

# State of Land Rights and Land Governance in Eight Asian Countries

Forty Years after the World Conference  
on Agrarian Reform and Rural Development





**Founded in 1979, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)** is a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC member networks and partners work in 10 Asian countries together with 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

The complexity of Asian realities and diversity of CSOs highlight the need for a development leadership to service the poor of Asia—providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives.

ANGOC is a member of the Global Land Tool Network (GLTN), Global Forum on Agricultural Research (GFAR), Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium and the International Land Coalition (ILC).



**Land Watch Asia (LWA)** is a regional campaign to ensure that access to land, agrarian reform and sustainable development for the rural poor are addressed in national and regional development agenda. The campaign involves civil society organizations in Bangladesh, Cambodia, India, Indonesia, Kyrgyzstan, Nepal, Pakistan and the Philippines. LWA aims to take stock of significant changes in the policy and legal environments; undertake strategic national and regional advocacy activities on access to land; jointly develop approaches and tools; and, encourage the sharing of experiences on coalition-building and actions on land rights issues. ANGOC is the regional convener of LWA.

**ANGOC can be reached at:**

33 Mapagsanguni Street  
Sikatuna Village, Diliman  
1101 Quezon City, Philippines  
P.O. Box 3107, QCCPO 1101, Quezon City, Philippines  
Tel: +63-2 351 0581 Fax: +63-2 351 0011  
Email: [angoc@angoc.org](mailto:angoc@angoc.org)  
Website: [www.angoc.org](http://www.angoc.org)  
Facebook: [www.facebook.com/AsianNGOCoalition](http://www.facebook.com/AsianNGOCoalition)



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Forty Years after the World Conference  
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**State of Land Rights and Land Governance in Eight Asian Countries:  
Forty Years after the World Conference on Agrarian Reform  
and Rural Development**

Edited by : Antonio Quizon and Nathaniel Don Marquez

Production team : Nathaniel Don Marquez, Denise Hyacinth Joy Musni,  
Marianne Jane Naungayan, Timothy Salomon,  
Joseph Onesa, Lennie Rose Cahusay

Layout and design : Gerard Jerome Dumlao

Cover Artwork : Christine Mae B. Santos

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The views presented in this publication do not necessarily reflect the views of the International Land Coalition (ILC), its strategic partners, and donors.

Commitment Based Initiatives (CBIs) are multi-country initiatives that bring together members of the ILC to develop partnerships and common strategies on one or more of ILC’s 10 commitments to people-centred land governance.



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# Foreword

In 2010, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and the Land Watch Asia (LWA) campaign initiated the Land Reform Monitoring Initiative to contribute to the process of building capacities of civil society organizations (CSOs) in undertaking monitoring of land tenure and access to land for evidence-based advocacy.

Using the information generated and gathered, country and regional reports are used by LWA to initiate multi-stakeholder dialogues and thereby influence the land policy formulation and monitoring of implementation processes within countries – thus contributing to efforts towards ensuring tenurial security for smallholder producers in rural areas.

For 2018, Land Monitoring Reports in Bangladesh, Cambodia, Indonesia, India, Kyrgyz Republic, Nepal, Pakistan, and Philippines, were prepared to:

- provide an overview of the current policy and legal environment on access to land and tenurial security for the rural poor;
- describe the current status and emerging issues on access to land rights and land access affecting the rural poor;
- describe and assess the transparency in land governance and public to land-related information; and,
- identify strategic opportunities for advancing land rights for the rural poor.

The particular focus of the 2018 country reports is to highlight the state of land governance and public access to land data in the eight Asian countries. It links with the Commitment-Based Initiative on “transparent and accessible information” – one of the ten thematic areas on People-Centred Land Governance (PCLG) of the International Land Coalition (ILC).

The regional summary and abridged country land monitoring reports in this publication were discussed and finalized through eight (8) in-country consultations and two (2) regional workshops. We thank the ILC for providing support for such processes through the regional initiative “*Sustainable, Reliable and Transparent Data and Information towards Responsible Land Governance*” coordinated by ANGOC.

This publication is the product of a collaborative effort among the authors of the country studies, and of the various organizations and individuals who provided data and contributed to the analysis of the reports in the country and regional dialogues.



