439	62	2760	598
19	Chamarajanagara	0	209	0	209	0
20	Gulbarga	24	340	15	379	0
21	Chitradurga	104	1785	1	1890	8
22	Chickballapur	66	3383	52	3501	8
23	Bijapur	5	491	34	530	1
24	Hassan	261	1453	85	1799	8
25	Davanagere	200	155	31	386	0
26	Udupi	6	1863	222	2091	41
27	Mandya	101	157	51	309	3
28	Tumkur	70	1346	70	1486	69
29	Yadgir	23	143	0	166	0
30	Bangalore	65	16073	548	16686	11
	Total:	2224	46649	2167	51040	1066

The High Court of Karnataka in Writ Petition NO: 12278/2007 has ordered that registration of illegal properties should be stopped immediately by adopting software solutions. Gram Panchayats need to provide the property details maintained by them to registration department to allow the transactions on those properties which are not in violation of various acts and rules prescribed by the state government. Rural Development and Panchayat Raj department has put in place e-Governance solution called e-SWATHU (SWATHU means property in Kannada language) from 14-06-2013 to monitor the activities of the Gram Panchayat with respect to maintenance, updating and issue of property records under their jurisdiction for registration and other legal purposes. The approach followed to create property records here is incremental in nature

Property records will be created after verifying the legality of property creation. Only difference between this system and regular record of rights maintenance system is that there is no cadastre for properties created using e-SWATHU. Cost of these mutations per property number one percent of stamp duty which will be less than 0.5% of property value.

Since e-Swathu covers 30,000 villages of Karnataka and Belgaum division of Karnataka uses agricultural property records document for maintaining non-agricultural properties, one can conclude that except for few towns and cities, some form of record of rights maintenance is in place and indicator can be rated as B.

#### POLICY RECOMMENDATIONS

- Karnataka Land Revenue Act has evolved over time and many amendments have been put in place time and again to include new provisions and restrictions. Though the concept of regularization committee has been visualized keeping social justice and public participation in view, it doesn't seem to be functioning as per the expectations of law makers. It is high time to revisit the whole concept of regularization of unauthorized occupation by poor.
- There are instances of tampering of Form-50 and Form-53 registers which are proof of seniority and possession due to long time pendency and delay in regularization decision. There is urgent need to secure and preserve these registers and make them tamper proof using technology.
- One needs to put in place decision support tools and required data for the tools to automate the generation of reports which enforce the proper decision making.
- There is need to modernize land administration with the help of latest technologies so that it can be made efficient, effective, consistent and transparent.

- Existing Acts and rules do provide for comprehensive procedures to recognize non documentary evidences to establish rights. There is urgent need of examining the existing laws and bring some revolutionary changes so that new provisions are put in place for the use non documentary evidences to establish rights without compromising on the revenue generation and orderliness in land records management system.
- Supreme Court has advised the Parliament to take a re-look at the outmoded adverse possession doctrine; the Court made various important alternative observations:
  - The Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in law in the larger public interest. And especially, if the governmental authorities, like the police try to use their might to acquire land using this doctrine, it is the most tragic – in the Supreme Court’s words – “a testament to the absurdity of the law and a black mark upon the justice system’s legitimacy”. Rather, the government should protect a citizen’s property and not ‘steal’ it.
  - The Parliament must either require the adverse possessors to compensate the owners at the prevalent market value, or abolish the ‘bad faith’ adverse possession, or maybe increase the period of possession to claim adversely from the current 12 years to 30 or 50 years.
  - Finally the Court held that: “Adverse possession allows a trespasser – a person guilty of a tort, or even a crime, in the eyes of law – to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible.”
  - The doctrine of adverse possession has troubled a great many legal minds. It is high time that law makers start looking into the aspects discussed above and find alternatives. Otherwise there may be situation wherein “the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country.”

- A fairly good process is there in place for bringing new owners into Record of Rights register with proper safeguards to prevent abuse. Land Revenue rules state a 30 day notice period for interested parties to raise objections if any for bringing new owners into the records of rights register. These provisions were proposed about 50 years back, with passing of time, transport and communication modes have increased and have become fast. Law makers should think of reducing the notice period from 30 days to something like 8-10 days so that overall turnaround time for mutation is reduced.
- There is urgent need to complete the UPOR project in four cities where it is in progress and same needs to be scaled up for other cities and towns in the state.
- Guidelines and processes should be put in place to have cadastre for property records that are being created using e-SWATHU.
- Since Grama Panchayats do not have legal backing for maintaining property records, Karnataka Land Revenue Act 1964 needs to be amended to enable Grama Panchayat secretary to officiate as ex-officio Village Accountant and Panchayat Development Officer to officiate as ex-officio Revenue Inspector for Village sites.

**Indicator 2: Completeness of the land registry**

LGI	Dimension	Score	Score Description
2	1	D	Total cost of registering a property transfer is low The cost for registering a property transfer is equal to or greater than 5% of the property value.
2	2(i)	C	Information held in records is linked to maps that reflect current reality – Agricultural lands Between 50% and 70% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre.
2	2(ii)	D	Information held in records is linked to maps that reflect current reality – Non-agricultural lands Less than 50% of records for privately held land registered in the registry are readily identifiable in maps (spatial records).
2	3(i)	A	All relevant private encumbrances are recorded – Agricultural lands Relevant private encumbrances are recorded consistently and in a reliable fashion and can be verified at low cost by any interested party
2	3(ii)	A	All relevant private encumbrances are recorded – Non-agricultural lands Relevant private encumbrances are recorded consistently and in a reliable fashion and can be verified at low cost by any interested party.
2	4(i)	A	All relevant public restrictions or charges are recorded - Agricultural lands Relevant public restrictions or charges are recorded consistently and in a reliable fashion and can be verified at a low cost by any interested party.
2	4(ii)	A	All relevant public restrictions or charges are recorded – Non-agricultural lands Relevant public restrictions or charges are recorded consistently and in a reliable fashion and can be verified at a low cost by any interested party.
2	5(i)	A	There is a timely response to requests for accessing registry records - Agricultural lands Copies or extracts of documents recording rights in property can generally be obtained within 1 day of request.
2	5(ii)	B	There is a timely response to requests for accessing registry records – Non-Agricultural lands Copies or extracts of documents recording rights in property can generally be obtained within 1 week of request.
2	6(i)	A	The registry is searchable - Agricultural lands The records in the registry can be searched by both right holder name and parcel.
2	6(ii)	A	The registry is searchable - Agricultural lands The records in the registry can be searched by both right holder name and parcel.
2	7	A	Land information records are easily accessed Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, if any.

## Analysis

### *Total cost of registering property transfer*

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There is a continuous effort by various state governments to bring down registration cost as per the directions of Government of India. Registration cost which was around 11 to 12% about 10 years back has been brought down to 5% of the property's guidance value. However that too remains high in absolute terms.

The World Bank's report under the title "Reforming Public Services in India: Drawing Lessons from Success" on the Stamps and Registration Department in Karnataka reveals that a staggering 77.5% have to pay 'office expense' at the sub-registrar's office apart from the officially collected stamp duty and registration fee.' Office expense', refers to a bribe — normally a flat 1% of the value of registration. It also reports that 94% of citizens can't do registration without the help of middlemen.

Including the informal cost as worked out in World Bank study report mentioned above, the total cost of registration computed using weighted average of number of transactions and cost of registration is estimated to be 4%.

### *Link between textual records and maps that reflect current reality –Agricultural lands*

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There are individual parcel maps maintained by survey department in Karnataka along with Village maps. Two systems are prevalent in Karnataka with respect to individual parcel maps namely *Tippans* and Field Measurement Book (FMB). While *Tippans* are based on base and offset concept, FMBs use triangulation. When it comes to spatial data, one has to depend on village maps with survey number boundaries. These village maps were initially prepared during the settlement survey carried out during years 1900-1920. There about 4.9 million *Tippans* pertaining to full survey numbers in the initial survey and if *hissa tippans* (When full survey number is sub divided, such '*tippans*' is called '*hissa tippans*') are included it totals up to approximately 16 million *Tippans* / FMBs. Numbers indicate that on an average there are three sub divisions on each survey number.

Karnataka State Remote Sensing Application Center under Department of Information Technology and Bio-Technology, Government of Karnataka is executing several GIS based applications for the Government. It has digitized and geo referenced the village maps with survey number boundaries.

However sub divisions in the survey number have not been updated on these maps. This essentially means that land parcels can be readily identifiable up to survey number only.

As explained earlier, there have been at least three sub divisions on each of the survey numbers on an average thereby making it difficult for the ground reality to be reflected on spatial data.

#### *Link between textual records and maps that reflect current reality – Non-agricultural lands*

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As discussed in LGI 6.1.4a, City survey is in place for only 48 towns and area of operation has not been expanded since the 1970's. While cities and town have grown at least 4-5 times since then whatever data that is available with city survey is also not complete. Further data which is there with city survey is not geo referenced data. UPOR project which is creating spatial records for the properties located in cities is handling about 0.68 million properties out of 13 million households in Karnataka (as per 2011 census there are 1, 31, 79,911 households, it is assumed that one household as one property, there may be some exceptions in assuming households equal to properties as there may be more than one household in single property and there may properties like commercial and industrial which are not households).

In Bangalore, Bruhat Bangalore Mahanagara Palike (Greater Bangalore City Corporation) is the local body managing tax records (which are used as property records due to un-availability of proper ownership records) has prepared spatial map with geo referenced co-ordinates. Bangalore is estimated to have 1.6 million properties out which for one million properties verification and validation of geo referenced coordinates have been completed and for remaining properties validation is in progress. The Corporation has enabled a facility in their website for citizens to locate their property on Google map using the PID (Property ID).

Totally about 2.28 million properties are readily identifiable in maps (spatial records) out of 13 million properties, which roughly work out to be 18% of non-agricultural properties.

#### *Recording of private encumbrances– Agricultural lands*

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Here it is assumed that encumbrance means encumbrances created on record of rights and not the encumbrance certificates issued by sub registrar's office recording all the registered transactions. Encumbrance could be created because of transfer of rights, partition of land among the family

members / legal heirs, mortgage with possession or without possession either to individuals or to institutions like banks, co-operative societies etc., All these are private encumbrances where no public interest is involved. After registration, intimation is sent to Revenue Department for incorporation of these transactions on Record of Rights. There are certain transactions which are executed without registered document like inheritance, unregistered will, family partition etc. In these cases record of rights get updated but encumbrance maintained in the Registration Department do not reflect these transactions. Similar is the case with respect land acquisition, grant, conversion of land from agricultural to non-agricultural purpose etc. While updating these encumbrances proper care is taken to ensure that only valid and authentic encumbrances are recorded on record of rights through workflow based online mutation process implemented through the *Bhoomi* project in Karnataka.

Registration department sends the intimation slip about all the transactions registered on land parcels to the *Tahsildar* for incorporating the details on the Record of Rights. *Bhoomi* has achieved electronic integration with registration department which enables KAVERI to send the XML data to *Bhoomi* once the registration is completed without any human discretion. On receipt XML from KAVERI, *Bhoomi* initiates the transaction to incorporate the encumbrance on Record of Rights in most transparent and consistent manner with FIFO (First in First Out) principle. Similarly electronic integration with land acquisition activities (*BHOOSWADEENA* software) and banks ensures that land acquisition details and charges created / removed from banks get updated on the Record of Rights with minimum human intervention.

Every encumbrance that is created on Record of Rights is printed conspicuously as part of liabilities. Everyone who takes the copy of RTC or views it on web can know encumbrances on a particular record of right. Cost of getting copy of record of right is just Rs.10 and viewing it on web is free of cost. There is facility to get copy of mutation extract which is available for Rs.15 and can be viewed free of cost on web. Mutation extract describes the consequences which give raise to incorporating encumbrance on the Record of Rights.

There is no provision for updating liabilities on Record of Rights with respect to loans obtained by farmers from private finances, *mandi* owners and other informal sources.

Table 6..2.1: Number of Record of Rights where private encumbrances are recorded as part of liabilities

District Name	Total Record of Rights	Total Record of Rights with private encumbrances recorded as part of liabilities	Percentage of Record of Rights with private liabilities recorded
Belgaum	1096671	819226	74.70
Bagalkot	419116	300587	71.72
Bijapur	581500	353317	60.76
Gulbarga	468550	155171	33.12
Bidar	304833	151761	49.78
Raichur	443743	172281	38.82
Koppal	315994	129258	40.91
Gadag	278830	208796	74.88
Dharwad	372886	250608	67.21
Uttara Kannada	567510	350576	61.77
Haveri	443293	329783	74.39
Bellary	574951	245565	42.71
Chitradurga	475848	184208	38.71
Davanagere	458177	228210	49.81
Shimoga	370372	220037	59.41
Udapi	918286	240481	26.19
Chickmagalore	450944	179346	39.77
Tumkur	1134638	392905	34.63
Kolar	539443	96809	17.95
Bangalore (urban)	275859	28092	10.18
Bangalore (Rural)	314721	70266	22.33
Mandya	1463496	377249	25.78
Hassan	958373	380621	39.72
Dakshina Kannada	911796	321663	35.28
Coorg	270275	71486	26.45
Mysore	685983	249933	36.43
Chamarajanagara	337749	97700	28.93
Chickballapur	454978	123788	27.21
Ramanagara	407053	98268	24.14
Yadgir	258328	81003	31.36
	<b>16554196</b>	<b>6908994</b>	<b>41.74</b>

### *Recording of private encumbrances – Non-agricultural lands*

It has been discussed in detail while analysing the previous indicator that list of properties being maintained by local bodies are tax account and not the property records. Local bodies maintain these registers as part of tax accounts for collecting tax and not to give ownership rights to tax payers. Hence, there is no practice of maintaining encumbrance on the properties.

Urban Property Ownership Records (UPOR) which is in place in four cities has provision for recording the encumbrances on the property records created under the project. Processes are also put in place UPOR to incorporate the encumbrances just like in case of agricultural lands. UPOR project is likely to get implemented in Bangalore (Capital city of Karnataka) in second phase and remaining cities in subsequent phases.

Since momentum has been set to create property records in urban areas through UPOR and in rural areas through e-SWATHU, both projects have facility to record encumbrances and there exists legal provisions also to do so. Keeping road map of Government of Karnataka, in having well established property record system through UPOR and e-SWATHU projects in view, this indicator is ranked as 'A'.

#### *Recording of public restrictions or charges - Agricultural lands*

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Government's interest in the private lands is protected by imposing public restrictions. Public restrictions on land are of two types namely, restrictions which are permanent and cannot be relaxed under any circumstances and restrictions which can be relaxed based on the request and merit of the case. In Karnataka, the RTC (Record of Rights) depicts the total extent along with *karab* extents. *Karab* extents are of two types namely *Karab-A* and *Karab-B*. *Karab-A* land is uncultivable waste land within the survey number which is not assessed, ownership of such land lies with the owner of the land parcel and owner can bring this land under cultivation after getting permission for sub-divisional magistrate (Assistant Commissioner). *Karab-B* is the portion of the land within the private survey number which cannot be converted into cultivable land and ownership of *Karab-B* land even though, it is in private survey number rests with the government. Typical *Karab-B* lands are like footpaths, bullock cart paths, natural water streams, etc. Other restrictions which are imposed while granting the land are recorded as part of liabilities in the Record of Rights. Typical examples of such public restrictions are non-alienation condition for 15 years and non-alienation for lifetime in the case of land granted for weaker sections (Scheduled Castes / Scheduled Tribes) under PTCL act etc., These restrictions which are imposed while granting land can be relaxed by the government if convinced with reason for relaxation, after imposing a fine as per the norms. Government restrictions are being maintained in *Bhoomi* and are regularly updated as and when need arises using mutation process.

It is clear from the above discussion that relevant public restrictions or charges are recorded consistently and in a reliable fashion and can be verified at a low cost by any interested party.

#### *Recording of public restrictions or charges: Non-agricultural lands*

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As discussed in earlier indicators, non-agricultural lands do not have Record of Rights and tax register maintained by local bodies is used as land records. Public restrictions are implemented in these cases by adopting different techniques such as not registering the property after allotment till restriction

period is completed, a holder certificate issued to provide right to the owner to raise loan, getting building plan approved etc., for the purpose of constructing the house.

**Table 6.2.2. Number of Record of Rights where public restrictions are recorded**

District Name	Total Record of Rights	Number of Record of rights with public restrictions				
		Govt restriction (Lease period/non alienation condition)	PTCL	Others if any	Total	Percentage
Belgaum	1096671	1	0	427775	427776	39.01
Bagalkot	419116	0	2	74610	74612	17.80
Bijapur	581500	0	8	130663	130671	22.47
Gulbarga	468550	1	1	52727	52729	11.25
Bidar	304833	0	2	42461	42463	13.93
Raichur	443743	0	0	47720	47720	10.75
Koppal	315994	0	1	34185	34186	10.82
Gadag	278830	0	34	52973	53007	19.01
Dharwad	372886	0	0	65689	65689	17.62
Uttara Kannada	567510	5	106	196391	196502	34.63
Haveri	443293	0	5	143558	143563	32.39
Bellary	574951	0	4	84198	84202	14.65
Chitradurga	475848	1	50	35450	35501	7.46
Davanagere	458177	0	5	36855	36860	8.04
Shimoga	370372	0	0	30330	30330	8.19
Udupi	918286	8	10	175197	175215	19.08
Chickmagalore	450944	0	90	127543	127633	28.30
Tumkur	1134638	0	4	45128	45132	3.98
Kolar	539443	0	4	47925	47929	8.88
Bangalore (Urban)	275859	0	4	32484	32488	11.78
Bangalore (Rural)	314721	1	16	54184	54201	17.22
Mandya	1463496	0	0	105721	105721	7.22
Hassan	958373	0	217	42858	43075	4.49
Dakshina Kannada	911796	0	17	320917	320934	35.20
Coorg	270275	0	0	22863	22863	8.46
Mysore	685983	0	7	63758	63765	9.30
Chamarajanagara	337749	0	148	14350	14498	4.29
Chickballapur	454978	0	17	31388	31405	6.90
Ramanagara	407053	0	3	41514	41517	10.20
Yadgir	258328	0	0	20132	20132	7.79
	16554196	17	755	2523793	2524565	15.25

Although, there is no well-established procedure for recording restrictions, UPOR and e-SWATHU projects are creating property records in local bodies with a provision to record public restrictions. The relevant amendments are put in place to have public restriction as part of property records before implementation of UPOR and e-SWATHU projects.

#### *Timely response to requests for accessing registry records - Agricultural lands*

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Section 193 of **Karnataka Land Revenue Act 1964** reads: “Subject to such rules and payment of such fees as the State Government may from time to time prescribe in this behalf, all maps and land records shall be open to the inspection of the public at reasonable hours and certified extracts from such maps and land records or certified copies thereof shall be given to all persons applying for the same.” Despite such a provision in the Act, accessing Records of Rights was difficult till they were digitized under the *Bhoomi* project. Now these records can be obtained from the computerized kiosks by paying a fee of Rs 15 per copy.

#### *Timely response to requests for accessing registry records – Non- Agricultural lands*

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Non-agricultural properties are managed by local bodies As discussed earlier UPOR and e-SWATHU projects cover major portion of records. Towns / Cities where UPOR is not in place, local municipalities / corporations manage property records (in the absence of property record, tax records are used as property records). The Government of Karnataka has notified issue of khatha certificates (property records) under Guarantee services to Citizen Act (GSC Act) and notified that these documents should be provided within seven days.

