

Review report on Performance Auditing of Lease of Government land, Government Reserved Forest (GRF) land and mines

Prepared by the Good Governance Committee

1. Background

One of the issues emanated from the discussion of the Annual Anti-corruption Report 2012 during the first session of the second Parliament was the corruption on land. The Annual Anti-corruption Report 2012 highlighted that the number of complaints on land was the second highest after resources. The forms of complaints were generally on illegal transfer of land, abuse of functions by land administration officials and local leaders, encroachment into government land, etc. Considering that the complaints on land related corruption has been a regular feature in every annual report of the ACC, and land as a State's scarce natural resources, the National Council felt the need to conduct a thorough study on the issue. Since the RAA had conducted a performance auditing on the lease of government land and Government Reserved Forests (GRF) land, the House decided to review the performance audit report in tandem with the corruption related to land.

The Good Governance Committee studied the RAA's performance audit report on leasing of government land, GRF land and mines that was published in August 2013. The report contains two parts: Part A pertaining to lease of government and GRF land; and Part B pertaining to mines and quarries. Since Adhoc Committee of the National Council is already looking into mining issues, the Good Governance Committee felt it may be sensible for the Adhoc Committee to take up the issue together. Therefore, this review report focuses only on Part A: Lease of government and GRF land.

The overall objective of leasing of land is to provide access to the land for a specified period to facilitate and accelerate socio-economic development activities in the country. The government land and government reserved forest (GRF) land are leased to individuals, institutions and others for various purposes. According to the performance report, a total of 13,944.90 acres of government land only are on leasehold across 20 Dzongkhags with a break up of 4790.47 acres for mines and quarries, 4318.12 acres for business and development, 370.95 acres for industrial areas, 1741.23 acres for hydropower projects, and 337.06 acres for Tsamdros. Leasing operations are governed by the Mines and Mineral Management Act 1995, Forest and Nature Conservation Act 1995, and Land Act 2007. The agencies involved in the leasing operation are National Land Commission as the overall coordinating agency, Ministry of Agriculture and Forests for agricultural and development purposes on GRF land, Ministry of Economic Affairs for industrial, commercial and mining purposes, Local governments for development/commercial activities taking place within their jurisdiction and National Environment Commission for environment clearances.

Leasing of land has served as an important source of revenue for the government. For example, records of Department of Geology and Mines showed auction proceeds of coal, gypsum and dolomite mines alone had contributed Nu.1,324.50 million for a fifteen year lease term alone. Besides, royalty, lease rent, dividend, taxes and other income and generating employment

activities carried out in the lease land contribute significantly in the acceleration of the socio economic development.

However, lack of monitoring and enforcement actions have provided opportunity for abuse and misuse of rights and powers by both lessee and lessor, which has become a major concern for the public. Considering the importance of leasing of government land in the socio economic development on one hand, and possible risks of misuse and abuse of natural resources like land on the other hand, the Royal Audit Authority (RAA) was instigated to conduct performance auditing on lease of government land, GRF land and mines in August 2013. The objectives of the performance auditing were to ascertain the following:

- Whether adequate legal, policy and institutional framework exist in governing the leasing of government land;
- Whether government land leased is within such framework, lease transactions are legally executed, controlled and monitored;
- Land leased are used for the purposes specified in the legal agreement in accordance with approved plans & methodologies without posing threats to people, environment & property ;
- Leasing obligations including fees and royalties are paid in correct amounts as per the rates and time frame prescribed and that restoration works are carried out as required;
- Whether illegal occupation and use of government land is identified and dealt with appropriately by respective regulatory bodies;
- Whether the government exercises effective control on leasing operations and maintains reliable central database of leased land.

2. Highlights of the RAA's findings

The findings of the performance auditing can be broadly categorized into following three areas. It covers only for the leasing of government and GRF lands and not for that of mines.

a. Lack of appropriate policy framework on leasing of government land

There is currently no specific policy framework for leasing of government land. With several agencies involved in the leasing process, it is imperative that such a policy is put in place. In the absence of a policy, there is no clarity on the nature, type and extent of activities that would be allowed to be undertaken on the leased land. It is possible that the allotment of land that may essentially be driven by sectoral goals may not be in congruence with the overall national goals and objectives. That may result in unsustainable use of limited land resources. However, a draft National Land Use Policy 2010 is in existence which is still awaiting approval by the government.