#### *Is the registry searchable - Agricultural lands*

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Record of Rights register with respect to agricultural lands is computerized under *Bhoomi* program and the same is searchable. In taluk kiosk and rural tele centres, Record of Rights register is searchable both on name of the holder and parcel number. On the web search is possible based on land parcel number only (i.e., Survey number).

#### *Is the registry searchable – Non-Agricultural lands*

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With respect to non-agricultural lands, all the residential properties in rural areas are handled by concerned gram panchayat and there is database of all the properties in the form of Panchatantra and e-SWATHU, any non-agricultural property is searchable using name or khatha number in the web interface provided by Rural Development department ([www.Panchatantra.kar.nic.in](http://www.Panchatantra.kar.nic.in) or <http://164.100.80.110/eswathu>). As far as urban local bodies are concerned, some of them have computerized their tax accounts and some are not. Wherever computerization has been carried out, there is a facility to search the properties. UPOR project also facilitates search using property number or name. There are very few local bodies where computerization is not taken up and in these places manual search using khatha number or name is possible.

### *Access to Land information records*

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Record of Rights and related land records documents pertaining to agricultural lands are easily available through 203 taluk kiosks and about 1000 rural tele centres called Atalji Jana Snehi Kendra (AJSK). Record of Rights are available for Rs 10.00 and all other land related documents such as mutation extract, status report on mutation, khatha extract, Record of Rights form -5, Record of Rights form-6, Scanned Tippan, scanned mutation register extract etc., are available for Rs 15.00 each. Since all these land related documents have been declared as public documents, they are accessible by the public. With respect to non-agricultural lands in villages records can be obtained by paying service charge of Rs. 50.00 to Rs.300.00 depending on the rate fixed by gram panchayats. In the case of urban local bodies are records are made available for a fixed service charge irrespective of whether records are computerized or not.

### **POLICY RECOMMENDATIONS**

- There is urgent need of enabling appointment based registration system. People should be given opportunity to apply for registration and upload of documents through a web based application. This will reduce / remove one to one contact between public and registration department officials before accepting the papers for registration. Once the papers are accepted for registration without personal contact between citizen and department officials, corruption can be reduced
- Transfer of properties Act 1892 needs to be amended and provisions needs to be put in place for submitting ownership document by the seller before allowing registration.
- Karnataka's last full-fledged survey was conducted during 1900-1920 and there has been a lot of transactions since then and the number of land parcels has increased three fold. Manual instruments

used more than century back were not accurate and procedures adopted were not very robust. The need of the hour is a resurvey with latest technologies. This will ensure that all sub divisions will become spatially identifiable and maps are accurate.

- There is a urgent need to complete the UPOR project in four cities where it is in progress and needs to be scaled up for other cities and towns in the state.
- Rural Development and Panchayat Raj department has to work out an action plan for creating cadaster of village sites using modern technologies, so that form-9 will become record of rights with well-defined boundaries and authentic dimensions.

### Indicator 3 Reliability: registry information is updated and sufficient to make meaningful inferences on ownership

LGI	Dimension Description	Score	Score Description
3	1(i)	A	Links are in place for all types of public land information registries; mandatory checks are performed to ensure legitimacy of any transactions that materially affects certain parties' land rights before they can be finalized.
3	1(ii)	A	Links are in place for all types of public land information registries; mandatory checks are performed to ensure legitimacy of any transactions that materially affects certain parties' land rights before they can be finalized.
3	2(i)	B	Between 70% and 90% of the ownership information in registry/cadastre is up-to-date and reflects ground reality.
3	2(ii)	D	Less than 50% of the ownership information in the registry/cadastre is up-to-date and reflects ground reality.

## Analysis

### *Synchronization of information held in public registry: Agricultural lands*

There is a well-defined procedure in Karnataka Land Revenue Act and Rules to achieve synchronization between various types of registers and departments so that integrity of land records data is intact. Sub registrars are mandated to send the transaction details of registrations on agricultural lands every day and consolidated statement once in fortnight to the concerned Tahsildar. Every village accountant should initiate inheritance transaction in the case of death of *khathedar* as village accountant is also

designated as registrar of birth and deaths. In case of Land acquisitions, Land Acquisition officer / Special land Acquisition officer shall send the details of notification to Tahsildar for incorporation in Record of Rights. In the case of farm credit, bankers are mandated to send the form-3 (declaration of having taken loan) to Tahsildar for creating charge. BHOOMI has implemented all these through electronic integration with registration department, land acquiring bodies and Banks. Data gets transferred electronically and transactions are initiated automatically without any human discretion.

#### *Synchronization of information held in public registry: Non-Agricultural lands*

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As far as Urban local bodies are concerned, since there is no concept of maintaining ownership records no such synchronization was in place till recently. It was the responsibility of the citizen to get the ownership changed into his/her name using registered deeds. After implementation of UPOR and e-SWATHU a procedure is put in place so that sub registrar sends intimation to concerned local bodies about registrations done on particular property.

#### *Is the registry information up-to-date and reflecting ground reality – Agricultural lands*

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Extent of synchronization between textual data with spatial data is the point of discussion here. There are individual parcel maps maintained by survey department in Karnataka along with Village maps. Two systems are prevalent with respect to individual parcel maps namely TIPPAN and FMB (Field Measurement Book). Initially while enacting Karnataka Land Revenue Act 1964, its objective was to carryout mutation (transfer of ownership or partition on paper) and podi (physical division on land) simultaneously. Over the years, gap between mutation and podi widened. As a result record of rights register not in sync with spatial data. Normally there is gap of about 15-20 years between textual and spatial data. Integration achieved in BHOOMI with survey records through IMP (Integrated Mutation Podi) is helping in synchronization of record of rights with spatial maps. IMP ensures that a pre-mutation sketch is used for rewarding sale or partition. There are about 16 million Record of Rights and about 12 million tippans and hissa tippans in Karnataka, hence nearly 75% of land parcels have corresponding cadastral maps.

*Is the Registry information is up-to-date and reflecting ground reality – Non-Agricultural lands*

Since Tax accounts maintained by Local bodies are being used as property records in the absence of proper ownership documents, no cadastre is maintained for these properties. UPOR is a novel attempt to create ownership records with cadastre.

**POLICY RECOMMENDATION**

Need of the hour is to create cadastre for all non-agricultural properties. Government should scale up UPOR project in towns / cities immediately. Rural Development and Panchayat Raj department or Revenue department should take up the survey and prepare cadastre for village sites on priority basis.

**Indicator 4: Cost-effectiveness and sustainability: land administration services are provided in a cost-effective manner**

LGI	Dimension Description	Score	Score description
4	1	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.)
4	2(i)	A	Investment in human and physical is sufficient to achieve or maintain high service standards and to proactively respond to future needs and new developments in the sector.
4	2(ii)	D	There is little or no investment in capital in the system to record rights in land.

*Analysis*

**Financial Viability of Registry**

In the case of agricultural lands, all the RECORD OF RIGHTS registers are maintained digitally under BHoomi project. Service charges collected are used for provision and maintenance of infrastructure such as computers, printers, scanners, biometric finger print readers, air conditioner, UPS etc., along with recurring cost such as stationery, printer cartridges, electricity bills etc., Even technical manpower

at state and district level is also paid using service charges collected under the project. Only salary and other allowances of government employees working on Record of Rights maintenance is paid by the government. Revenue officials which perform Record of Rights maintenance handle many other activities and their full time cannot be attributed to Record of Rights maintenance alone. *Bhoomi* has earned about Rs 2250 million in the form of user charges since 2000.

As regards non-agricultural lands, local bodies have higher property tax rates compared to land revenue. Tax collection is about 70-80 % in cities while 20-20% in rural areas.

### *Sufficiency of investment in land administration*

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Reports below shows the increase in number of transactions handled in case of agricultural lands, Government of Karnataka has sanctioned and recruited 1000 posts of village accountants to handle Bhoomi operations in addition to existing strength of 10,000 village accountants. To improve the spatial data / cadaster 1800 surveyor posts have be created and filled recently. All BHOOMI deputy Tehsildars have been upgraded as special tehsildars to provide more power and responsibility. Karnataka Land Revenue Act has been amended by mandating pre-mutation sketch as pre-requisite for registration and this is a major step towards brining synchronization between textual and spatial records.

**Indicator 5: Fees are determined transparently to cover the cost of service provision**

LGI	Dimension Description	Score	Score Description
5	1(i) Fees have a clear rationale – agricultural land	A	A clear rationale exists for fixing fee for most of the services.
5	1(ii) Fees have a clear rationale – non-agricultural land	B	Clear rationale for fixing fees does not exist for some services.
5	2 Informal payments are discouraged	A	Effective mechanisms to detect and deal with illegal staff behaviour exist in all registry offices and all cases are promptly dealt with.
5	3 Service standards are published and regularly monitored	A	Effective mechanisms to detect and deal with illegal staff behaviour exist in all registry offices and all cases are promptly dealt with.

*Analysis**Rationale for Fees*

*Bhoomi* was the first e-Governance project in the country to introduce service charges. All documents issued from *Bhoomi* data base were made available to the public for Rs. 15.00. Recently the Government of Karnataka has reduced cost of Record of Rights to Rs.10.00. Similarly, service charges are fixed to different documents.

Schedule of fees are prominently published in every kiosk and on every document cost of the document is being printed so that citizen is made aware of the service charge. Receipt numbers are automatically generated in the software and money management module developed under *Bhoomi* project take care of this. Since the system automatically counts the service charge as and when document is issued, there is no scope for manipulation. Similar systems are in place for non-agricultural records also in some form or the other.

*Informal payments*

Several studies show that BHOOMI project has eliminated corruption with respect to getting RECORD OF RIGHTS documents and reduced transport and opportunity costs to large extent. With the introduction of the Karnataka Guarantee of Services Act 2011; informal payments are said to have been reduced in the case of services provided with respect to urban land.

### *Monitoring Service standards*

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After Guarantee to Services to Citizens Act, it has become mandatory for official to serve the citizens request within the fixed period, failing which citizen can claim compensation up to Rs 500.00 at the rate of Rs 20.00 for every day of delay. The amount of compensation paid to citizen will be recovered for the salary of erring government servant.

## 4.7. Panel 7: Land Valuation and Taxation

### 4.7.1. Panel Context

#### *Introduction*

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A robust land valuation system leads to accurate determination of land tax, stamp duty and registration fees, which adds to the government revenue. From the perspective of land owners, land valuation impacts the compensation value where the state is compulsorily acquiring land, particularly when the recent The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 proposes that “compensation for the owners of the acquired land shall be four times the market value in case of rural areas and twice in the case of urban areas.” Proper stamping and registration of documents relating to land in accordance with procedures established by law is very important, in terms of recognizing title over the land (as mentioned earlier), and also in court proceedings. Documents that have not been adequately stamped cannot be produced before a court of law as evidence in any proceedings (as per Section 34 of the Karnataka Stamp Act 1957 discussed below). Documents that have been incorrectly stamped, or which are not stamped are also not capable of being used or recognized by any public officer, as per Section 34 of the Karnataka Stamp Act. The legal authenticity and overall validity of a document, in terms of vesting title in property or being recognized by public officers or courts, is entirely subject to the stamping of the document.

The Karnataka Stamp (Prevention of Undervaluation of Instruments) Rules of 1977 set out the principles for the determination of market value for land, house sites, buildings and other lands. The levy and collection of stamp duty and registration fee is administered by the Department of Stamps and Registration (DSR) headed by the Inspector General of Registration and Commissioner of Stamps (IGRCS). There are 35 District Registrar (DR) offices and 241 Sub-Registrar offices (SRO) in the State. The DSR is third highest revenue earning department under the Government of Karnataka.

#### *Land Valuation Process*

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For rural land a factor considered is the revenue assessment established during the settlement surveys, which is updated every 30 years. A primary reference is the sales histories recorded by the Sub-Registries, although this information has a number of distortions and there is often limited sales information in rural areas. The area covered by the Sub-Registry is grouped into areas of like characteristics and a roll of market values – in Rs/square foot in non-agricultural areas and Rs/Acre in rural areas – is prepared and published in the Karnataka Gazette. The Central Valuation Committee (CVC) constituted by the DSR determines or revises the market value periodically. The Deputy Inspector General of Registration (Intelligence), is the Member Secretary of the CVC and is responsible for compilation and publication of the data relating to the market value guidelines in accordance with

the decision the committee. The CVC may also constitute Market Valuation Sub-Committees in each Sub-District and District for the purpose of estimation and revision of the market value guidelines of the properties. The members of these Sub-committees may be drawn from the department of Revenue, Survey and settlement, Public works and the Municipal Councils or Town Panchayaths. The sub-committee is headed by the Tahsildar of the concerned Taluk and the sub-Registrar of the said sub-district shall be the Member Secretary. The CVC, in the first week of October of every calendar year, sends instructions along with general policy guidelines to all the sub-committees in the state for estimation of market value guidelines of properties for the next calendar year. The sub-committee publishes the intention of such estimation or revision, as the case may be, in the local newspapers and also on the notice board of important offices. A period of 15 days is allowed for receipt of objections and suggestions from the public and all such suggestions and objections so received are processed by the Secretary and placed before the sub-committee for discussion. The sub-committee meets as often as required to discuss and decide on the estimation of market value rates for the guidelines and prepares a statement showing the average rates of agricultural lands, residential, commercial and industrial sites in village and municipal or any other local body area in its jurisdiction. The average rates are determined keeping in mind the types of land - (i) Classification of land as dry, garden, wet and the like; (ii) Classification under various classes of soil in the survey records; (iii) Other factors which influence the valuation of the land in question; (iv) Value of adjacent land or lands in the vicinity; (v) As far as practicable the nature of crop and average annual yield from the land for five consecutive years till the determination and nearness to road the market, distance from village site, its location in general, level of land transport facilities, facilities available for irrigation for irrigation, such as tanks, well and pump sets.

A period, normally 30 days after publication, is allowed for the submission of objections. These objections are considered and the valuation roll is approved by the Government and published in the Gazette. Local publishers print copies of the valuation roll and this information is available from local bookstores. The state government also publishes guidance values of residential properties. The Guidance value is the minimum price below which a property cannot be registered.

In Karnataka, property can be registered at either the guidance value or market value. Stamp duty is paid at 5% of the registration value while registration fee amounts to 1% of registration value.

Audits conducted by the Comptroller and Auditor General of India (CAG) on the test records of 163 offices of the DSR during the year 2011-12 revealed evasion, non-realization, short levy of stamp duty and registration fee, etc. amounting to INR 5.66 crore in 993 cases.<sup>56</sup>

Another evaluation study<sup>57</sup> on Land valuation in Karnataka states that the system for the valuation is still very rudimentary. Further, the sub committees described above are fairly autonomous in making decisions about market values. The report claims that, the information collected by Government does

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<sup>56</sup> Audit Report (Revenue Sector) for the year ended 31 March 2012

<sup>57</sup> Comparative Study of Land Administration Systems – Karnataka Case Study

provide some measure of relative values, but will lead to difficulties in establishing value where private property is being compulsorily acquired by the State under the Land Acquisition Act – something that is addressed in the Karnataka Industrial Development Act (KIDA). There is also limited experience in the valuation of rural property to support a land market or mortgage market.

### *Use of Technology in Valuation and Registration*

The Government of Karnataka (GoK) embarked upon a scheme of computerization known as the Karnataka Valuation and e-Registration Programme (Kaveri) on the activities of the Department in 2002. The aim of the computerisation as stated by the DSR was to make the process of registration speedy, simple, transparent, accountable and to build in information about the market value into the system. Under the manually registering process, the documents registered were copied manually in specified books. After they were verified with the original document, the hand written document was authenticated by registering officers. The registered book would become the permanent public document and certified copies of these records would provide evidentiary value. Since the procedure involved in handwriting each documents that were registered the time taken to hand over the original registered document to the person registering the document would take anywhere between 2 to 3 months. Moreover it also meant 2-3 trips to the registration office to check if the document was ready. This cumbersome process encouraged undesirable practices. In the KAVERI programme, a software system carrying the existing registration procedure, property valuation and all associated activities was created. Care was taken not to change the existing five stage process of registering documents that citizens were familiar with.

By 2003-2004 the DSR had computerized all 235 Sub-Registrars offices and 33 District Registrar offices in the state. Reports on the outcome of Kaveri have mentioned that despite the Government of Karnataka reducing the rate of stamp duty on conveyance from 10% to 8% and Registration fee from 2% to 1%, in 2003 there is significant growth in revenue as the Kaveri system calculated the valuation of property automatically eradicating the discretionary power of the Registering officer in accessing the valuation of property.

A positive impact of the programme can be seen from the figures given in the table 4.7.1

Year	Budget estimates (INR in crore)	Actual receipts (INR in crore)
2007-08	4,400.00	3,408.83
2008-09	4,195.84	2,926.72
2009-10	3,566.62	2,627.57
2010-11	3,500.00	3,531.08
2011-12	4,030.00	4,623.20

Source: Audit Report (Revenue Sector) for the year ended 31 March 2012

The increases in 2011-12 was stated to be due to increase in market value and increase in the number of registered documents.

The Government of Karnataka as part of its urban reforms process introduced Capital Value Based property taxation system along with schematic GIS and MIS of all properties of urban areas. This involved the computerization of the revenue department of ULB for efficient tax management. Further, a GIS Based Property Tax Information System is put in place to improve property tax collection. These processes bring transparency in property tax levy and collection, which was hitherto criticized for inefficient tax management and low revenue collection

### 4.7.2. Assessment and Score

This section analyses in detail the specific elements related to land valuation in Karnataka, with a focus on the efficiency and transparency of the valuation process. These elements are divided into Indicators which in turn are broken down into several Dimensions. Indicators provide a relatively exhaustive assessment of relevant land governance issues through specific dimensions which define areas for investigation, quantitative measurement or qualitative assessment.

**Indicator 1: Transparency of valuations: valuations for tax purposes are based on clear principles, applied uniformly, updated regularly, and publicly accessible**

LGI		Dimension Description	Score	Score Description
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.
1	2	Valuation rolls are publicly accessible	A	There is a policy that valuation rolls be publicly accessible and this policy is effective for most of the properties that are considered for taxation.

### Analysis

#### Process of property valuation

There is a well-established process for property valuation fixed by government of Karnataka which is supposed to get revised every year. Due to various reasons such as elections, popular government doesn't want to increase burden of stamp duty on citizen etc., and as such they are not being revised every year. Department of stamps and registration uses various sources to get the market value of the property for fixing guidance value. The important sources are report from sub-registrars, District registrars, Banks, real estate agencies; Advertisements issued by developers, National Housing Bank's Residex etc., the guidance value fixed by the government of Karnataka approximately about 70% of the Market value.

Central valuation Committee constituted as per Section 45-B of Karnataka Stamp Act, 1957 and Rules made there under to estimate the value of properties to curb under valuation of the properties. The committee publishes valuation in all places for the information of public, after estimation of the value of properties.

#### POLICY RECOMMENDATION

No automated tools and GIS techniques are used for scientifically determining property valuation. For example valuation of the property has to be more if it is in close proximity of public places like school,

bus stand, railway station and market. At the same time one has to consider that if property is too close to these type of public places then valuation should be less if it is residential property and more if it is commercial property.

Following factors are to be taken into account while making analysis using comparative method:

**i) Location:** The value of land which is situated in a busy locality or centre of city or shopping district will certainly be more than that of land which is situated far away from the town. The location of the property is very important and it is quite likely that a slightly different location can cause a vast difference to the market value. The location is said to be a prime factor in demand for land.

**ii) Size:** The size of plot also plays an important role in fixation of its value. The rate of a large land cannot be compared to that of a small land. Usually, there will be keen demand for plots of certain sizes in a particular locality. The rate of land with such sizes should be considered as the trend prevailing in that locality for arriving at the value of open lands under consideration.

**iii) Shape:** People prefer to have land having regular shape. It is observed that plots of land with regular shapes will be sold at a higher price than those with irregular shapes.

**iv) Frontage and depth:** It is quite clear that the most valuable part of a plot of land is its street frontage and the value of rear portion of plot decreases as the distance from street increases.

**v) Return frontage:** A corner plot gets an additional return frontage and depending upon the importance of intersecting streets or roads, there will be corresponding increase in the value of such plots. The corner plot has better facility of entrance and egress & gives more light and ventilation. In residential area, a corner plot gives wide scope for better layout of shops or offices with greater space for show-rooms and advertisements.

**vi) Level:** If the natural level of land is lower than the road level, considerable amount will have to be spent for filling and there will also be substantial increase in the cost of foundations. On the contrary, if the natural level of land is considerably higher than the road level, there will be difficulty in laying water / drainage lines and hence, the extra earth will have to be excavated to make the plot reasonably level.

**vii) Nature of soil:** For lands with building potentiality, the bearing capacity of soil should also be considered. If the bearing capacity is adequate, the cost of foundation will be reasonable in proportion to the total cost of the building. If, however, the bearing capacity is poor, considerable amount will have to be spent to make the structure stable. It is thus clear that the land with good bearing capacity will command a higher rate as compared to the land with poor bearing capacity.

**viii) Land-locked land:** It sometimes so happens that a plot of land has no well-defined legal access and it is surrounded on all sides by plots belonging to other owners resulting in less value.

**ix) Restriction on development:** The permissible Floor Space Index or F.S.I should be studied for the plot to be valued and scrutinized. The plot of land having more permissible F.S.I. will naturally be sold at higher price as compared to the one having less permissible F.S.I.

**x) Encumbrances:** The plots of land which are subject to the easement rights of air, light or passage will be less attractive to the prospective purchasers and depending upon the inconveniences caused, there will be reduction in values of such lands.

**xi) Miscellaneous advantages:** In addition to the above consideration, if the property possesses some special advantages because of its location or any other reason, the same should be considered while arriving at the reasonable rate of open land

#### *Accessibility of Valuation rolls*

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Property valuation is publicly accessible in the website of Department of Stamps and Registration ([www.karnataka.gov.in/karigr](http://www.karnataka.gov.in/karigr)). One can find out the property valuation of every parcel of land in Karnataka. In the case of agricultural lands valuation is available village wise / survey number wise. In case of urban areas it is available ward wise / street wise so that one can easily find out the valuation.

For agricultural properties market value is provided per acre for other types it is provided per sq. ft. In the case of flat / apartment there exist different rates for different type of flooring and type of construction. In the case of agricultural properties also rates are provided depending on whether land is dry, wet or garden.

**Indicator 2: Collection efficiency: resources from land and property taxes are collected and the yield from land taxes exceeds the cost of collection.**

LGI	Dimension Description	Score	Score Description	
2	1	B	Exemptions from property taxes payment are justified and transparent	There are limited exemptions to the payment of land/property taxes, and the exemptions that exist are clearly based on equity or efficiency grounds but are not applied in a transparent and consistent manner.
2	2	B	All property holders liable to pay property tax are listed on the tax roll	Between 70% and 80% of property holder liable for land/property tax are listed on the tax roll.
2	3(i)	C	Assessed property taxes are collected – rural	Between 70 per cent and 80 per cent of property holders liable for land/property tax are listed on the tax roll
2	3(ii)	B	Assessed property taxes are collected – urban	Between 50 per cent and 70 per cent of assessed land/property taxes are collected.
2	4(i)	D	Receipts from property tax exceed the cost of collection – agricultural	The amount of property taxes collected is less than the cost of staff in charge of collection.
2	4(ii)	A	Receipts from property tax exceed the cost of collection – non-agricultural	The amount of property taxes collected exceeds the cost of staff in charge of collection by a factor of more than 5.

### Analysis

#### Justification for and transparency of exemptions from property taxes payment

Exemption from property tax should be studied for both agricultural and non-agricultural lands. Normally exemption (referred as remission) to land revenue of agricultural lands is given during drought or natural calamities. Exemption to property tax is provided to charitable institutions, educational institutions, religious institutions in case of non-agricultural properties. Normally when remission is given, it is for a full year's land revenue for all farmers. Following provisions are available for providing provisions.

#### PROVISIONS REGARDING ANNEWARI IN LAND REVENUE ACT.1964 / Rules 1966.

Section 194 of Chapter XV of the Land Revenue Act 1964 speaks about the Remission of Land Revenue.

#### Section 194 - Suspension /Remission of Land Revenue

- 1) Notwithstanding anything contained in this Act, but subject to such Rules as may be prescribed, where there is a failure of crops in any tract owing to inadequate rainfall or other cause and the state Government considers that it is necessary to suspend or remit the Land Revenue payable in respect of any land in such a tract, it may by notification 1).suspend the collection of Land Revenue 2)Remit the Land Revenue payable for any year.

Similarly the RULE 147 of the chapter XVI of LAND REVENUE RULES 1966 spells about Annewari process, i.e. Crop cutting experiments.

RULE 147(1) - The Deputy Commissioner shall cause crop cutting experiments to be conducted in all the villages every year in all the growing seasons, in order to determine the average crop wise yield per acre. The Tehsildar shall conduct such crop cutting experiments in at least 5%of the villages in the taluk, the Revenue Inspector in at least 20% of the villages in his circle and Village Accountant in all the villages in his charge. The question of remission of Land Revenue shall be considered on the basis of such experiments

Thus the Land Revenue Rules are clear to know that under what circumstances the Land Revenue payable becomes eligible for recovery /suspension/Remission as the case may be, depending upon the crop Annewari determined as per crop cutting experiments.

Hence proclamation of ANNEWARI NOTIFICATION by the Deputy Commissioners is a must so as to ascertain as to whether the Land Revenue payable becomes eligible for recovery, suspension or remission.

In the case of urban areas, percentage of exemption varies depending on type of institution. The service charge instead of property tax is a recent rule in Bangalore. It was included under the Karnataka Municipal Corporation (KMC) Act in 2002 for all municipalities across the state that followed the capital value system (CVS). Bangalore being the only city with SAS then had to keep this on hold considering the different system. Category 16 under revised SAS 2008 finally brought the rule into effect. According to this, all educational institutions must calculate the regular tax rate and pay only 25% of the total amount as service charge to BBMP.

Amendments to the KMC Act 1976 having been legislated on 28 April 2012, the 50 % Exemption in Property Tax extended to Ex-servicemen and Ex-Para Military Forces personnel has come into effect from Financial year 2012-13.

Section 110(b) of the **Karnataka Municipal Corporations Act**, 1976 provides for exemption of property taxes for various category of property tax.

It is difficult to declare that norms are applied in transparent and consistent manner especially in urban local bodies while providing exemptions as it is subjective decision of the officer in charge and human discretion sometime leads to nepotism.

### *Are all property holders liable to pay property tax are listed on the tax roll?*

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Normally all agricultural lands are listed in demand list as land revenue is one of the parameter in the ownership records. In the case of non-agricultural lands which are being maintained by local bodies, since *khatha* registers are not ownership records all properties may or may not be listed in the tax registers. A 100 % recording on tax rolls is achieved in the case of agricultural lands except unauthorized cultivation. In the case of urban local bodies, tax net may be up to 70-80%. With respect to grama panchayats it is nearly 100% as it is easy to bring properties under tax net in villages as compared to urban areas. For example Bangalore is estimated to be having 1.6 million properties and about 1.3 million properties are under tax net. However JNNURM rate Bangalore and Mysore as 100% coverage of tax in their reports

### *Collection of assessed property taxes*

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DCB (Demand, Collection and Balance) register of the Revenue department, urban local bodies / authorities and grama panchayats provide details into tax collection. According to estimates tax collection touches up to 80%. Percentage of tax collections for agricultural lands is high as number of transactions is higher here and revenue officials collect land revenue (tax) at the time of ownership transfer. In the case of grama panchayat properties it is lower and may be around 20-25% of current demand and 7-8% of total demand including arrears. Collection is low as the number of transactions is minimal. In the case of urban areas tax collection is around 70-80% on an average. As per JNNURM Bangalore's tax collection rate is 100% and for Mysore it is 83%.

### *Do receipts from property tax exceed the cost of collection*

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Land revenue for the state government is no more a major source of income. Over the years either it has not been revised or it has been reduced. In the case of non-agricultural properties taxes are being revised regularly and for local bodies property tax has become major source of income. There have been continuous efforts by different governments to shift from annual rental value system to capital value system to increase their revenue share.

In the case of agricultural lands, Village Accountants are assigned with job of collecting land revenue. Since Village Accountants' are assigned with multiple tasks and collection of land revenue is one of minor activities, and the collection cost cannot be attributed to tax collection. In the case of Urban local bodies / grama panchayats there are officials designated as 'Bill Collector' whose only job is collection of revenue (assuming that no other activities are assigned to him/her).

Table 4.7.2: District wise demand, collections and balance for financial year 2013-14

District Name	No of GPs	OB(Rs. in 1000)	Current Demand(Rs.in 1000)	Total Demand(Rs.in 1000)	Collection(Rs.in 1000)	Balance(Rs.in 1000)	% of collection against current demand	% of collection against total demand
BAGALKOTE	163	258231	71656	329974	7923	322006	11.06	2.4
BANGALORE	86	658607	637589	1296234	205630	1090555	32.25	15.86
BANGALORE RURAL	98	347305	274110	621468	94364	527050	34.43	15.18
BELGAUM	486	1030469	318987	1349705	52031	1297523	16.31	3.85
BELLARY	189	226047	70332	296474	13436	282977	19.1	4.53
BIDAR	175	220512	37119	257702	1798	255883	4.84	0.7
BIJAPUR	199	401072	87761	488922	2989	485910	3.41	0.61
CHAMARAJA NAGARA	120	196106	55617	251771	4348	247394	7.82	1.73
CHIKMAGALUR	226	224582	83717	308404	28629	279674	34.2	9.28
CHITRADURGA	185	393510	92681	486284	9869	476372	10.65	2.03
DAKSHINA KANNADA	203	72036	119847	191989	51297	140593	42.8	26.72
DAVANAGERE	230	282682	81977	364784	28010	336648	34.17	7.68
DHARWAR	127	139042	33561	172658	10840	161760	32.3	6.28
GADAG	106	119098	28429	147580	10148	137383	35.7	6.88
GULBARGA	220	313899	66756	380756	11020	369672	16.51	2.89
HASSAN	258	330992	139175	470284	75190	394970	54.03	15.99
HAVERI	208	441302	97243	538646	30340	508196	31.2	5.63
KODAGU	98	66143	45666	111848	18351	93445	40.19	16.41
KOLAR	156	248745	77142	325977	10199	315715	13.22	3.13
KOPPAL	134	143364	37174	180610	4979	175592	13.39	2.76
MANDYA	232	438182	176072	614366	53500	560750	30.39	8.71
MYSORE	235	561952	209405	771482	45584	725787	21.77	5.91
RAICHUR	165	116523	23348	139930	2560	137353	10.96	1.83
SHIMOGA	260	161950	66428	228515	27507	200878	41.41	12.04
TUMKUR	321	594638	168877	763687	23449	740100	13.89	3.07
UDUPI	146	71512	91242	162844	24566	138200	26.92	15.09
UTTARA KANNADA	208	48692	51880	100663	22277	78288	42.94	22.13
CHIKKABALLAPURA	151	229937	71309	301318	9714	291545	13.62	3.22
RAMANAGARA	130	239319	121064	360439	34858	325532	28.79	9.67
YADGIR	117	174252	31437	205740	234	205505	0.74	0.11
<b>TOTAL</b>	<b>5632</b>	<b>8750701</b>	<b>3467601</b>	<b>12221054</b>	<b>915640</b>	<b>11303256</b>	<b>26.41</b>	<b>7.49</b>

In the case of agricultural lands land revenue (tax) is very low and the government tries to keep it very low in the interest of farmers. In fact it is about Rs. 2.50 per acre, and if the *khathedar's* total extent is less than 10 acres of dry land, his/her land revenue is waived off. Thus, the amount of land revenue collected will be less than the cost of collection. In the case of urban areas tax rates are higher and amount of property tax collected normally exceeds the cost of collection.

## 4.8. Panel 8: Dispute Resolution

### 4.8.1. Panel Context

#### *Introduction*

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Land disputes in Karnataka may be classified under three broad heads- (i) acquisition disputes under the Land Acquisition Act, 1894; (ii) revenue disputes under the Karnataka Land Revenue Act, 1964 and the Karnataka Land Reforms Act, 1961; and (iii) transactional disputes such as succession and transfer of property.

In Karnataka, as in other states in India, land disputes form a high proportion of cases before the courts and are also seen to clog the formal legal system as they generally are not disposed of quickly. There is a general lack of policy that specifically targets resolution of land disputes. While the union government has formulated a National Litigation Policy, this policy does not focus on clearing the backlog in land disputes. There is no mention of any approach that the Government must take towards specific types of disputes such as land disputes that have been clogging the Indian legal system for decades.

#### *Revenue and Civil Courts*

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The dispute resolution takes place both through the Revenue Courts and the Civil Courts. In the Revenue Court system, the Tahsildar, who heads the revenue department at the Taluk/block level is identified as the first level dispute resolution officer. Revenue officials heading the sub-divisions, districts and division also hold dispute resolution powers. A large number of cases remain pending at this level. Also, this system has been criticized on the grounds that this combines both the functions – dispute resolution and as the executive functions, which may create a conflict of interest.

The civil litigation system mainly comprises the High Court, District Courts, Court of Civil Judge (Senior Division), Court of Civil Judge (Junior Division) and Court of Small Causes. All courts are governed under the Code of Civil Procedure 1908. The Courts of Civil Judge (Senior Division) and the Court of Civil Judge (Junior Division) are established under the Karnataka Civil Courts Act, 1964. In addition to these civil courts, Courts of Small Causes are empowered to take up suits on immovable property under the

Karnataka Small Causes Courts Act, 1964. Courts of Small Causes may be established by the state government in consultation with the High Court of Karnataka and thereupon define their jurisdiction. These courts are primarily established to deal with small value cases.

In the civil litigation system, land acquisition cases filed in the last decade have increased substantially. However, the same is not true for land revenue disputes. The former also have a higher disposal rate than the latter.

In addition to regular courts, the *Gram Nyayalayas Act, 2008* establishes formal rural courts (Gram Nyayalayas) at the panchayat level. In the context of land disputes, *Gram Nyayalayas* are empowered to adjudicate disputes related to rights to purchase a property, use of common pasturage, use of irrigation facilities, wells and water channels and disputes regarding possession of village and farm houses.

Finally, the state is mandated to make efforts towards clearing the backlog in courts through *Lok Adalats*. Under the Legal Services Authorities Act, 1987 states organise *Lok Adalats* or courts that are specifically set up for speedy disposal of cases. The jurisdiction of these courts is limited to cases in which the parties agree or file a complaint before this forum or when a Court deems it fit to refer the case to a *Lok Adalat*. The award of this court is in the form of an agreement and appeals against such awards are not allowed. However, the efficacy of the *Lok Adalat* system requires careful examination

### 4.8.2. Assessment and Score

This section analyses in detail the specific elements related to land disputes in Karnataka with reference to capacity, accessibility and affordability of the dispute resolution system. These elements are divided into Indicators which in turn are broken down into several dimensions. Indicators provide a relatively exhaustive assessment of relevant land governance issues through specific dimensions which define areas for investigation, quantitative measurement or qualitative assessment.

**Indicator 1: 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**

LGI	Dimension Description	Score	Score Description
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
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
1 3	Decisions made by informal or community based dispute resolution systems are recognized	B	There is a community-based system or alternative dispute resolution system that resolves conflicts in an equitable manner but decisions made by this system have limited recognition in the formal judicial or administrative dispute resolutions
1 4	There is a process for appealing dispute 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.

### Analysis

#### *Assignment of responsibility for conflict resolution*

This section describes the assignment of dispute resolution functions under various land laws in Karnataka. The three major enactments - Karnataka Land Revenue Act, 1964; Karnataka Land Reforms Act, 1961 and the Land Acquisition Act, 1894 use the revenue authorities in the state to resolve land related disputes. As the following parts of this section elucidate, these laws create a bar on the jurisdiction of civil courts to entertain land disputes. However, it is important to bear in mind that

citizens may engage the civil litigation system for specific types of disputes under these laws. In the case of inheritance related disputes dispute resolution may either be done through litigation before a competent civil court or through alternative dispute resolution methods.

### *Land Acquisition*

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The Land Acquisition Act, 1894 empowers the State Government to acquire private land for a public purpose. Acquisitions may be made by serving a notice of acquisition and providing a just compensation for the portion of the land notified for acquisition. Prior to acquisition, it is incumbent upon the state to make the reasons for acquisition known. Objections to acquisition may be raised on two grounds- the true area or value of the notified land and that the compensation awarded is not “just”. The District Collector or the Chief Revenue Officer of district is the appointed authority for hearing disputes related to compensation<sup>58</sup> or hearing objections<sup>59</sup> against the acquisition.

### *Land Revenue*

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The Karnataka Land Revenue Act, 1964 broadly concerns the classification of lands for the purposes of land revenue and land revenue administration. Disputes under this enactment are primarily those that concern boundary marks, record of rights, and use of land. The enactment identifies revenue officers as revenue courts. Section 24 of the Act vests powers of settling disputes in the Tahsildar, acting as the revenue court. In addition to this, the Act also establishes the Karnataka Revenue Appellate Tribunal, comprising the Regional Commissioner and Deputy Commissioners to hear appeals against the orders of the revenue court<sup>60</sup>. In addition to this, the Act empowers civil courts to take up matters against the government in certain cases or in the case of private rights. In the specific case of a land boundary dispute, Section 141 empowers the parties to settle the dispute through arbitration.

### *Land Reforms*

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The Karnataka Land Reforms Act, 1961 governs land tenures related to agricultural land in the state. This Act seeks to curb the exploitation of tenants by landlords and land owners by abolishing leases and regulating tenures over agricultural land. The state’s revenue administration is responsible for

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<sup>58</sup> Section 5, Land Acquisition Act, 1894

<sup>59</sup> Section 5A, Land Acquisition Act, 1894

<sup>60</sup> Section 40, Karnataka Land Revenue Act, 1964

implementing the provisions of this law. The Tahsildar, a block level officer is in charge of settling disputes relating to tenure. The dispute resolution and appeals processes are similar to those mentioned under the Land Revenue Act, 1964

### *Dispute resolution through courts*

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In India, inheritance is governed by religious personal laws for Hindus<sup>61</sup> and Muslims<sup>62</sup>. The Indian Succession Act, 1925 governs inheritance for other communities. These laws do not particularly empower officers to resolve disputes. Disputes related to inheritance in India are mostly in the form of partition suits and are regularly attended to by civil courts. In addition to inheritance related disputes, civil courts also take up matters pertaining to private rights under the Karnataka Land Revenue Act, 1964. If a person is being denied his right over land due to an entry in any record, he has the right to file a suit for declaration under Chapter VI of the Specific Relief Act, 1877 provided that the suit is not against the State Government or any government officer.