The following cases have occurred as a result of lack of a policy guideline:

Leasing of varying land size for similar activity: The Land Act 2007 does not stipulate ceiling on size of the land leased for various economic and development activities. Instead, leeway is given to the implementing agencies to decide on the land size to be leased based on nature and scale of the project. While the intent is genuine, it appears that the actual allotment has not been done judiciously by the implementing agencies. The RAA had observed many cases

where varying sizes of land were leased for the similar activities. Some were allotted more than the required size whereas in some cases land leased was barely enough for the proposed activity as shown in the following table.

Activity	Minimum Area leased (Acre)	Maximum Area leased (Acre)
Mineral water production	1	10
Mobile towers	0.10	2.19
Stone crusher	0.85	26.80
Petroleum distribution	0.15	2.25
Automobile workshop	0.12	1.50
Shops	0.04	0.24
Plantations	30	1810

While one may argue that the variation of land size is justifiable as the activity though may be the same but may differ in scale of operation. However, this point is weakened by the RAA's another observation point, which shows some of these leased land areas are sublet to a third party.

Disparity in fixation of lease rates: Lease rates are fixed by the relevant agency to promote economic activity in different parts of the country. By that principle, lease rates have to be lower for places, which are economically not developed. However, lease rents prescribed in the Rules and Regulations of Lease of Government Land and GRF land 2009 show otherwise. For example, lease rent for commercial use in Phuntsholing, Gelephu and Samdrupjongkhar is Nu.42 per sq. ft. whereas, it is only Nu.20 per sq. ft for the same use in Thimphu. It is also noted that the term "industrial" means warehouse/open dump yard and "commercial" means business oriented activities. The RAA team upon field verification (at certain location in Thimphu, Phuntsholing, and Samdrupjongkhar) had observed that activities carried out under "industrial" were no different from that of "commercial". The anomaly is, lease rent charged for the "industrial" is far less than that of the "commercial", which has created sense of unfairness amongst the lessees. In addition, if the same lease rate was applied to industrial as that of the commercial, the government would have realized additional revenue of Nu. 200.02 million.

Lack of wider advocacy: Majority of the lessees today are few individuals, institutions, and business entities. People in the rural areas although are interested, have no knowledge about such an initiative is in place. Therefore, if equal opportunity has to be provided to all citizens to access government land resources, and ensure that the leased lands are used for priority sectors of the government, a wider advocacy is needed.

b. Weak enforcement and monitoring

The report highlights various issues that are symptomatic of poor monitoring and enforcement of legal provisions by the competent authorities. The examples are as follows:

Leased land not used for the intended purpose

As per Section 83 of the Rules and Regulations on Lease of GRF land and Government Land (RRLGRF&GL) 2009, it is stated that the leased land shall be solely used for the purpose applied for. The lease agreement reinforces the point, which states “the lessee shall not, except with the permission of the lessor in writing first had and obtained, use GRF land for any other purpose other than the ones approved by the National Land Commission Secretariat”. However, in deviation to these provisions, 20 cases of lease land measuring 20.51 acres were found used for purpose other than ones specified in the lease agreement.

Flawed System of Demarcation

As per Section 33(b) of the RRLGRF&GL 2009 it states that “Upon executing the lease agreement, the concerned Ministry with the assistance of the Dzongkhag Land Record officer, demarcate the boundaries of land to be leased as specified in the location map and acreage approved by the NLC.” However, during field visits, RAA team had observed that most of the leased lands were not demarcated properly.

Unauthorized subletting of leased area

As per Sections 6.3(d) and 6.4(c) of the Forest and Nature Conservation Rules (FNCR) 2008 it states that, “The GRF land on lease shall not be allowed to be sold, sub-leased, mortgaged, etc.” The terms and conditions of the lease agreement also disallows the lessee to sublet the premises leased either in whole or in part. However, the Audit team had observed 19 lessees had sublet the leased area to private parties at the monthly rents ranging from Nu. 2,000 to Nu. 38,650.

Non-usage of leased land

Section 8.3(e) of the FCNR 2008 stipulates that, “The lessee shall develop the GRF land immediately after entering into the lease agreement. In the event of failure to develop within two years, the lease shall be cancelled.” However, the audit finding highlights 18 cases of leased land measuring 42.01 acres were found unused for period exceeding two years.

Encroachment and occupation of more than registered leased areas

The Audit team had observed 37 cases of lease measuring land area of 30.93 acres were encroached. Although the terms and conditions of the lease agreement required termination of the lease at the discretion of the lessor, the leases were not terminated. Instead, the lessees had continued to enjoy undue benefits of occupying land beyond the specified boundaries.