In addition to the formal legal system, alternative dispute resolution methods such as arbitration, mediation and conciliation also play a significant role in resolving disputes. These alternative methods are recognized under the Arbitration and Conciliation Act, 1996; the Code of Civil Procedure, 1908<sup>63</sup>; Civil Procedure (Alternative Dispute Resolution) (Karnataka) Rules, 2005 and the Karnataka Civil Procedure (Mediation) Rules, 2005. Moreover, formal forums such as the Lok Adalats are also available for redressing land related disputes (See Section 2).

Therefore, the various avenues for conflict resolution clearly assign responsibilities between different administrative and judicial forums with respect to different kinds of land disputes. The responsibilities of individual forums are decided based on the type of dispute, the legislation it is governed by, the geographical region in which the dispute arises and the value of the dispute. In addition to this, the civil litigation system has established processes for transfer of cases from one court to another and restrictions on appeals.

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<sup>61</sup> Hindu inheritance is codified under the Hindu Succession Act, 1956

<sup>62</sup> Muslim inheritance is covered under Shariah laws which are not codified but applicable under the Muslim Personal Law (Shariat) Application Act, 1937.

<sup>63</sup> Sections 89 and 122 of the Code of Civil Procedure, 1908.

### *Accessibility of Conflict resolution mechanisms*

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The accessibility of conflict resolution mechanisms to local communities varies between different legislation governing land disputes. The revenue administration system in Karnataka caters to the public at various levels- village, block, district, zone and state.

### *Conflict resolution of the first instance*

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The Tahsildar, who heads the revenue department at the block level (comprising 3-4 villages) is identified as the first level dispute resolution officer under the Karnataka Land Revenue Act, 1964 and the Karnataka Land Reforms Act, 1961. Therefore, conflict resolution institutions are available at the local level under these Acts. The Land Acquisition Act, 1894 vests dispute resolution powers in the District Collector, an officer at the district level thus raising questions about accessibility to the conflict resolution mechanism under the Land Acquisition Act, 1894.

### *Legal System*

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In Karnataka the civil litigation system mainly comprises the High Court, District Courts, Court of Civil Judge (Senior Division), Court of Civil Judge (Junior Division) and Court of Small Causes. All courts are governed under the Code of Civil Procedure 1908. The Courts of Civil Judge (Senior Division) and the Court of Civil Judge (Junior Division) are established under the Karnataka Civil Courts Act, 1964. The Act provides for one Court of Civil Judge Senior Division in each district<sup>64</sup> and a fixed number of Courts of Civil Judge Junior Division in every district<sup>65</sup>. In addition to these civil courts, Courts of Small Causes are empowered to take up suits on immovable property under the Karnataka Small Causes Courts Act, 1964. Courts of Small Causes may be established by the state government in consultation with the High Court of Karnataka and thereupon define their jurisdiction. These courts are primarily established to deal with small value cases.

In addition to these courts, the Gram Nyayalayas Act, 2008 establishes formal rural courts (Gram Nyayalayas) at the panchayat level<sup>66</sup>. In 2010, the High Court of Karnataka requested the state

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<sup>64</sup> Section 6, Karnataka Civil Courts Act, 1964

<sup>65</sup> Section 7, Karnataka Civil Courts Act, 1964

<sup>66</sup> Section 3, Gram Nyayalayas Act, 2008

government to sanction 30 such courts in Karnataka<sup>67</sup>. These courts are empowered to entertain specific criminal and civil cases. The procedure in Gram Nyayalayas is decided by the High Court from time to time and these courts are expected to resolve disputes within a period of six months from the date of filing a case<sup>68</sup>. Moreover, District Courts may transfer pending cases from any court under its jurisdiction to a Gram Nyayalaya for speedy disposal<sup>69</sup>. Additionally, decrees issued by a Gram Nyayalaya are on par with the decrees of a civil court and the Gram Nyayalaya may execute these decrees in the prescribed manner<sup>70</sup>. These courts are also bound to resort to alternative methods of dispute resolution in civil cases as far as practicable<sup>71</sup>. In the context of land disputes, Gram Nyayalayas are empowered to adjudicate on disputes related to rights to purchase a property, use of common pasturage, use of irrigation facilities, wells and water channels and disputes regarding possession of village and farm houses<sup>72</sup>.

In addition to the regular civil litigation system, the state is mandated to make efforts towards clearing the backlog in courts through Lok Adalats. Under the Legal Services Authorities Act, 1987 states organise “Lok Adalats” or courts that are specifically set up for speedy disposal of cases. The jurisdiction of these courts is limited to cases in which the parties agree or file a complaint before this forum or when a Court deems it fit to refer the case to a Lok Adalat. The award of this court is in the form of an agreement and appeals against such awards are not allowed. However, the efficacy of the Lok Adalat system requires careful examination.

### *Recognition of decisions made by informal or community based dispute resolution systems*

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When there is questionable accessibility to conflict resolution institutions of the first instance at the local level, the role of both formal and informal institutions that deal with conflict resolution becomes important. Informal local governance institutions or customary village councils co-exist<sup>73</sup> and often

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<sup>67</sup> See “State’s first Gram Nyayalaya to be inaugurated in Chickballapur” The Hindu, October 3, 2010 available at: <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/states-first-gram-nyayalaya-inaugurated-in-chickballapur/article810165.ece>, last accessed on January 1, 2014.

<sup>68</sup> Chapter V, Gram Nyayalayas Act, 2008

<sup>69</sup> Section 16, Gram Nyayalayas Act, 2008

<sup>70</sup> Id.

<sup>71</sup> Section 26, Gram Nyayalayas Act, 2008

<sup>72</sup> Part II, Schedule I, Gram Nyayalayas Act, 2008

<sup>73</sup> “Dynamics of Local Governance in Karnataka” by Ananthpur K., Economic and Political Weekly February 24, 2007, page 667

interact with the formal panchayat system<sup>74</sup> in Karnataka. These institutions range from street panchayats to customary village councils. These informal institutions are entrenched in traditional power relations, caste politics and are legitimized by traditional and customary practices. They perform a range of functions, including dispute resolution, sometimes complementing the formal local governance bodies. Customary village councils adopt reconciliatory and consensus building approaches of dispute resolution, thereby contributing to the maintenance of law and order in the village. Land disputes before these informal councils primarily concern encroachment, partition, ensuring the rights of destitute or widowed women to property and other minor property related issues.<sup>75</sup> While it is true that their decisions in disputes are not legally enforceable<sup>76</sup>, they are capable of building social pressure to enforce their decisions in the village community. Despite the existence of these informal institutions for dispute resolution, avenues to approach the police and formal legal system remain open. However, the legitimacy of their decisions regarding disputes are contested and the acceptance of their decisions requires further examination.

#### *Process for appealing dispute rulings*

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**Appeals to administrative authorities:** Apart from cases related to inheritance, appeals processes for other disputes have been provided for in the respective enactments. The Tehsildar may sit as the lowest revenue court under the Karnataka Land Revenue Act, 1964 and the Karnataka Land Reforms Act, 1961. In addition to the Tehsildar, orders may be passed by higher revenue officials such as the Assistant Commissioner, Deputy Commissioner and the Regional Commissioner in similar capacity. The Karnataka Land Revenue Act, 1964 allows for two sets of appeals against an original order issued by a revenue official. First appeals against original orders by any official below the rank of Assistant Commissioner lie with the Assistant Commissioner. An appeal against an original order by the Assistant Commissioner lies with the Deputy Commissioner, and from the Deputy Commissioner/Regional Commissioner to the Karnataka Land Revenue Tribunal<sup>77</sup>. Second appeals against orders passed by the Assistant Commissioner are available with the Deputy Commissioner. In the case of appeals against

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<sup>74</sup> Panchayats in Karnataka are institutionalised and organised under the Karnataka Panchayati Raj Act, 1993

<sup>75</sup> *Supra* at N. 17

<sup>76</sup> Informal local governance institutions are not recognised under any existing law, therefore, their capacity to arbitrate disputes of any form is not legitimate. Moreover, settlement of land-related disputes must be made through legally enforceable instruments in order to be valid. This makes the terrain of informal dispute resolution mechanisms in land cases fall outside the ambit of land governance.

<sup>77</sup> Section 49, Karnataka Land Revenue Act, 1964

orders passed by Deputy Commissioners, the appeal lies with the Tribunal. Further, where an order on a first appeal is passed by the Assistant Director (Settlement) or Assistant Director (Land Records), the appeal shall lie with the Director of Survey, Settlement and Land Records. However, appeals against orders of Joint Directors are available with the Karnataka Revenue Appellate Tribunal<sup>78</sup>.

If any member of the public is aggrieved by a Government order declaring certain lands to be state-owned property, or an order extinguishing public rights over roads or lanes as prescribed under these sections, he/she can institute a civil suit or file objections before the Deputy Commissioner, within a specified period of limitation (one year and 90 days, respectively). When land has been sold due to default in revenue payments, the defaulter or owner has the right to apply to the Deputy Commissioner to have the sale set aside, provided that he applies within 90 days of the sale and that the grounds for setting aside the sale are as per the Act. In addition to the detailed appellate structure, the Act also imposes limitation periods- sixty days from the date of the order in the case of a first appeal and ninety days from the date of the order in the case of second appeals<sup>79</sup>.

#### *Karnataka Revenue Appellate Tribunal*

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Under the Karnataka Land Revenue Act, 1964 appeals against the order of a Tahsildar lie before the Karnataka Revenue Appellate Tribunal<sup>80</sup>. This Tribunal comprises a Chairman (an officer not below the rank of a Regional Commissioner), three district judges and two other revenue officials not below the rank of a Deputy Commissioner<sup>81</sup>. Appeals against an order of the Civil Judge (Junior Division) lie before the Civil Judge Senior Division<sup>82</sup>, while appeals against an order of a Court of Civil Judge Senior Division lie before the District Court<sup>83</sup>.

#### *Court Appeals*

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In India, states' High Courts are subordinate to the Supreme Court, District Courts are subordinate to the relevant state High Court and all other courts (civil courts, small causes courts) are subordinate to

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<sup>78</sup> Section 50, Karnataka Land Revenue Act, 1964

<sup>79</sup> Section 51, Karnataka Land Revenue Act, 1964

<sup>80</sup> Section 41, Karnataka Land Revenue Act, 1964

<sup>81</sup> Section 40 (2), Karnataka Land Revenue Act, 1964

<sup>82</sup> Section 20, Karnataka Civil Courts Act, 1964

<sup>83</sup> Section 19, Karnataka Civil Courts Act, 1964

the District Courts. The appeals process here is determined by the Code of Civil Procedure, 1908<sup>84</sup>. In addition to the subordination of courts under the Code of Civil Procedure, 1908, the Karnataka Civil Courts Act, 1964 further divides lower civil courts (below the rank of a District Court) into Court of the Civil Judge Senior Division and Court of the Civil Judge Junior Division<sup>85</sup>. Therefore appeals from a Court of Civil Judge Junior Division are available at the Court of Civil Judge Senior Division. In addition to geographic jurisdiction, the jurisdiction of lower courts is also determined by the pecuniary value of the suit, known as pecuniary jurisdiction<sup>86</sup>. The Civil Judge Senior Division is empowered to take up all civil suits from the specified district, while the Court of Civil Judge Junior Division is empowered to take up civil suits where the suit value is below Rs 50,000<sup>87</sup>. In addition to the above set of courts, the Karnataka Small Causes Courts Act, 1964 empowers Courts of Small Causes to take up suits on immovable property where the value of the property does not exceed Rs 25,000<sup>88</sup>. Appeals against orders of a Court of Small Causes lie before the relevant district courts, however, in the case of Bangalore City, the appeal lies before the High Court<sup>89</sup>.

In the case of Gram Nyayalayas, an appeal over most matters lies before the relevant District Court<sup>90</sup>. Appeals in certain cases<sup>91</sup> are barred under the Gram Nyayalaya Act, 2008. In addition to these restrictions, the Act imposes a limitation period of 30 days from the date of the judgment in the case of all appeals against judgments of a Gram Nyayalaya.

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<sup>84</sup> Section 3 of the Code of Civil Procedure, 1908 describes the subordination of courts in India.

<sup>85</sup> Section 3, Karnataka Civil Courts Act, 1964

<sup>86</sup> Section 6, Code of Civil Procedure, 1908

<sup>87</sup> Section 17, Karnataka Civil Courts Act, 1964

<sup>88</sup> Section 8 (2), Karnataka Small Causes Courts Act, 1964

<sup>89</sup> Section 17, Karnataka Small Causes Courts Act, 1964

<sup>90</sup> Section 34, Gram Nyayalaya Act, 2008

<sup>91</sup> Appeals in cases where the judgment is passed with the consent of both parties, or the value of the suit is below Rs 1000 or Rs 5000 appeals to a District Court are barred under Section 34, Gram Nyayalayas Act, 2008

**Indicator 2: The share of land affected by pending conflicts is low and decreasing**

LGI		Dimension Description	Score	Score Description
2	1	Land disputes constitute a small proportion of cases in the legal system	Not Scored	Not Scored
2	2	There are few long-standing land conflicts (greater than 5 years).	C	The share of long-standing land conflicts is between 10% and 20% of the total pending land dispute court cases.
2	3	There is a process for appealing dispute 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.

*Analysis**Volume of land disputes as proportion of cases in the formal legal system:*

The current legal system provides court facilities at the panchayat, taluk, district and state levels for the resolution of land disputes. The problem of geographic access to courts is a relatively smaller one when compared to the high costs and delays in the formal legal system (Anderson, 2000). Such high rates of pendency and backlog of cases prevalent in all courts across India (Kumar, 2011)<sup>92</sup> tend to cripple speedy disposal of land disputes. Despite these shortcomings of the legal system, a remarkably large number of cases related to land disputes are filed before the courts each year and tend to take years or sometimes decades before they are resolved.

**POLICY RECOMMENDATIONS**

- A title insurance system that allows the purchases to be insured against fraudulent transactions must be introduced to reduce the incidence of land disputes.

<sup>92</sup> Also see "Justice Without Delay: Recommendations for Legal and Institutional Reforms in the Indian Courts" by the Centre on Public Law and Jurisprudence, O.P. Jindal Global University, Research Paper No. 4/2011, abstract and paper available at: <http://ssrn.com/abstract=1679350>. Last accessed on December 30, 2013.

### *Long-standing land conflicts (greater than 5 years)*

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There have been voices advocating the establishment of special courts for the disposal land cases as they tend form a relatively large percentage of the cases in the civil litigation system<sup>93</sup>. The establishment of mobile rural courts<sup>94</sup>, conducting Lok Adalats<sup>95</sup> and the use of alternative dispute resolution methods provide some hope in speedy disposal of land disputes.

Conflicts in the formal system are resolved in a fairly timely manner across the variety of land disputes presented in this report. In land acquisition cases the average percentage of disposal of cases in the same year is 70.1% and in land revenue rent cases this is almost one hundred per cent. Although the data in relation to land acquisition cases demonstrates higher rates of pendency towards the end of the decade, the initial parts of the decade witnessed high disposal rates.

### **POLICY RECOMMENDATIONS:**

- It is recommended that there be a separate tribunal established to handle land related disputes.

### *Process for appealing dispute rulings*

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There are many long-standing land disputes that have not been resolved. Media reports indicate an increasing trend in pendency of land disputes under the jurisdiction of revenue officers.<sup>96</sup> This is also the trend that may be observed in the data presented in the background report. Land acquisition cases take particularly long to be disposed.

Based on the data provided on land acquisition cases, 10-20% of the total pending cases are more

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<sup>93</sup> See "Special courts for disposal of land dispute cases sought" The Hindu, September 5, 2009, available at: <http://www.hindu.com/2009/09/05/stories/2009090551830300.htm> last accessed on January 1, 2014.

<sup>94</sup> See "Funds crunch, lukewarm response mar Gram Nyayalayas", Times of India, May 22, 2012, New Delhi Edition available at: <http://timesofindia.indiatimes.com/india/Funds-crunch-lukewarm-response-mar-Gram-Nyayalayas/articleshow/13368644.cms> last accessed on January 1, 2014.

<sup>95</sup> *Supra* at N. 18

<sup>96</sup> See "Principal Secretary lays stress on speedy disposal of land dispute cases" The Hindu, December 9, 2013 available at: <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/principal-secretary-lays-stress-on-speedy-disposal-of-land-dispute-cases/article5438415.ece> last accessed January 1, 2014. Also see "Resurvey of Government Lands in Rural Areas Planned" The New Indian Express, December 31, 2013 available at: <http://www.newindianexpress.com/states/karnataka/Resurvey-of-Govt-Lands-in-Rural-Areas-Planned/2013/12/31/article1974418.ece> last accessed on January 1, 2014.

than five years old.

### POLICY RECOMMENDATIONS

We recommend that there is clear separation of dispute resolution functions and executive functions within the state's revenue department. Presently, the executive officers are also burdened with dispute resolution functions and this has resulted in an increasing number of pending cases before these authorities.

A title insurance system that allows the purchases to be insured against fraudulent transactions must be introduced to reduce the incidence of land disputes.

## 4.9. Panel 9: Institutional Arrangements and Policies

### 4.9.1. Context

#### *Introduction*

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Land governance in Karnataka involves several departments, agencies offices and officials. To a large extent the functions of policy formulation are separated from those of implementation and arbitration in Karnataka. However, there is less separation between the functions of implementation and arbitration (detailed analysis of this is as part of Indicator analysis in the Section 4.9.2).

Land policy formulation takes place at higher levels of government and the legislature. While major changes in the land policy which requires changes in the existing Acts go through the legislature, other changes to the statute are carried out by the department headed by the minister for revenue through the principal secretary to the Department of Revenue. Karnataka does not have a revenue board. The implementation of the legislation, policies and programs in the land sector takes place through the field-level offices of the revenue department. These field-level offices are organized in a complex arrangement under three different functional areas.

#### *Institutional Complexity*

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The Revenue Department is responsible for overall land administration in the State and it deals with land titling, land reforms and manages spatial records of the rural agricultural land. It is also functions as the estate department of the state in which role it owns all the land which is not owned by any other private or public entities. The Revenue Department has its offices at various levels up to the village. It represented by the Divisional Commissioners at the divisional level, Deputy Commissioners at the District level, Assistant Commissioners at the sub-divisional level, Tahsildars at the Taluk level and Village Accountants at the Village Level. These officials of the Revenue Department are also responsible for the general administration function which leaves them with very little time to devote to land related issues.

The functions of survey, settlement and creation and management of cadastral records are

undertaken by a separate department within the overall supervision of Revenue Department, called the Department of Survey, Settlement and Land Records and is headed by a Commissioner. Under a similar administrative arrangement, land registration and valuation has been assigned to the Department of Stamps and Registration and is headed by an Inspector General of Registration-and-Commissioner of Stamps. The Department of Survey, Settlement and Land Records has its offices in districts and taluks. The Department of Registration and Stamps has a network of sub-registrar's offices across the state where the actual land registration takes place.

Any piece of rural land that had been transacted through sale at any point after 1882 entered the land registry system, implying that its records are maintained not only by the revenue but also by the stamps and registration department. This duplication of institutions increases transaction costs for landowners without providing commensurate benefits. More importantly, it introduces a major source of tenure insecurity and even fraud because, for a variety of reasons, the records maintained by both institutions may well be inconsistent.

In addition to the Revenue Department, the local bodies also are involved in land administration. The urban local bodies are responsible for managing the ownership and taxation matters relating to urban land whereas the village homestead land is under the jurisdiction of the gram panchayats.

Within the arrangement for managing urban land, Bangalore, the largest city in the State has a separate institutional set up at least in so far as its planning and land use management are concerned. Due to its size Bangalore has hierarchical planning agencies. There exists Bangalore Metropolitan Region Development Authority (BMRDA) that is technically the super structure encompassing an area of 8000 sq. km. Within the BMRDA, is the Bangalore Development Authority (BDA) as the local planning authority for Bangalore metropolitan area. As per the existing policies, the planning carried out by local planning authorities, has to be vetted and forwarded to the government through the BMRDA. The BMRDA prepares a macro structure plan that outlines a broad framework for urban expansion.

Common lands and forests are spread across diverse administrative categories, with unique local taxonomies, and controlled by the Forest Department, Revenue Department and, to some extent, the local Gram Panchayats. The variance in the actual physical status of the lands does not allow a neat division of responsibilities between the Forest Department and the Revenue Department based on the type of land in question. These complexities are only exaggerated by the absence of any rigor in

the estimates of the conditions of lands disaggregated by their types. (Lele, Purushothaman and Kashyap, 2013; Nagendra and Gokhale, 2008). Securing the rights of forest dwelling individuals and groups requires four departments - tribal welfare, revenue, forest and panchayati raj – working in coordination.

Several departments are involved in land acquisition too. While the Revenue Department directly handles some kind of land acquisition especially for public purposes, land acquisition for industrial purpose takes place through the Karnataka Industrial Area Development Board which operates under a separate Act. Similarly, for housing purposes both the Karnataka Housing Board and the Bangalore Development Authority acquire land, empowered by different statutes. Karnataka Highways Improvement Project and Karnataka Bhagya Jala Nigam acquire land for roads and irrigation purposes respectively and they are guided by their own policies relating to compensation and rehabilitation of the land owners.

These institutional and legal/policy complexities are brought out more vividly in the indicator analysis in the next section.

## 4.9.2. Assessment and Score

**Indicator 1: Clarity of mandates and practice: institutional mandates concerning the regulation and management of the land sector are clearly defined, duplication of responsibilities is avoided and information is shared as needed**

LGI		Dimension Description	Score	Score Description
1	1	Land policy formulation, implementation and arbitration are separated to avoid conflict of interest	B	In situations that can entail conflicts of interest or abuse (e.g. transfers of land rights) there is some separation in the roles of policy formulation, implementation of policy through land management and administration and the arbitration of disputes
1	2	Responsibilities of the ministries and agencies dealing with land do not overlap (horizontal overlap)	C	The mandated responsibilities of the various authorities dealing with land administration issues are defined but institutional overlap with those of other land sector agencies and inconsistency is a problem.
1	3	Administrative (vertical) overlap is avoided	A	Assignment of land-related responsibilities between the different levels of administration and government is clear and non-overlapping.
1	4	Land right and use information is shared by public bodies; key parts are regularly reported on and publicly accessible	B	Information related to rights in land is available to interested institutions and although this information is available at reasonable cost, it is not readily accessible as the information is not maintained in a uniform way.
1	5	Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute	C	The Legal framework and procedures for land-related matters (incl. renewable and subsoil resources) deal with land-related matters very differently but have functioning mechanisms for redressing overlap in place.
1	6	Ambiguity in institutional mandates (based on institutional map) does not cause problems	C	Different public institutions deal with land-related matters very differently but functioning mechanisms for coordination are in place and regularly used.

*Land policy formulation, implementation and arbitration are separated to avoid conflict of interest*

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The relevant Acts under this dimension are discussed below.

*Revenue Act* – Under the Karnataka Land Revenue Act 1964 officers of the Revenue Department are charged with the responsibility of implementing various policies pertaining to land use, taxation, rights and ownership. The Act also ascribes certain quasi-judicial functions to officers such as the power “to inquire into or to decide any question arising, for determination between the State Government and any person or between parties to any proceedings”, to hold enquires and hear cases and to take evidence, summon persons to give evidence and produce documents. Thus, particularly in the case of the Deputy Commissioner the implementation and arbitration roles seem to overlap.

Land Policy formulations seem to be clearly distinguished from the implementation and arbitration functions. While major changes in the land policy which requires changes Revenue Act go through the legislature, other changes to the statute are carried out by the department headed by the minister for revenue through the principal secretary to the Department of Revenue.

*Forest Act* – Under the Forest Rights Act, 2006, members of the Gram Sabha are charged with the authority to implement various policies under the Act such as the process for determining the nature and extent of individual or community forest rights that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction by receiving claims, consolidating and verifying them.

Whereas, according to the Act, conflicts arising from the implementation are arbitrated by three specific committees, the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee consisting of officers from the departments of Revenue, Forest and Tribal Affairs of the State Government. Also, policy formulations seem to be clearly distinguished from the implementation and arbitration functions.

*Karnataka Municipal Corporation Act* - This Act clearly states that the State government determines the policies pertaining to the administration of urban land which are implemented by the Corporation established under this Act, suggesting no conflict between policy making and implementation. However, in the case of arbitration, matters are more complicated. While the Act at several points

refers to the involvement of the Karnataka Appellate Tribunal or district court in determining sums payable in disputes related to action taken by the Commissioner, as well as to costs, damages, penalties, compensation, charges, fees, rents, and expenses contributions, it also specifies that in the case of certain disputes, for instance those arising from whether places are markets or not, the Commissioner of the Corporation will make a reference of this to the State government for the final decision. Thus, it appears that the Commissioner, who is charged with the responsibility of implementing policies determined by the government, also has a role in the arbitration of certain disputes, suggesting some overlap between the two functions. Also, the policy making functions and arbitration functions of the State government are in conflict in some instances as described above. However, it must be noted the constituent member of the above mentioned appellate do not overlap with the officers of the departments under this Act.<sup>97</sup>

*Bangalore Development Authority Act* - According to this Act, policies related to the development of Bangalore (involving acquisition of land) can be drawn up by the Authority but their implementation can happen only with the prior approval of the government. Additionally, the government may make the Authority take up any developmental scheme or work and execute it under its direction. As far as arbitration of disputes arising from the BDA's land policies is concerned, the Act specifies that appeals can be made to the concerned Appellate authority. As per information published by the BDA<sup>98</sup>, the designated First Appellate authorities for the various departments are members from the department itself. Thus some overlap is seen in implementation and arbitration functions under this Act.

*Karnataka Slum Areas (Improvement and Clearance) Act, 1973* - The Karnataka Slum Clearance Board<sup>99</sup> established under this Act is charged with the responsibility to carry out and execute such scheme and works as the Government may direct. As such the policy making functions under this Act seem to rest with the government while the implementation of these policies is the responsibility of the Board. As

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<sup>97</sup> The Chairman shall be an officer not below the rank of the Divisional Commissioner and of the remaining members, at least two shall be District Judges, (at least one shall be) an officer of the Commercial Taxes Department not below the rank of the Deputy Commissioner of Commercial Taxes (hereinafter referred to as (a Commercial Taxes member) (at-least one shall be) an officer of the Department of Co-operative not below the rank of a Joint Registrar of Co-operative Societies (hereinafter referred to as the (a Co-operation member) and the rest shall be officers not below the rank of a Deputy Commissioner of a district having administrative experience)

<sup>98</sup> <http://www.bdabangalore.org/RIAPRO.pdf>

<sup>99</sup> Now named as Karnataka Slum Development Board

far as arbitration of disputes is concerned, the Act is clear that in cases of disputes arising from the acquisition of land for the improvement of slum areas, the arbitrating authority is the court, where the court shall follow the provisions of Part III of the Land Acquisition Act 1894. For disputes arising as a result of transfer of property from the Karnataka Housing Board to the Slum Clearance Board, the Act states that the dispute shall be referred to the decision of the Government and its decision shall be final.

*Karnataka Industrial Areas Development Act* - According to this Act, the Board has been entrusted with the rights to establish land policy pertaining to acquiring and holding property, both movable and immovable as the Board may deem necessary for the performance of any of its activities and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Board. The Board is also allowed to purchase by agreement or take on lease or under any form of tenancy any land, to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions. However, according to the Act, acquisition of all land can take place only after a notification put out by the state government.

Thus, policies related to industrialization seem to come under the gamut of both the State Government and the Board while the Board is charged with implementation of these policies.

As far as arbitration is concerned, in matters relating to demolition or alteration of unauthorized construction in industrial areas, any person aggrieved by such an order may within thirty days of the said order appeal to the Board, which, after hearing the parties to the appeal may either allow or dismiss the appeal or vary any part of the said order. This suggests that the Board has been entrusted with the powers of arbitration, suggesting overlap with its implementation functions.

#### *Do Responsibilities of the ministries and agencies dealing with land overlap (horizontal overlap)?*

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Arising out of the Laws and policies mentioned in this report, there appear to be instances of overlap between the mandates of ministries and agencies which are analysed below:

*Overlap between mandates of local self-governance and statutory authorities* – According to a report published by Alternative Law Forum (2003), a conflict appears to emerge between the bodies of local self – governance and the statutory authorities, and it revolves around the core issue relating to control over land and planning. According to the report, this has arisen because of the incomplete

devolution of powers to local bodies resulting in ambiguity regarding the mandate of the constitutionally endorsed panchayats, municipalities and district/metropolitan planning committees. Further, the introduction of the 73<sup>rd</sup> and 74<sup>th</sup> amendments bestowed certain powers on the local governance bodies that were hitherto held by other parastatal authorities. This sets the context for the conflicts arising out of overlapping provisions in different Acts and their statutory agencies, with specific regard to revenue land control, regulation, usage, management and collection of revenue. i.e. at the level of the authorities, a direct conflict between the Panchayats / Municipalities and various authorities such as the BDA, KIADB, BMRDA, Revenue Department, etc, and at another level, the conflicts and contradictions in overlapping provisions of the Constitution and various Acts such as the Karnataka Panchayati Raj Act, Karnataka Municipal Corporations Act, Karnataka Municipalities Act, Land Acquisition Act, Karnataka Industrial Areas Development Act, Karnataka Land Revenue Act, Bangalore Metropolitan Regional Development Authority Act, BDA Act, Karnataka Town and Country Planning Act, etc. Specifically, conflicts in mandate seem to arise in the domain of development plans affecting revenue land-use change.

### *Overlap between mandates of Urban Local Bodies*

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On certain issues, for instance the maintenance of public lands such as lakes<sup>100</sup>, there has been confusion between the mandates of the Bangalore Development Authority (BDA), the Bruhut Bangalore Municipal Corporation (BBMP), the Revenue Department and the Minor Irrigation Department. Most recently, this has resulted in the BBMP refusing to take the responsibility of maintaining 12 lakes in Bangalore stating that if a lake is less than 40 hectares, it is with the Revenue Department. If it is more than 40 hectares, it belongs to the Minor Irrigation Department and the BDA is the trustee of the lakes, entrusted with the task of development of the lakes. While the BBMPs own mandate includes the development of the city which include development of water bodies.

Another area of confusion over mandates pertains to issuance of Occupancy certificates. While, the BBMP claims it is the only civic body which is authorised to issue these certificates under the provisions

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<sup>100</sup> See <http://bangalore.citizenmatters.in/articles/bda-devlops-lakes-but-bbmp-yet-to-take-them-back>

of the Karnataka Town and Country Planning Act, the BDA claims that the state government has given it powers to issue these certificates.<sup>101</sup>

### *Administrative (vertical) overlap is avoided*

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There does not appear to be instances of administrative overlap between different levels of administration in the land administration departments studied as part of this report.

### *Sharing and reporting of land right and use information*

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For agricultural land, information pertaining to land rights is available through a computerized database called Bhoomi. The cost of procuring a copy of the Records of Rights, Tenancy, and Crops (RTCs) through Bhoomi kiosks is Rs. 15 which can be considered a reasonable amount for this information.

No such information database exists for the land rights in non-agricultural land in rural and urban areas.

Further, it has been observed that there is little communication among the offices dealing with land records, land use, land acquisition and registration despite the fact that they all fall within the office of the Deputy Commissioner. Thus the information on land use in both rural and urban areas is not readily accessible as the information is not maintained in a uniform way.

### *Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute*

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The existing structure of land rights allow for the existence of overlapping of rights in so far as they pertain to common land and natural resources, in which case they are resolved by orders passed by local authorities. Multiple rights exist over the same plot of land to an individual or an aggregate of individuals, insofar as certain resources in the land are deemed to vest with the state government, while others continue to remain with the occupant of the land. This has been illustrated previously through the right to trees under the Karnataka Land Revenue Act, whereby by virtue of Section 74 and 75, the right to trees will vest in the occupant of a property, except when these trees are reserved by

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<sup>101</sup> <http://ibnlive.in.com/news/bbmp-bda-lock-horns-over-occupancy-certificates/183100-60-119.html>

the Government or a Survey Officer, or are standing on Government property. Further, multiple rights over land and sub-soil resources can legally coexist. The legal regime which operate in this sphere does not create preferential right of those who have surface rights, thus creating a regime where multiple rights operate over the same plot of land.

Overlap of rights also occurs as a result of land being recorded both under the forest as well as the revenue department records. For instance, it has been reported that in Kodagu district forest lands to be mutated in favour of the Forest Department, as a result of the Supreme Court order in *T.N. Godavarman Thirumulpad vs Union of India and others*, remain in an ambiguous situation, as in the case of those mutated in the records of the Forest Department, are not removed from the records of the Revenue Department. This creates ambiguity in the rights of both the departments' vis-à-vis such land. Reports mention that amid this tug-of-war and swapping of rights between the Revenue and Forest Departments, some encroachers legitimise their holdings allegedly by managing to tamper with RTC and other documents.

As far as complaint and redressal is concerned, the Land Revenue Act lays out the procedure to be followed in the case of dispute usually involving the District Commissioner and Tehsildar.

*Ambiguity in institutional mandates (based on institutional map) does not cause problems*

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There is often an overlap in the institutional mandate of the Revenue and Forest Departments due to the difficulty in classification of the regions according the actual physical status of the land in question. We believe that it is not possible to comment on whether there are problems caused due to the ambiguities in institutional mandates in the absence of actual data from the agencies in question and a more thorough interaction with the various actors that interface with the land governance system on a day-to-day basis.

#### POLICY RECOMMENDATIONS

- In Karnataka, common lands and forests are spread across diverse administrative categories, with unique local taxonomies, and controlled by various arms of the state, including the Forest Department, Revenue Department and, to some extent, the local Gram Panchayats. The variance in the actual physical status of the lands does not allow a neat division of responsibilities between the Forest Department and the Revenue Department based on the

type of land in question. These complexities are only exaggerated by the absence of any rigor in the estimates of the conditions of lands disaggregated by their types.

- One single department should take care of all land records related functions which would reduce the dependency on multiple institutions and agencies as computerized property records will be real-time records obtainable from a single window, thereby, saving the citizen time and effort in obtaining property records.
- Keeping in view the observations made by the Second Administrative Reform Commission as well as our analysis of the situation in Karnataka, we recommend divesting the functions pertaining to land administration from the Deputy Commissioner to a separate entity at the district level, so that undivided attention can be given to land issues. It has been noted that the inability of higher officials of the state administration to monitor the work of frontline bureaucrats is because of their heavy burden of work, which leaves them with little time and energy to focus on rural affairs.

**Indicator 2: Equity and non-discrimination in the decision-making process: policies are formulated through a legitimate 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**

LGI	Dimension Description	Score	Score Description
2	1	B	A comprehensive land policy exists or can be inferred by the existing legislation. Land policy decisions that affect sections of the community are based on consultation with those affected but feedback is usually not sought or not used in making decisions.
2	2	B	Land policies incorporate equity objectives that are regularly and meaningfully monitored but their impact on equity issues is not compared to that of other policy instruments.
2	3	C	Land policies incorporate some ecology and environmental sustainability objectives but these are not regularly and meaningfully monitored.
2	4	B	The implementation of land policy is costed, though not necessarily based on a comparison of expected benefits and costs. There is an adequate budget, resources and institutional capacity.

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.
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
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.

## Analysis

### Are land policies and regulations developed in a participatory manner?

In the urban region, the Bangalore Development Authority (BDA) is the planning authority for Bangalore Metropolitan Area and it comes up with the Comprehensive Development Plan for the region. It has been reported that with the exception of the Revised Master Plan (RMP) 2015, it had sought public comments on every prior draft of the RMP. It is indicative of good practice by the BDA that it has initiated the process of revising the master plan.

The policy for the formulation of rural land use arises from the procedure laid out in the Karnataka Town & Country Planning Act, 1961 (KT&CP Act). When the planning authority begins carrying out a survey to prepare the Outline Development Plans, Section 9, KT&CP Act, mandates them to declare their intention to prepare such a plan, showing the boundary of the area proposed to be included in it and a two month window exists within which a member of the public may communicate a suggestion regarding its use, which may or may not be accepted by the planning authority. Once the State Government returns the Master Plan to the planning authority, the authority is expected to invite public comments for a period of 60 days, after which they may once again resubmit a plan for approval under Section 13. The final plan is then permanently displayed in the offices of the Planning Authority. Similarly, under Section 14A of the KT&CP Act, a proposal for change of land use from outline development plan requires a similar process of public consultation.

It has however been contended that often the application of this procedure in practice is significantly different from what is stated in the provisions. For instance, a report claims that during the process

of acquisition of land by the BDA and the KIADB for the Information Technology Corridor in Bangalore, there were no consultations with the local communities and its representative bodies including the Gram Panchayat in any process. This includes the choice of area for the IT Corridor and the preparation of the report itself. There was also no participation elicited from the community with regard to the lands being acquired / notified for various companies. It would be possible to judge the efficacy of the procedure mentioned above in the presence of actual data from the relevant agencies regarding the comments received from the public to evaluate whether the ideas sought to be conveyed found expression in the final plan.

### *Land policies and equity and poverty reduction goals*

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As captured at several junctures in this report land Policies address equity and poverty reduction goals in several ways, be it through regularization of unauthorized occupation of land in rural and urban areas, construction of housing under state and centrally sponsored schemes, improvement of slums, provisioning of homestead lands, easing access to land records which in turn help faster access to loans and other aid.

Monitoring the implementation of the policy has been included into the policy documents of each of these initiatives which includes third party monitoring including NGOs, activists and residents. Further, the Right to Information Act allows for information regarding details of these policies to be made available to the public.

On the third aspect, data determining the correlation between policies and human development indices is hard to find, and thus nothing conclusive can be said about this parameter. However, improvement in the lives of people in general terms as a result of implementation of these policies is spoken about in government documents such as the reports from the Planning Commission.

### *Land policies and ecological and environmental goals*

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The Karnataka Land Revenue Act, clearly establishes the policy around laying out of 'Green Belts' around cities/towns in order to ensure that the urban population in Karnataka is adequately served by infrastructural facilities and does not unnecessarily run the risk of environmental hazards. The Act further prevents unauthorized development or construction in green belt areas. Section 95 (3B) of the

Act also specifically prohibits the Deputy Commissioner from granting permission for conversion of land in the green belt for any other purpose.

However, at present various residential layouts are formed in the green belt. Reports point to certain loopholes within the existing land and tax policies, which are exploited in order to go ahead with such constructions. Reports also mention that the relevant authorities do not take adequate action against such misuse of green belts leading to a proliferation of such practices.<sup>102</sup>

Other Acts such as the Forest Rights Act recognize “critical wildlife habitat” as such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of objective environmental criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forest.