Unauthorized occupation and usage

The Report highlights of 38 cases of government and GRF land measuring 50.10 acres being occupied and used by individuals, corporations and companies without any approval. These lands were neither leased out to the occupants nor their occupation approved by the

government. In some cases, the proponents have applied for lease recently, whereas the lands were being used for many years without approval.

Short-levy of lease rents

Short-levy of Nu. 58.70million was observed by the Audit team as a result of discrepancy between the lease rates schedule prescribed by the NLC in RRLGRF&GL 2009 and the actual collection made by various agencies.

(Note: This observation has been incorporated in a separate Propriety Audit Report along with accountability for the lapses).

Non-existence of inventory prior to 2008

Despite requirement by the Land Act 2007 to maintain records on leased land by the Ministry of Agriculture and Forests for the GRF land, Municipal Authority for the government land, and National Land Commission Secretariat for both GRF and government land, records of leases approved prior to 2008 were not maintained. In the absence of such records, it is difficult to exercise effective monitoring and control over such land, which will result in possible abuses and even change of ownership. A case in point is, the RAA team during physical verification had found a case where the lease period of the land has expired in March 2012 but not renewed. Instead, the land is still used without paying any rent, which the concerned authorities are unaware of.

c. Occupation of Government and GRF land by other agencies and institutions

Various agencies and institutions have been observed occupying government and GRF land without entering into any form of lease agreement. Summary of those institutions and agencies are the following:

- Construction of 380 units of National Workforce Dwelling.
- Erection of telecommunication and transmission towers covering 144.93 acres of land.
- Settlement of 12 townships across the country. The authorities concerned have not maintained any records of these settlements such as, the size of land, details of occupants, dates of occupancy and usage of land, etc.
- Construction of camps and permanent structures along the highways to house project officials and labourers. Like in the case of township settlement, authorities have not maintained any inventory for land occupied by DANTAK, GREF & IMTRAT.
- Construction of hutments in municipal boundaries.

3. Conclusion and Recommendation

The findings of the Performance Audit Report primarily revolve around weak enforcement and monitoring by the concerned authorities. In general, it gives an impression that administration of leasing of government and GRF land has not received adequate attention. This shortfall has led to many unwarranted cases such as lessees using leased land without paying rents even after lease period had expired, illegal encroachment beyond leased land areas as a result of lack of proper demarcation, use of land without entering into lease agreement, lack of complete

knowledge about the total land area on lease due to non-maintenance of inventory for leased lands, etc. In the immediate term, this has not only resulted in the loss of revenue and created avenue for misuse and abuse of powers and rights by lessors and lessees but such a trend in the long run will be detrimental to sustainable management of scarce land resources of the country.

Given such risks, there is an urgent need for the Government and NLCS to consider the following interventions:

a. Need to adopt a National Land policy

An overall national policy framework for land use is needed to ensure that the scarcely available land resource is utilized optimally. Since the draft National Land policy 2010 is already in place, waiting for final approval of the government, it may need to be urgently adopted. In addition, the Committee proposes that a specific policy guidelines be adopted for the lease of GRF land and government land, clearly defining areas to be allocated for the development/economic activities that are of priority to the government in achieving overall goal of self-reliance.

b. Current shortfalls to be corrected immediately

The government needs to immediately sort out the following lapses:

- 20 cases measuring 20.51 of leased land not used for the intended purpose.
- 19 cases of unauthorized subletting of leased area.
- 18 cases measuring 42.01 acres of leased land not used for the intended purpose.
- 37 cases measuring 30.93 acres of land encroached and occupied beyond boundary of leased area.
- 38 cases of land measuring 50.10 acres occupied and used without any approval of the competent authority.
- Short-levy of lease rents of Nu. 58.70 million due to discrepancies between the lease rate prescribed in the RRGL&GRFL 2009 and actual collection.
- Cases on non-renewal of lease and lack of documentation.
- Non-existence of inventory for leased lands prior to 2008.
- Government and GRF lands occupied by project authorities, hutments, and NWF dwellings without entering into lease agreement.
- Misnomer of the term "industrial".

c. Encroachment into government land and GRF land needs to be strictly monitored

Just as the Annual Anti-Corruption Reports have highlighted on corruption related to land as topping the list of alleged corruption, the findings of this performance report further confirms the existence of issue with encroachment into government land. If such illegal practices are left unchecked, it is highly possible that gradually conversion of government land into private ownership will take place breeding sense of unfairness and disgruntlement amongst the citizenry. Therefore, it is recommended that NLCS and government institute a stringent mechanism to ensure encroachment into government lands does not take place.