The state of Karnataka was one of the first states to issue a Government Order in 1993 for the implementation of the programme for the protection and management of degraded forests, in pursuance of National Forest Policy, 1988, which for the first time highlighted the urgent need to protect and preserve forests for their own sake with the necessary involvement of village communities in the regeneration of degraded forest lands.

The Bangalore Development Authority Act calls for the constitution of an Urban Art Commission charged with the responsibility of advising the government on restoration and conservation of urban design and of the environment in the development areas.

The Karnataka Town and Country Planning Act, 1961 aims at providing regulation of planned growth of land use and development with a view to ensuring desirable standards of environmental health and hygiene and prevents the regularization of development in areas covered by the Coastal Zone Regulations of the Ministry of Environment and Forest.

Determining the impact of these policies would require a lot of data which is unavailable at the moment.

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<sup>102</sup><http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=e5fe7675-d431-4839-a619-f5340f5877e1&txtsearch=Subject:%20Property>

*Is implementation of land policy costed, matched with benefits and adequately resourced?*

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There is often a budget prepared, based upon which funds are allocated to a particular governmental agency by either the state or central government. However, it is not clear whether the land policies that are currently being implemented have undergone a rigorous process of cost-benefit analysis.

The Karnataka Revenue Act makes mention of the process of costing and the officers involved for the implementation of various policies under it. For instance, for the preparation or revision of maps or plan required for in connection with any record or register, the Act states that any Revenue Officer of a rank not lower than that of an Assistant Commissioner or of a Survey Officer may assess the cost of the preparation or revision of such map or plan and all contingent expenses including the cost of clerical labour and supervision, and such costs shall be recoverable from such person as an arrear or land revenue. Similarly, in the case of revenue demand through sale of property, the Act prescribes the form and contents of a notice of demand, the costs recoverable for such notice and the officers by whom such notices shall be issued. The Act makes specific the instances when costs have to be borne by parties interested in benefitting from the land policies of the government. For instance, in the case of construction of a water course through a neighbour's property, the Act mentions that in the event of removal or discontinuance of water course the person taking the water shall fill in and restore the land to its original condition at his own cost. Other instances in the Act include in the case of sale of forfeited property, the cost of the removal of any encroachment under this section shall be recoverable as an arrear of land revenue.

In the case of urban development schemes, the Bangalore Development Act clearly specifies that the Authority in charge of implementing such schemes must complete plans and estimate of the cost of executing the scheme. Further, the BDA Act states if the estimated cost of executing the scheme as altered exceeds, by a greater sum than five per cent the estimated cost of executing the scheme as sanctioned, the Authority shall not, without the previous sanction of the Government, proceed to execute the scheme as altered. The Act also clearly states the existence of a Development Fund and the items to be credited to such fund, which include the rents, profits, and sale proceeds of all lands, buildings and other property vested or vesting in or acquired by the Authority under this Act.

The Karnataka Slum Areas Act specifies that the Slum Board in determining whether at a reasonable expense the slum area or part thereof can be improved or the building rendered fit for human

habitation, regard shall be had to the estimated cost of the works of improvement of the slum area or part thereof or of the works necessary to render the building fit for human habitation and the estimated value that the slum area or part thereof or the building will have when such works are completed.

The Karnataka Town and Country Planning Act has a specific section detailing what constitutes the cost of a Town planning scheme by the Planning Authority. This includes all sums payable by the Planning Authority under the provisions of this Act, which are not specifically excluded from the costs of the scheme, as well as all sums spent or estimated to be spent by the Planning Authority in the making and in the execution of the scheme, all sums payable as compensation for land reserved or designated for any public purpose or purpose of the Planning Authority and all legal expenses incurred by the Planning Authority in the execution of the scheme.

*Is there regular and public reporting indicating progress in policy implementation?*

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Progress in the implementation of major central policies is usually publically available. For instance, the Ministry of Tribal Affairs, Government of India, provides a status report on implementation of the Forest Rights Act, 2006 which includes a status update on Karnataka. This report is freely accessible to the public via the Ministry's website. Similarly for urban housing policies described in this report such as Indira Awaas Yojana status reports are published by the Ministry of Rural Development which includes specific information on Karnataka. For Slum housing policies like Rajiv Awaas Yojana, the Ministry of Housing and Urban Poverty Alleviation publishes regular status reports. Various agencies and ministries release annual reports which allow for the public to gain awareness of the measures taken by them. However public reporting of policies and programmes implemented by the state government are hard to find.

*Land policies and land use by vulnerable groups*

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Karnataka's land governance policy since the 1970s has been geared toward the abolition of the system of tenancy so that persons from a socioeconomically weaker background can have greater access to landholding. Further, amendments in the land revenue legislation have been aimed at regularizing the unauthorized encroachment and farming upon by individuals who are from a

disadvantaged background in the economic sense. The Karnataka Land Grant Rules 1969 are also designed to benefit individuals from the backward castes and classes. The policy stated therein stipulates eligibility based upon existing income and current state of land-holding by an individual.

However, as mentioned in this report, cases of concealed tenancy continue to exist in the state. It has also been reported that big landlords also retain vast lands under their ownership by dividing their family into a number of 'units' for technical purposes and also by fraud (benami) transactions of landed property. Overall, the concealed tenancy rates in Karnataka have been estimated to be between two to eight percent<sup>103</sup> of holdings as opposed to the national estimated average of 15 to 25 percent (Deshpande, 2003).

In the case of securing rights of Forest dwellers, while the Forest Rights Act goes a long way in establishing the procedure and extent of rights, the implementation of these policies in securing life and livelihoods of poor tribal forest dwellers has been reported to be varied. For instance, tribal leaders in the State have alleged that tribal people were not given access to collect minor forest produce, rights over water bodies to allow fishing and cultivation, though the Act gave them the right to do so.

Similarly in the case of implementation of housing policies in urban areas, particularly policies related to slum improvements, it has been observed that while new policies such as RAY attempt for the first time to guarantee tenure to slum dwellers, it has been observed that on the ground, the goal of tenure security is lost to the goal of containing beneficiaries even as biometric identification does not prevent ineligible beneficiaries from being included, while adding another step to the already long project cycle implemented by ULBs (Kamath, 2012).

### *Do land policies proactively and effectively reduce future disaster risk?*

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Given the fact that Karnataka has amongst the highest proportion of drought prone areas (79%) and nearly the lowest extent of replenishable ground water resources (154.2 M ha M/Yr), the state has launched the Karnataka National Watershed Development Project for Rainfed Areas in 1992<sup>104</sup>, the

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<sup>103</sup> Development in Karnataka (2007), Planning Commission Government of India, Academic Foundation New Delhi

<sup>104</sup> <http://watershed.kar.nic.in/Impofws.htm>

objective of which was to ensure the shift from treating entire watersheds at once, to treating sub-watersheds with active farmer partnership and the building capacity.

However, there is no integrated approach to the identification of areas which are risk-prone, and there are no coordinated attempts to discourage human settlement in those areas. While Karnataka's land policies are designed keeping ecological sustainability in mind, there is no program in place to ensure effective management of areas which are disaster prone.

## 5.1 Policy Matrix

KARNATAKA POLICY MATRIX			
Issues	recommendations	Responsible agency	Monitoring indicator
<p><b>1. Rural land records are not all updated regularly, may lack spatial reference and are presumptive</b></p> <p>Rural land records are available in a digitized format allowing for easy and low-cost access, also on-line (Bhoomi since 2000). However, manual/paper records were digitized without verification and only 75% (or 12 million records) are mapped.</p> <p>To update all existing records in the data base and develop a robust land information system covering all aspects of land governance GoK will launch upgraded version of Bhoomi.</p> <p>Informal or undocumented tenancy is frequent although the Karnataka Land Reforms Act-1974 has banned tenancy. Informal tenants have no security of tenure nor can they access agricultural credit or various schemes of the government</p>	<p>1.1 Identify &amp; implement on a priority basis, cost-effective ways of verification &amp; updating textual records based on ground reality</p> <p>1.2 Prepare guidelines and processes to have a cadastre for property records</p> <p>1.3 Develop and implement mechanism for continued updating of Bhoomi textual and spatial records, also to overcome need for special drives/ mission modes. Develop a comprehensive program to accomplish this in a specified and realistic time frame.</p> <p>1.4 Assess the resource requirements for record maintenance, verification and resurvey, and requirements for sustainability; Make all land records related services available at the village level.</p> <p>1.5 Simplify procedures for correction of Record of Tenancy Rights and Cultivation (RTC)</p> <p>1.6 Develop procedure for creating ownership records for <i>gramthana</i> (village habitation) land on the lines of urban property ownership documents and amending the Karnataka Land Revenue Act to enable panchayats to manage them</p>	Revenue dept.	<p>% of records verified and updated</p> <p>% of records identified on maps</p> <p>% of area mapped with land holder identified</p> <p>% of area mapped with land holder identified having documentation of tenure (gender disaggregated)</p>
<p><b>2. Urban land records are lacking for most properties and there is much fraud around transactions. Many constructions are in violation with urban regulations;</b></p> <p>No cadastre is maintained for urban properties and tax receipts (<i>khata</i> registers) issued by local bodies are therefore used as property records. Fraudulent, duplicate and overlapping land titles in urban areas lead to conflicts and litigation in private land and grabbing of public land.</p> <p>Bangalore completed for two-third of the 1.6 million properties verification and validation of geo referenced coordinates and in progress for remaining properties.</p>	<p>2.1 Establish and complete a common spatial data infrastructure focusing on maintenance and continuous updating of textual and spatial urban records, while using existing information as much as possible</p> <p>2.2 Develop and implement mechanism for expanding (UPOR), set priorities and consider phasing to speed up urban tenure security and develop a comprehensive program to complete all cities in Karnataka in a specified and realistic time frame</p> <p>2.3 Define workflows and responsibilities for urban land management, records maintenance, building permits and monitoring/enforcement, re-engineer where possible</p>	<p>Revenue Department, Urban Development Department</p> <p>Urban Local Bodies</p>	% of area mapped with land holder identified having documentation of tenure (gender disaggregated)

<p>Bruhat Bangalore Mahanagara Palike (BBMP) enables citizens to locate their property on Google map using the Property ID; 2.28 million (18%) non-agricultural properties are identifiable</p> <p>In four cities individual property records are created since 2011 (Urban Property Ownership Records - UPOR), using a PPP model to create an accurate record of both spatial and textual ownership data and provide speedy services to urban residents. Out of 682387 properties in these 4 cities, 13% draft property cards are ready and 5% final. In the 2<sup>nd</sup> phase UPOR project will expand to Bangalore</p> <p>Building regulations are not respected, while unauthorized constructions may be regularised (Sect.76-FF of KTCP Act)</p>	<p>2.4 Review laws and systems in place for formalization of unauthorised constructions, ensure compliance with plan regulations and building by-laws and re-engineer where possible</p>		
<p><b>3 Registration of transactions is sometimes marred by errors and fraud</b></p> <p>Both urban and rural transactions are registered at the office of the sub-registrar (except lease transactions). A well-defined procedure exists to achieve synchronization between various types of registers (ROR in Bhoomi with the land registration database in KAVERI) and departments to ensure the integrity of agricultural land records. But, there is a gap of about 15-20 years between textual and spatial data synchronization, which is now addressed via pre-mutation sketch by a licensed surveyor as a mandatory requirement for registration or partition of land (Integrated Mutation Podi). Integration of Bhoomi with banks and cooperative institutions for efficient verification of records and determining liabilities on the land has been set up. All public restriction (15% of all ROR) and encumbrance created on RoRs are printed and can be viewed online. There is no provision for updating liabilities on ROR for loans obtained from private financiers. Measures are afoot to link Bhoomi data base with courts so that the encumbrances would also reflect any pending court cases with regard</p>	<p>3.1 Review and pursue integration of RORs, registration transfers, encumbrances and pending court cases for agricultural lands and enable for urban lands by expanding UPOR to end duplication of records, reduce fraud, and to evolve a robust land information system.</p> <p>3.2 Develop legal and institutional context for e-governance with citizens having opportunity to apply for registration and uploading of documents through web based application.</p>	<p>The Department of Survey, Settlement and Land Records</p> <p>The Department of Stamps and Registration</p> <p>Urban Local Bodies</p>	<p>Ratio of textual to spatial records of Registered vs. mutated transactions</p>

<p>to the land parcel in question. Urban Property Ownership Records (UPOR) have provision for recording encumbrances on the property records.</p>			
<p><b>4. Strengthen effectiveness of public land redistribution for eligible poor and the actual possession for granted public land</b> Karnataka state has policies to promote equity in land holdings and distribution (land grants to marginalized community, joint registration of land in the names of both husband and wife etc.) but implementation of most of these policy measures can be improved. Poor people were granted government land without proper titles and adequate recording or mapping is not available for rural settlement land or <i>gramthana</i> lands, with tax receipts constituting the sole documentary evidence of ownership. There are restrictions on the sale of granted land, particularly for SC/STs, who need to obtain permission, which is time consuming and may lead to various kinds of malpractices.</p>	<p>4.1 Review efficiency and effectiveness of policies on land distribution and balance between demands of equity, ecology and growth; 4.2 Identify available land for redistribution as well as the number of land- or homeless who could benefit from land distribution. 4.3 More systematic distribution of land among the landless and houseless people, while preventing unauthorized occupation of the government land 4.4 Develop effective steps to ensure effective possession and use of land that has been redistributed to eligible marginal groups 4.5 Monitoring of compliance with conditions of land grant allocation and confiscation of granted land which has not been utilized for the purpose specified at the time of grant. 4.6 Review restrictions on the right to alienate land granted to SC/STs 4.7 Government may buy back land from SC/STs willing to sell their land so that the government may distribute such land among the landless SC/ST families.</p>	<p>.Revenue Department</p>	<p>% of area mapped with land holder identified having documentation of tenure (gender disaggregated) % land less ness/ homestead less</p>
<p><b>5. legal and administrative opportunities to enhance women’s access to land are not used sufficiently</b> Women constitute over 18 per cent of total RORs in the state. Data to determine what proportion of women owners is not recorded is not available. Amendments to the JFPM programme in 1996 sought to introduce gender equity by providing co-membership of spouses to Village Forest Committees</p>	<p>5.1 Review effectiveness of existing policies and explore opportunities for amendments to enhance women’s access to land 5.2 Introducing ‘gender’ parameter to help tracking of progress with respect to women’s land rights. 5.3 Ensure that Urban Property Ownership Records identify women property owners as a separate category</p>	<p>Revenue Department</p>	<p>Share of RORs held by women Share of records issued to women (under various land distribution schemes)-share of women holding land)</p>
<p><b>6. Lack of clarity in assignment of institutional responsibility for forest land prevents assigning ownership</b> There is a lack of clarity on legal recognition of forests. Common land is not properly identified and</p>	<p>6.1 Comprehensive identification, reclassification, survey and boundary demarcation of forests, common land, pastures and other non-forest common pool resources) 6.2 Identify and codify the rights of various indigenous and non-</p>	<p>Forest department Revenue department. Panchayati Raj Department</p>	<p>% of land mapped identified as CPR/public land + management responsibilities clearly identified (CPR or not)</p>

<p>responsibility for protection is not clearly assigned (forest laws or revenue laws). There is mismatch between land records and the reality on the ground. Rights of community over non-forest common resources and fishing ponds are not clearly defined, nor are codified.</p> <p>Much common land is encroached, which sometimes even regularized. The worst hit are permanent pastures, which are not protected under the Forest Conservation Act, 1980 The 2013 Status report implementation Forest Rights Act-2006 shows that community rights constitute only 2% of total applications (i.e. 3,080 community claims as opposed to 1,65,638 individual claims) and only 90 such titles have been granted under FRA. Joint Forest Planning &amp; Management (JFPM) established 5,200 VFCs covering around 3,40,000 ha of degraded forests. But, JFPM excludes forests with larger canopy cover, assessed wastelands and other forest lands under the control of the Revenue Department, and forested lands under "individual access" systems</p>	<p>indigenous groups to the forest and non-forest commons; clarify rights of mining minor minerals and sand</p> <p>6.3 Clarify policy for their protection, management and use. Define responsibilities and workflows involved in forest /CPR land management and assignment of ownership rights, clarify overlapping jurisdictions between the forest and revenue departments and re-engineer where possible; synchronize records maintenance between Forest Department and Revenue Department.</p> <p>6.4 Extend coverage of Joint Forest Planning Management program, review low number of approved community claims and increase awareness on formalizing group rights under the Forest Rights Act, 2006</p>	<p>for Gramthana land</p>	
<p><b>7. Urban development and expansion is unplanned and reactive; informal tenure regularization improves equity but can undermine planning and promote encroachment.</b></p> <p>Urban development is unplanned in practice. Although a planning machinery is in place, the stipulations are routinely flouted. In smaller towns there is no land use planning at all. 48 cities have city survey plans, but these were developed in the 1970s and are not geo-referenced.</p> <p>National schemes like the Rajiv Awas Yojna (RAY) lay down guidelines for providing security of tenure to slum dwellers, but implementation by urban local bodies in is ineffective. The process of notification based on duration of occupancy and size of settlements is not clearly defined, ad hoc, and giving rise to political manipulations.</p>	<p>7.1 Review existing urban planning practice of para-state planning authorities, increase involvement of elected local government and streamline urban planning, implementation</p> <p>7.2 Review and assess the resource requirements for town planning; urban development and design strategy to address capacity constraints;</p> <p>7.3 Establish common jurisdiction and geographical coverage for all govt. and parastatal agencies dealing with urban planning and service delivery and improve coordination</p> <p>7.4 Simplification of rules governing the permission of land conversion/change in use and narrow the discretion of government officials in authenticating such changes.</p> <p>7.5 Develop and maintain databases that allow for routine and effective monitoring of land use restrictions enforcement and protection of the greenbelt</p>	<p>Urban Development Department Urban Development Authorities Bangalore Metropolitan Regional Development Authority Urban Local Bodies</p>	<p>% of urban land with claimant identified/ documented evidence</p>

<p>Informal urban settlements on government land were regularized in 1970, 1997 and 1999 for bona fide landless persons. Similar amendments are being contemplated once again, but which can be abused easily for land grabbing, while post facto regularization undermines urban planning. The High Court of Karnataka (Writ Petition NO: 12278/2007) has ordered to stop registration of illegal properties and use e-SWATHU (an online monitoring system to prevent illegal occupation and registration)</p>	<p>7.6 Systematic assessment of housing stock with tenure types and develop workable plan for providing low-cost housing</p> <p>7.7 Review policy of regularization of unauthorized construction and urban development, including use e-SWATHU, and re-engineer where possible</p>		
<p><b>8. Public lands not properly protected nor managed effectively and land use planning is weak; Transfer of public land to private investors does not always serve growth and contribute to inequity and conflict</b></p> <p>In Karnataka, according to the records 23 per cent total area is public lands (115 lakh acres) of which 4110425 acres is used as commons. These data do not reflect reality on the ground as the diversion of public and common land is not properly documented or records are not updated following transfer of public land to private purposes. Encroachments are estimated at 10% and difficult to recover in the absence of a clear policy and appropriate records (of 1302241 acres detected as encroachments, 8% is recovered in 2014 and 57% held up in various court cases)</p> <p>Rural Land Use planning is virtually absent and there is no institutional capacity to implement the provisions of the Karnataka Town and Country Planning Act in rural areas There is ad hoc diversion of common land for housing and commercial purposes, a lack of scientific basis for deciding the land requirement for industries. Justified restrictions on rural land use and conversion are weakly enforced and there is no proper mechanism to monitor compliance conditions imposed on land conversion and other rules and regulations.</p>	<p>8.1 Identify, survey and prepare records for the remaining public lands, and establish unified system for land possessed by different State / Central Government Departments and Public Sector Corporations. Create web portal to make this information available to the public.</p> <p>8.2 Develop State Land Use and zoning policy for rural and urban land. Identify viable land for distribution to poor and industrial areas. Create a digital repository of spatial data with geo referential co-ordinates for all agricultural lands so that land parcels can be identified and located easily both on satellite imagery and physically and land use changes tracked</p> <p>8.3 Develop clear policy for public lands management and their disposal, strengthen Karnataka Public Land Corporation and obtain Presidential clearance for the Karnataka Land Grabbing (Prohibition) Bill 2011. Protect remaining public land and assign responsibilities for implementation and monitoring in view of future public requirement of government land and ecological and economic importance of common land resources.</p> <p>8.4 Review and streamline responsibilities and procedures for public lands and assess resource requirements for every department having public land</p>	<p>Revenue Department Panchayati Raj Department for Gramthana land Karnataka Public Land Corporation</p> <p>Town and Country Planning Department</p>	<p>Share of land in different categories mapped with ownership and use rights clearly assigned No. disputes filed over land acquisition</p>

<p>Karnataka Industrial Areas Development Board (KIADB) is the agency which acquires and transfers land for private purpose. The disposal of public land for investment has often become controversial as sometimes land is allocated in violation of rules (around acquisition, compensations, transfer) and increasingly sold, while mechanisms to monitor compliance of conditions imposed for the use and alienation of such land are weak .</p>	<p>and legal responsibility for safeguarding public property, improve coordination.</p> <p>8.5 Ensure that KIADB consults with the jurisdictional planning authorities, and strict checks on de-notification of land identified for acquisition</p> <p>8.6 Establish policy and legal framework to recover and restore of Govt lands fraudulently settled with private persons. Use fencing to ensure that any encroachment on them is publicly visible.</p> <p>8.7 Develop clear guidelines for compensation to prevent discretion</p> <p>8.8 Develop mechanism to monitor whether land acquired and transferred is actually used for the destined use. 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><b>9. Improve tax collection and adjust land valuation procedures to reflect real values</b></p> <p>Urban tax collection is around 70-80% while in rural areas it is around 20 to 25 per cent. For local bodies property tax has become major source of income.</p> <p>A well-established process for property valuation exists. Various sources are used to get the market value of the property and fixing guidance value. A Capital Value Based property taxation system combined with GIS - Property Tax Information System and MIS of all properties is introduced and computerized for efficient tax management; This also improves transparency in property tax levy and collection. The Karnataka Valuation and e-Registration Programme (Kaveri) started In 2002. Despite reduction in rate of stamp duty on conveyance from 10% to 8% and Registration fee from 2% to 1%, there is an overall increase in tax revenue as the Kaveri system calculated the valuation of property</p>	<p>9.1 Identify and publicize revenue potential vs. actual collection for all major cities;</p> <p>9.2 Review area-specific valuation of properties and alternatives of property-specific valuation for efficiency and better compliance; develop automated tools and use GIS techniques for scientifically determining property valuation.</p> <p>9.3 Review cost to government of exemption of taxes for agricultural and non-agricultural lands, such as to various institutions</p> <p>9.4 Review and streamline procedures for tax collection assess resource requirements to further improve the administrative capacity;</p>	<p>The Department of Stamps and Registration</p> <p>Local Bodies</p>	<p>% Property tax collection/ potential by municipalities</p>

<p>automatically, eradicating the discretionary power of the Registering officer. Tax exemption is subjective and not publicly displayed for scrutiny. GoK has not studied the costs of collection of taxes making it difficult to determine the efficiency of the system.</p>			
<p><b>10. Enhance effectiveness of dispute resolution mechanisms and develop monitoring capacity</b> Land disputes form a high proportion of cases before the courts and are also seen to clog the formal legal system as they generally are not disposed of quickly. Land acquisition cases filed in the last decade have increased substantially compared to revenue disputes and have a higher disposal rate. A large number of cases remain pending at the Tahsildar level. The state is mandated (since 1987) to clear the backlog in courts through <i>Lok Adalats</i></p>	<p>10.1 Develop scheme for categorization/recording of disputes for all courts/instances so as to allow identification of legislative/regulatory bottlenecks, type of land dispute cases that are increasing; review efficacy of the <i>Lok Adalat</i> system; 10.2 Include separate category for land-related cases in the data base of pending court cases for monitoring. 10.3 Review causes for slow disposal and streamline procedures and identify steps towards speedy disposal of cases, including special tribunals 10.4 Review and assess resource requirements to increase effectiveness and efficiency of dispute resolution system 10.5 Expedite presidential clearance for Karnataka Land Grabbing (Prohibition Bill) 2011, which provides for setting up of special courts to try land grabbing cases.</p>	<p>The Karnataka High Court  Law Department</p>	<p>For various courts/ instances &amp; categories of disputes - Level of pending land related disputes - No. of cases treated; - Length</p>
<p><b>11. Revision of Legislative and institutional framework to eliminate outdated and ineffective sections, and update specific sections; and improve institutional coordination, efficiency and effectiveness</b> Karnataka has a strong legal and institutional framework but there is a multiplicity of laws and lack of a single land code which covers all aspects of land administration. Rights over private agricultural land are subject to restrictions under various provisions of the Karnataka Land Reforms Act (concealed tenancy, restrictions on purchase of agriculture land by non-agriculturists, land ceilings, procedure individualisation of rights, restrictions on leasing, regularization unauthorised occupation poor, use of non-documentary evidence, adverse possession) but some of these</p>	<p>10.1 Consider creating a single land code which covers all aspects of land administration 10.2 Consider establishment of separate land administration department responsible for managing all kinds of non-forest lands – both rural and urban. 10.3 Review restrictions on purchasing and owning agricultural land and eliminate those that do not serve any useful purpose and improve enforcement of others that continue to be justified 10.4 Review Transfer of Properties Act 1882 to put in place provisions for submitting ownership document by the seller before allowing registration 10.5 Review, rationalize and streamline the administrative structure for land administration; reduce discretions at all levels and inventory of resource requirements and resource availability.</p>		

<p>provisions may have to be reviewed as agriculture and land markets have changed.</p> <p>There is horizontal institutional overlap as land management is shared by at least four departments and a number of agencies. Capacity at all levels of land administration is lacking. Land bureaucracy lacks proper training and motivation, while vacancies are not filled regularly. The revenue department is burdened also with a wide range of general administration functions and this has affected the efficiency of land administration. Shortage of land surveyors resulted in spatial data remaining not updated over a long period of time</p>	<p>10.6 Put in place decision support tools, using monitoring data from land information systems and other required data to automate the generation of reports to inform decision making</p> <p>10.7 Improve capacity in land governance” of the State Administrative Training Institutes (ATI) and availability of high quality trainers</p>		
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## 5.2. Best Practices

### *BHOOMI*

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*Bhoomi*, a land record management system implemented by Government of Karnataka with National Informatics Centre as technical partner is a good practice in the arena of land records management. Under this project, the revenue department, beginning in 2002, has computerized 20 million textual records (RTCs) of 6.7 million farmers in the state. Previously, farmers were solely dependent on Village Accountant (Village Level functionary of Revenue Department in Karnataka) to get a copy of the record of Rights, Tenancy and Cultivation and Crop Inspection (RTC). There were delays and harassment as bribes had to be paid. With the introduction of *Bhoomi* manual records have been invalidated through amendment to Karnataka Land Revenue Rules 1964. Any changes to record of rights now happens through online mutation application under *Bhoomi*. On approval of mutation by Revenue Inspector on this online application, transfer of entries from registers of mutation are transferred automatically to record of rights there by updating the Record of Rights instantaneously. Official cost of mutation for per survey number is Rs 35 only which is very nominal and definitely less than 0.5% of property value.

Further, copies of textual records under *Bhoomi* are easily available through 203 taluk kiosks and about 1000 rural tele centres called Atalji Jana Snehi kendras (AJSK). Record of Rights are available for Rs. 10.00 and all other land related documents such as mutation extract, status report on mutation, khatha extract, Record of Rights form -5, Record of Rights form-6, Scanned Tippan, Scanned served notice, scanned mutation register extract etc., are available for Rs. 15.00 each. This has removed uncertainty that existed in manual system for access to records and has also reduced time and cost for farmers. *Bhoomi* has generated about 2250 million in the form of user charges since 2000. As a result, Karnataka is one of the few states in the India where the land records registry is financially sustainable through the fees collected. Fees collected are used for purchase of infrastructural equipment such as computers, as well as to meet certain other operational costs. Even technical manpower at state and district level which is outsourced from private firms is funded using fees collected under this project.

As part of *Bhoomi*, the Online mutation application handles all type of mutation so that no manual intervention in updating land records database is needed. Workflow based user-friendly software has been designed and developed by National Informatics Centre, Bangalore has bio-metric authentication to take care of non-repudiation and scanning interface to scan important documents as evidence for electronic transaction. PKI (Public Key Infrastructure) enabled BHOOMI database and application with integration of digital signatures is in place to adhere to IT Act 2000. On an average BHOOMI software handles more than 0.1 million mutation a month. About 9,000 Village Accountants, 800 Revenue Inspectors, 203 *Sheristedars*, 1000 Operators-cum-Village Accountants, 203 *Tahasildars* and 52 Assistant Commissioners work on the system based on clear-cut roles and privileges given to them

Further BHOOMI has implemented all the provisions of section 129 of Karnataka Land Revenue Act 1964 wherein revenue officer after making entry in mutation register, post up a complete copy of the entry (form-12 as generated by BHOOMI) in a conspicuous place in the chavadi (village community Centre) and shall give issue intimation (form-21 as generated by BHOOMI) to all persons appearing from the Record of Rights or Register of Mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein. BHOOMI provides for raising objection as facilitated in the act and if objection is raised, case will be taken into dispute register for hearing the affected parties before taking final call. On approval of mutation by Revenue Inspector on BHOOMI, transfer of entries from registers of mutation are transferred automatically to record of rights thereby updating the Record of Rights instantaneously thus eliminating inconsistencies.

Significant achievement of Bhoomi is in the electronic integration with stakeholders like survey department, registration department, land acquiring bodies and Banks and financial institutions. The implementation of such integrations have resulted in reducing / removing human discretion and streamlined the various land records administration activities making Records of Right current with respect to various activities happening in the external environment pertaining land records. Some examples of such good practices initiated by the Government in Karnataka are below:

**Integration of Bhoomi with the Land Survey** - this process has resulted in the creation of software called Mojani, which facilitates the creation of pre-mutation sketch by licensed private surveyors. MOJANI uses the BHOOMI database at the backend and is fully integrated with it for creation of any

sketch. This integration has been reported to not only help the Government and citizens but also help in employment of rural youths numbering about 3500.

**Integration of Bhoomi with Kaveri** – this integration has resulted in bridging the gap in the availability of accurate information at the time of registration with respect to agricultural land. The KAVERI system of the Stamps and Registration department now electronically talks to the BHOOMI system and ensures that the seller is indeed owner of the property as per the BHOOMI database. Soon after the transaction is over the extent in BHOOMI database of the seller gets decreased ensuring that he cannot sell more than what he owns or that he cannot sell the same piece of land to others. Immediately after the transaction is over in Sub-registrar office a mutation transaction is started in BHOOMI system automatically as all the required data for starting of such transaction is available due to electronic linkages between the two systems. Citizens are also sent an SMS automatically as their transactions pass various phases/stages in the mutation process in BHOOMI system.

**Integration with Banks and Co-operative Institutions** – the integration between Bhoomi and bank and co-operative institutions has led to a reduction in the time taken to service requests for changes to the RTCs resulting from either pledge or release of lands in the process of acquiring farm credit. Through this integration a facility for banks and co-operative institutions to raise requests to the Revenue Department for pledge or release over the internet has been put in place. The request contains all the parameters to initiate the transaction in BHOOMI automatically. Banks are also benefitted because they can access the land records database for confirming ownership, extents owned by the farmer, other liabilities that farmer has and also monitor the status of requests raised by them. Analyses also shows that the BHOOMI project has eliminated the bribe with respect to getting RECORD OF RIGHTS documents and reduced transport and opportunity costs to a large extent.

#### *Urban Property Ownership Records*

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The Revenue Department has taken up the task of creating Urban property ownership records (UPOR) in 4 cities namely Mysore, Hubli-Dharwar, Bellary and Shimoga. UPOR aims to capture all the rights associated with properties in urban areas through the use of modern spatial technology such as Global Positioning Systems (GPS). In addition, the project employs Total Station (TS) for ground based Survey and use of ICT (Information and Communication Technology) for data management, MIS Reports, and GIS tools for Mapping of data.

This allows for eradication of conflicting claims and contestations on the transaction of land. The project is being implemented through a public-private partnership model where the private partners are responsible for first time spatial data creation, creation of IT infrastructure and delivery of services. However, the Revenue department continues to discharge its core responsibility including title enquiry of the properties and approve any change to the property Record (Mutation). In addition, different types of existing urban properties related data available with various government agencies such as urban local bodies and urban development authorities are being used as reference data in the project. The project is the process of being extended to other cities in Karnataka.

Some of the key benefits of UPOR are:

- Accurate spatial and updated ownership data of all properties.
- Secured ownership documents.
- Confidence in transactions in the mind of property owners.
- Speedy land related services.
- Reduced property disputes due to fair handling of ownership records.
- UPOR project also facilitates for searching using property number or name. There are very few local bodies where computerization is not taken up and in these places manual search using khatha number or name is possible.

### *e-SWATHU*

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In 2013, the rural development department and the Panchayat Raj department in Karnataka put in place an e-Governance solution called e-swathu (swathu means property in Kannada language) to monitor the activities of the Gram Panchayat with respect to the maintenance, updating and issue of property records under their jurisdiction for registration and other legal purposes. e-Swathu covers 30,000 villages of Karnataka and includes the process to update records as a result of transactions such as sale, inheritance, partition, gift, will, land acquisition, etc. In addition, issuance of copies of property records is done through e-Swathu

The approach followed to create property records in this project is incremental in nature. Property records are created after verifying the legality of property creation. There exists a facility to record encumbrances and there also exist legal provisions for the same through e-SWATHU. The software

also allows for recording government restrictions against each property such as those arising from the prohibition of transfer of certain lands Act and other non-alienation conditions. Non-agricultural properties are managed by local bodies and e-swathu covers a major portion of these records as well. However there is no cadastre for properties created using e-swathu. E-Swathu allows for electronic exchange with registration department and local town planning authorities.

### *Pre-Mutation Sketch*

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Observing that there is a huge delay in updating the textual and spatial records of a land parcel that has undergone mutation, the Revenue Department implemented an Integrated Mutation Process (IMP), in which textual and spatial records are updated simultaneously along with the physical mutation of the land parcel. To capture the spatial record, Karnataka has made an amendment to the Karnataka Land Revenue Act making pre-mutation sketch by licensed surveyors a mandatory requirement for registration or partition of land involving fragmentation. The *Bhoomi* software has been enhanced to capture the details of pre-mutation sketch. Once this sketch is captured in the system, it is used to carry out the change in the textual records in Bhoomi without having to visit the field site again. Further, no registration of a property is done unless a sub-division plan (pre-mutation sketch) is submitted implying that spatial and textual records are synchronized.

### *Land Grabbing (Prohibition) Bill*

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While there are a number of Central and State-level Acts – such as the Karnataka Land Revenue Act, 1964; the Karnataka Land Reforms (Amendment) Act, 1986; the Forest Conservation Act, 1980; and the Wakf Act, 1993 – to check encroachment of public land, the glaring non-compliance witnessed in Karnataka suggests that these laws have been ineffective.

Around 23 per cent (over 115 lakh acres) of the total geographical area in Karnataka is publicly owned, according to the data available with the Land Records, Survey and Settlement Department. Public Land management in Karnataka is in a state of disarray prompting the state to initiate a number of corrective measures such as setting up of the Karnataka Public Land Corporation and the passing of the Karnataka Land Grabbing (Prohibition) Bill 2011. The Bill awaiting Presidential assent, provides for measures to curb organized attempts to grab lands belonging to the Government, Wakf or Hindu

religious institutions and charitable endowments, local authorities or other statutory or non-statutory bodies owned, controlled or managed by the Government. The Government may also institute speedy enquiry into alleged land grabbing and trial of cases, by notification and constituting a special court. These measures were initiated in response to the recommendations made by a high-level committee headed by former Additional Chief Secretary V. Balasubramanian, which investigated the cases of public land encroachment in the state.

## 6. Conclusions

In the preceding sections, this report has presented in detail the status of land governance in Karnataka. The report is prepared by applying the World Bank's Land Governance Assessment Framework (LGAF). The study has examined the state's land governance in nine focus areas. Overall conclusions emerging from this study show that while Karnataka has a strong policy and institutional framework for land governance which seeks to recognize and protect land rights and to use land resources for the larger socio-economic development, there are significant areas of concern which need policy attention. The study also documents a number of good practices and the recent initiatives by the government to address some of these issues.

This study shows that multiplicity of laws with a lack of legal clarity on several crucial issues; an overburdened land administration infrastructure; mismatch between textual and spatial records and a poor land information system have affected the effectiveness of land governance in the State. As a result, despite the state's pioneering efforts of digitizing land records management and land registration system, fraudulent duplicate and overlapping land titles continue to dog the system, especially in urban areas, leading to conflicts and litigation in private land and unabated grabbing of public land. Land use planning is a matter of serious concern both in rural and urban areas. In urban areas, while there is planning machinery in place although the plan stipulations are routinely flouted, in smaller towns and rural areas, there is virtually no land use planning in practice. There is no clear policy to guide the use of land for the state's overall development by striking a balance between the competing claims of economic development, equity and environmental concerns. Indiscriminate diversion of common land for housing and commercial purposes and a highly discretionary system of allocation of land for private investment are too glaring to miss. The absence of a centralized land information system to assist in decision making and in monitoring compliance of regulations is another deficiency in the land governance system.

The State has taken up several progressive reforms in the land sector but they address the problems in isolation rather than providing an integrated solution to the myriad inter-related problems of the land governance. In this context, the study highlights three broad priority areas which would pave the way for implementing several other policy recommendations emerging from this exercise. These three priority areas are:

- Lack of Capacity seems to be the single-most important area of concern. Unless proper capacity is built into the system, no effective and sustained reform is possible. One of the major steps that can be taken in this regard is to separate out the land administration and general administration function on the lines of West Bengal land administration department. It will also be helpful to bring all non-forest-land-related responsibilities which are now spread over several departments and agencies.
- The comprehensive re-survey which has been taken up on a pilot basis should be scaled up and finished as early as possible. Without re-building the entire land information system based on a fresh survey, the existing anomalies in the land records cannot be plugged effectively.
- Finally, this study shows that land use planning in both urban and rural areas is in a state of crisis and urgent attention needs to be paid to this problem before it assumes totally unmanageable proportions.

To conclude, while the existing programs need scaling up, this study strongly recommends for an integrated approach to solving the problems of land governance starting with a comprehensive survey of land using modern technological tools and eventually moving towards an absolute titling system in the place for current presumptive titling.

## References

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## Karnataka State, INDIA - Land Governance Assessment Framework

Pan-LGI-Dim				Topic	Score			
					A	B	C	D
<b>PANEL 1: Land Rights Recognition</b>								
<i>LGI 1: Recognition of a continuum of rights</i>								
1	1	1	Individuals' rural land tenure rights are (i) legally recognized and (ii) protected in practice.	(i)	(ii)			
1	1	2	Customary tenure rights are legally recognized and protected in practice.					
1	1	3	Indigenous rights to land and forest are (i) legally recognized and (ii) protected in practice.		(i)	(ii)		
1	1	4	Urban land tenure rights are legally recognized and protected in practice.					
<i>LGI 2: Respect for and enforcement of rights</i>								
1	2	1	Accessible opportunities for tenure individualization exist.					
1	2	2	Individual land in rural areas is recorded and mapped.					
1	2	3	Individual land in urban areas is formally (i) recorded and (ii) mapped.			(i)	(ii)	
1	2	4	The number of illegal land sales is low.					
1	2	5	The number of illegal lease transactions is low.					
1	2	6	Women's property rights in lands as accrued by relevant laws are recorded.					
1	2	7	Women's property rights to land are equal to those by men in law and in practice.					
<b>PANEL 2: Rights to Forest and Common Lands &amp; Rural Land Use Regulations</b>								
<i>LGI 1: Rights to Forest and Common Lands</i>								
2	1	1	Clear identification and assignment of use for (i) forests (ii) common lands		(i)		(ii)	
2	1	2	Rural group rights are formally recognized and can be enforced.					
2	1	3	Users' rights to key natural resources on land (incl. fisheries) are legally recognized and protected in practice.					
2	1	4	Multiple rights over common land and natural resources on these lands can legally coexist.					
2	1	5	Multiple rights over the same plot of land and its resources (e.g. trees) can legally coexist.					
2	1	6	Multiple rights over land and mining/other sub-soil resources located on the same plot can legally coexist.					
2	1	7	Accessible opportunities exist for mapping and recording of group rights.					
2	1	8	Boundary demarcation of communal land.					
<i>LGI 2: Effectiveness and equity of rural land use regulations</i>								
2	2	1	Restrictions regarding rural land use are justified and enforced.					
2	2	2	Restrictions on rural land transferability effectively serve public policy objectives.					
2	2	3	Rural land use plans are elaborated/changed via public process and resulting burdens are shared.					
2	2	4	Rural lands, the use of which is changed, are swiftly transferred to the destined use.					
2	2	5	Rezoning of rural land use follows a public process that safeguards existing rights.					
2	2	6	For protected rural land use (forest, pastures, wetlands, national parks, etc.) plans correspond to actual use.					
<b>PANEL 3: Urban Land Use, Planning, and Development</b>								
<i>LGI 1: Restrictions on Rights</i>								
3	1	1	Restrictions on urban land ownership/transfer effectively serve public policy objectives.					
3	1	2	Restrictions on urban land use (disaster risk) effectively serve public policy objectives.					
<i>LGI 2: Transparency of Land Use Restrictions</i>								
3	2	1	Process of urban expansion/infrastructure development process is transparent and respects existing rights.					
3	2	2	Changes in urban land use plans are based on a clear public process and input by all stakeholders.					
3	2	3	Changes in assigned urban land use are swiftly followed by actual land use change.					
<i>LGI 3: Efficiency in the Urban Land Use Planning Process</i>								

3	3	1	Policy to ensure delivery of low-cost housing and services exists and is progressively implemented.					
3	3	2	Land use planning effectively guides urban spatial expansion in the largest city.					
3	3	3	Land use planning effectively guides urban development in the four next largest cities.					
3	3	4	Planning processes are able to cope with urban growth.					
<i>LGI 4: Speed and Predictability of Enforcement of Restricted Land Uses</i>								
3	4	1	Provisions for residential building permits are appropriate, affordable and complied with.					
3	4	2	A building permit for a residential dwelling can be obtained quickly and at a low cost.					
<i>LGI 5: Tenure regularization schemes in urban areas</i>								
3	5	1	Formalization of urban residential housing is feasible and affordable.					
3	5	2	In cities with informal tenure, a viable strategy exists for tenure security, infrastructure, and housing.					
3	5	3	A condominium regime allows effective management and recording of urban property.					
<b>PANEL 4: Public Land Management</b>								
<i>LGI 1: Identification of Public Land and Clear Management</i>								
4	1	1	Criteria for public land ownership are clearly defined and assigned to the right level of government.					
4	1	2	There is a complete recording of public land.					
4	1	3	Information on public land is publicly accessible.					
4	1	4	The management responsibility for different types of public land is unambiguously assigned.					
4	1	5	Responsible public institutions have sufficient resources for their land management responsibilities.					
4	1	6	All essential information on public land allocations to private interests is publicly accessible.					
<i>LGI 2: Justification and Time-Efficiency of Acquisition Processes</i>								
4	2	1	There is minimal transfer of acquired land to private interests.					
4	2	2	Acquired land is transferred to destined use in a timely manner.					
4	2	3	The threat of land acquisition does not lead to pre-emptive action by private parties.					
<i>LGI 3: Transparency and Fairness of Acquisition Procedures</i>								
4	3	1	Compensation is provided for the acquisition of all rights regardless of their recording status.					
4	3	2	Land use change resulting in selective loss of rights there is compensated for.					
4	3	3	Acquired owners are compensated promptly.					
4	3	4	There are independent and accessible avenues for appeal against acquisition.					
4	3	5	Timely decisions are made regarding complaints about acquisition.					
<b>PANEL 5: Transfer of Large Tracts of Land to Investors</b>								
<i>LGI 1: Transfer of Public Land to Private Use Follows a Clear, Competitive Process and Payments are Collected</i>								
5	1	1	Public land transactions are conducted in an open transparent manner.					
5	1	2	Payments for public leases are collected.					
5	1	3	Public land is transacted at market prices unless guided by equity objectives.					
5	1	4	The public captures benefits arising from changes in permitted land use.					
5	1	5	Policy to improve equity in asset access and use by the poor exists, is implemented effectively and monitored.					
<i>LGI 2: Private Investment Strategy</i>								
5	2	1	Land to be made available to investors is identified transparently and publicly, in agreement with right holders.					
5	2	2	Investments are selected based on economic, socio-cultural and environmental impacts in an open process.					
5	2	3	Public institutions transferring land to investors are clearly identified and regularly audited.					
5	2	4	Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (incl. sub-soil).					
5	2	5	Compliance with contractual obligations is regularly monitored and remedial action taken if needed.					

5	2	6	Safeguards effectively reduce the risk of negative effects from large scale land-related investments.				
5	2	7	The scope for resettlement is clearly circumscribed and procedures exist to deal with it in line with best practice.				
<i>LGI 3: Policy Implementation is Effective, Consistent and Transparent</i>							
5	3	1	Investors provide sufficient information to allow rigorous evaluation of proposed investments.				
5	3	2	Approval of investment plans follows a clear process with reasonable timelines.				
5	3	3	Right holders and investors negotiate freely and directly with full access to relevant information.				
5	3	4	Contractual provisions regarding benefit sharing are publicly disclosed.				
<i>LGI 4: Contracts Involving Public Land are Public and Accessible</i>							
5	4	1	Information on spatial extent and duration of approved concessions is publicly available.				

5	4	2	Compliance with safeguards on concessions is monitored and enforced effectively and consistently.				
5	4	3	Avenues to deal with non-compliance exist and obtain timely and fair decisions.				
<b>PANEL 6: Public Provision of Land Information: Registry and Cadastre</b>							
<i>LGI 1: Mechanisms for Recognition of Rights</i>							
6	1	1	Land possession by the poor can be formalized in line with local norms in an efficient and transparent process.				
6	1	2	Non-documentary evidence is effectively used to help establish rights.				
6	1	3	Long-term unchallenged possession is formally recognized.				
6	1	4	First-time recording of rights on demand includes proper safeguards and access is not restricted by high fees. (i) agricultural (ii) non-agricultural	(i)	(ii)		
<i>LGI 2: Completeness of the Land Registry</i>							
6	2	1	Total cost of recording a property transfer is low.				
6	2	2	Information held in records is linked to maps that reflect current reality.				
6	2	3	All relevant private encumbrances are recorded. (i) agricultural (ii) non-agricultural	(i)	(ii)		
6	2	4	All relevant public restrictions or charges are recorded. (i) agricultural (ii) non-agricultural	(i)	(ii)		
6	2	5	There is a timely response to requests for accessing registry records. (i) agricultural (ii) non-agricultural	(i)	(ii)		
6	2	6	The registry is searchable. (i) agricultural (ii) non-agricultural	(i)	(ii)		
6	2	7	Land information records are easily accessed.				
<i>LGI 3: Reliability of Registry Information</i>							
6	3	1	Information in public registries is synchronized to ensure integrity of rights and reduce transaction cost. (i) agricultural (ii) non-agricultural	(i)	(ii)		
6	3	2	Registry information is up-to-date and reflects ground reality. (i) agricultural (ii) non-agricultural		(i)		(ii)
<i>LGI 4: Cost-effectiveness and Sustainability of Land Administration Services</i>							
6	4	1	The registry is financially sustainable through fee collection to finance its operations.				
6	4	2	Investment in land administration is sufficient to cope with demand for high quality services. (i) agricultural (ii) non-agricultural	(i)			(ii)
<i>LGI 5: Fees are Determined Transparently</i>							
6	5	1	Fees have a (i) clear rationale, (ii) their schedule is public, and all payments are accounted for.	(ii)	(i)		
6	5	2	Informal payments are discouraged.				
6	5	3	Service standards are published and regularly monitored.				
<b>PANEL 7: Land Valuation and Taxation</b>							

<i>LGI 1: Transparency of Valuations</i>							
7	1	1	There is a clear process of property valuation.				
7	1	2	Valuation rolls are publicly accessible.				
<i>LGI 2: Collection Efficiency</i>							
7	2	1	Exemptions from property taxes payment are justified and transparent.				
7	2	2	All property holders liable to pay property tax are listed on the tax roll.				
7	2	3	Assessed property taxes are collected. (i) rural (ii) urban			(ii)	(i)
7	2	4	Receipts from property tax exceed the cost of collection. (i) rural (ii) urban	(ii)			(i)
<b>PANEL 8: Dispute Resolution</b>							
<i>LGI 1: Assignment of Responsibility</i>							
8	1	1	There is clear assignment of responsibility for conflict resolution.				
8	1	2	Conflict resolution mechanisms are accessible to the public.				
8	1	3	Mutually accepted agreements reached through informal dispute resolution systems are encouraged.				
8	1	4	There is an accessible, affordable and timely process for appealing disputed rulings.				
<i>LGI 2: The Share of Land Affected by Pending Conflicts is Low and Decreasing</i>							
8	2	1	Land disputes constitute a small proportion of cases in the formal legal system.				
8	2	2	Conflicts in the formal system are resolved in a timely manner.				
8	2	3	There are few long-standing (> 5 years) land conflicts.				

<b>PANEL 9: Institutional Arrangements and Policies</b>							
<i>LGI 1: Clarity of Mandates and Practice</i>							
9	1	1	Land policy formulation, implementation and arbitration are separated to avoid conflict of interest.				
9	1	2	Responsibilities of the ministries and agencies dealing with land do not overlap (horizontal overlap).				
9	1	3	Administrative (vertical) overlap is avoided.				
9	1	4	Land right and use information is shared by public bodies; key parts are regularly reported on and publicly accessible.				
9	1	5	Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute.				
9	1	6	Ambiguity in institutional mandates (based on institutional map) does not cause problems.				
<i>LGI 2: Equity and Non-discrimination in the Decision-making Process</i>							
9	2	1	Land policies and regulations are developed in a participatory manner involving all relevant stakeholders.				
9	2	2	Land policies address equity and poverty reduction goals; progress towards these is publicly monitored.				
9	2	3	Land policies address ecological and environmental goals; progress towards these is publicly monitored.				
9	2	4	The implementation of land policy is costed, matched with benefits and adequately resourced.				
9	2	5	There is regular and public reporting indicating progress in policy implementation.				
9	2	6	Land policies help to improve land use by low-income groups and those who experienced injustice.				
9	2	7	Land policies proactively and effectively reduce future disaster risk.				

## Annexure

Key State and National Acts by Panel		
Land Tenure Recognition	Rights to Forest and Common Land	Urban Land Use, Planning and Development
<ul style="list-style-type: none"> <li>• Karnataka Land Reforms Act, 1961</li> <li>• Karnataka Land Revenue Act, 1964</li> <li>• Karnataka Land Grant Rules, 1969</li> <li>• Forest Rights Act, 2006</li> <li>• Karnataka Municipal Corporations Act, 1976</li> <li>• The Bangalore Development Authority Act, 1976</li> <li>• Karnataka Slum Areas (Improvement and Clearance) Act 1974</li> <li>• Hindu Succession Act, 1956</li> </ul>	<ul style="list-style-type: none"> <li>• Indian Forest Act, 1927</li> <li>• Karnataka Forest Act, 1963</li> <li>• Karnataka Forest Rules, 1969</li> <li>• Karnataka Forest Manual, 1976</li> <li>• Forest Conservation Act, 1980</li> <li>• Forest Conservation Rules, 1981</li> <li>• Karnataka Tree Preservation Act, 1976</li> <li>• Karnataka Tree Preservation Rules, 1977</li> <li>• Forest Rights Act, 2006</li> <li>• Forest Rights Rules, 2008</li> <li>• Karnataka Land Revenue Act, 1964</li> <li>• Karnataka Land Reforms Act, 1961</li> <li>• Karnataka Land Grant Rules, 1969</li> <li>• Karnataka Town &amp; Country Planning Act, 1961</li> </ul>	<ul style="list-style-type: none"> <li>• Karnataka Town and Country Planning Act, 1961</li> <li>• Karnataka Land Revenue Act, 1964</li> <li>• Karnataka Municipalities Act, 1964</li> <li>• Karnataka Municipal Corporations Act, 1976</li> <li>• Bangalore Development Authority Act, 1976</li> <li>• Karnataka Urban Development Authorities Act, 1987</li> <li>• Karnataka Regularization of Unauthorized Construction in Urban Areas, 1991</li> </ul>

Public Land Management	Transfer of Public Land for Private Use	Public Provision of Land Information: Registry & Cadastre
<ul style="list-style-type: none"> <li>• Karnataka Land Revenue Act, 1964</li> <li>• Karnataka Forest Act, 1963</li> <li>• Forest Conservation Act, 1980</li> <li>• Karnataka Panchayat Raj Act, 1993</li> <li>• Karnataka Industrial Areas Development Act, 1966</li> <li>• Karnataka Land (Restriction on Transfer) Act, 1991</li> <li>• Land Acquisition Act, 1894</li> </ul>	<ul style="list-style-type: none"> <li>• Land Acquisition Act, 1894</li> <li>• Karnataka Land Reforms Act, 1961</li> <li>• Karnataka Land Revenue Act, 1964</li> <li>• Karnataka Town and Country Planning Act, 1961</li> <li>• Karnataka Municipalities Act, 1964</li> <li>• Karnataka Municipal Corporations Act, 1970</li> <li>• Bangalore Development Authority Act, 1976</li> <li>• Bangalore City Planning Area, Zonal Regulation (Amendment and Validation) Act, 1976</li> <li>• Bangalore Metropolitan Region Development Act, 1985</li> <li>• Industrial Areas Development Act, 1960</li> <li>• Regularization of Unauthorized Constructions in Urban areas Act, 1991</li> </ul>	<ul style="list-style-type: none"> <li>• Indian Transfer of Property Act 1882</li> <li>• The Karnataka Land Reform Act 1961</li> <li>• Karnataka Land Revenue Act 1964</li> <li>• Karnataka Guarantee of Services to Citizens Act 2011</li> </ul>

Land Valuation & Taxation	Dispute Resolution	Institutional Arrangements & Policies
<ul style="list-style-type: none"> <li>• Indian Stamp Act 1899</li> <li>• Indian Land Registration Act, 1908</li> <li>• Karnataka Stamp Act 1957</li> <li>• Karnataka Land Revenue Act 1964</li> </ul>	<ul style="list-style-type: none"> <li>• The Karnataka Land Revenue Act, 1964</li> <li>• The Karnataka Land Reforms Act, 1961</li> <li>• Land Acquisition Act, 1894</li> <li>• Gram Nyayalayas Act, 2008</li> <li>• Karnataka Civil Courts Act, 1964</li> <li>• Legal Services Authorities Act, 1987</li> </ul>	As mentioned in the Panel Context

### State Coordinator, Expert Investigators and Panel Members

State Coordinator	Narayana A Associate Professor, School of Policy and Governance, Azim Premji University, Bagalore	
Panel Name	Expert Investigator	Panel Members
Land Tenure Recognition	Sudhir Krishnaswamy Professor of Law, Azim Premji University	Abhijin Shetty, Tahsildar, Land Records and Survey Department Rajendra Prasad, Assistant Commissioner, Bhoomi Monitoring Cell Mohammad Jinna, Land Rights/forest rights Activist
Rights to Forest and Common Land	Seema Purushothaman Environmental Economist and Professor, Azim Premji University Badrinarayana Seetharaman, Lawyer	H.S. Gopalakrishne Gowda, retired deputy commissioner S. Gurumurthy, retired tahsildar Mohammad Jinna, land rights/forest rights activist
Urban Land Use, Planning and Development	H.S. Sudhira, Urban Planning Expert and Consultant, Gubbi Labs	B.V. Karee Gowda, Special Deputy Commissioner, Revenue Department Venkateshaiah, former Municipal Commissioner Mathew Idiculla, Research Fellow (Urban Governance)
Public Land Management	K.P. Suresh Consultant – Land Rights Activist	C. Krishnappa, former Inspector General of Stamps and Registration G. Narayanaswamy, former Revenue Secretary
Transfer of Public Land for Private Use	I.M. Vittala Murthy, former Commissioner, Survey, Settlement and Land Records	B.V. Karee Gowda, Special Deputy Commissioner N. Vinay Madhav, journalist and forest rights activist N. Palaksha, Real Estate Consultant

<b>Public Provision of Land Information: Registry &amp; Cadastre</b>	Mallikarjuna Patil Consultant, Karnataka Land Records Computersiation Project	K.V.. Rudresh, Deputy Director, Urban Land Survey, Department of Survey, Settlement and Land Records H.L. Prabhakar, Assistant Inspector General of Stamps and Registration
<b>Land Valuation &amp; Taxation</b>	Mallikarjun Patil, Consultant, Karnataka Land Records Computerisation Project	Arakere Jayaram, former Resident Editor, the Hindu, Bangalore Rajendra Prasad, Assistant Commissioner, Bhoomi Monitoring Cell
<b>Dispute Resolution</b>	Dolashree Mysoor Advocate and Legal Researcher	Suresh Babu, advocate (land laws) Venkatesh Prasad, advocate N. Venkateshaiah, Assistant Commissioner, Karnataka Industrial Area Development Board
<b>Institutional Arrangements &amp; Policies</b>	Nafis Hasan Governance Research Fellow, Azim Premji University I.M. Vittala Murthy, former Commissioner, Survey, Settlement and Land Records	G. Narayanaswamy, former Revenue Secretary Abhijin Shetty, Tahsildar, Survey Settlement and Land Records Department N. Bhaskara, former Deputy Tahsildar N.A.M. Ismail, journalist S. Ramesh, Panchayat Development Officer