We acknowledge the writers and lead agencies for each of the country reports:

- *Bangladesh*: Abul Barkat and Gazi Mohammad Suhrawardy of the Human Development Resource Centre (HDRC) and the Association for Land Reform and Development (ALRD);
- *Cambodia*: Cham Soeun, Keo Bora, and Il Oeur of Analyzing Development Issues Centre (ADIC) and STAR Kampuchea;
- *Indonesia*: Consortium for Agrarian Reform (KPA);
- *India*: Barna Baibhab Panda of Foundation for Ecological Security (FES) and G.N. Reddy, Satyanarayana, M. Somasekhar, M. Kumar Raju, B. Madhavi, Arun Arasan, Vishnuvardhan, and Dileep of South Asia Rural Reconstruction Association (SARRA);
- *Kyrgyzstan*: Sairagul Tazhibaeva and Elvira Maratova for the National Union of Water Users Association (NUWUA), Kyrgyz Association of Forest and Land Users (KAFLU), and Rural Development Fund (RDF);
- *Nepal*: Jagat Basnet and Nisha Neupane of the Community Self Reliance Center (CSRC);
- *Pakistan*: Society for Conservation and Protection of Environment (SCOPE); and,
- *Philippines*: Roel Ravanera of Xavier Science Foundation (XSF), Dave de Vera of Philippine Association for Intercultural Development (PAFID), Marita Rodriquez of NGOs for Fisheries Reform (NFR), and Anthony Marzan and Maricel Almojuela-Tolentino of People's Campaign for Agrarian Reform Network, Inc. (AR Now!), Timothy Salomon of Asian NGO Coalition (ANGOC).

ANGOC and LWA express our special gratitude to Antonio “Tony” Quizon for meticulously and substantially reviewing the papers, hemming them coherently for a regional summary, and for steering the overall editing of this regional report.

We thank Marianna Bicchieri, Regional Land Tenure Officer of the FAO Regional Office for Asia and the Pacific (FAORAP) and Tam Hoang, Partners Advisor of the UN Human Settlements Programme Regional Office for Asia and the Pacific (UN-Habitat ROAP), for providing feedback on the initial drafts of the papers. We express our appreciation to Denise Hyacinth Joy Musni, Marianne Jane Naungayan, Jose Ignatius Pagsanghan, Ma. Cristina Dumlao, and Jerome Dumlao for editing the country papers and preparing them for publication.

ANGOC thanks the ILC for providing support for the various processes leading to this publication.

Fittingly, this book is being released on the occasion of the 40<sup>th</sup> Anniversary of the World Conference on Agrarian and Rural Development (WCARRD) this 2019. It may be seen as a modest contribution of ANGOC and LWA to assess how WCARRD has progressed after four decades, in selected countries in the region. The recommendations of the country studies are echoed in the Bangkok Declaration entitled “**WCARRD@40: Recognize, Defend, and Protect Access to Land, Resources and Tenure Security of the Rural Poor**” – as adopted by the participants of the regional workshop on “*State of Land Rights and Land Governance in Selected Asian Countries*” – held in Bangkok, Thailand on 14-15 February 2019, and jointly organized



by ANGOC, LWA, ILC-Asia and the Centre for Integrated Rural Development for Asia and the Pacific (CIRDAP). This Declaration highlighted the need for States to:

- enact and enforce national legislations and policies that promote access and tenure security to land, forests, waters, and pastures of rural poor;
- implement agrarian reforms and provide adequate support to smallholders to improve farm productivity and strengthen their participation in the value chain;
- legally recognize and respect the land and territorial rights of indigenous peoples, and promote locally-managed ecosystems by indigenous peoples, small fisherfolk, pastoralists and traditional forest users;
- implement integrated water resources management on joint use of transboundary river flows and introduce effective and transparent mechanisms for water distribution;
- uphold the spirit and compliance of international human rights instruments (e.g., CEDAW, ICCPR, ICESCR, ICERD, CBD, Paris Agreement, UNGP BHR, Voluntary Guidelines on the Responsible Governance of Tenure, ILO 169, UNDRIP, UNDROP, etc.), specific to land rights for marginalized sectors;
- ensure the integrity of safeguard mechanisms that regulate public and private land investments and strengthen local mediation mechanisms for resolution of land and other resource conflicts;
- support the ratification of the UN Guiding Principles on Business and Human Rights as a legally-binding instrument at country level;
- effectively implement social and environmental impact assessments, and adherence to Free Prior Informed Consent (FPIC);
- promote continuous engagements among National Statistical Offices (NSOs), government land agencies and CSOs to improve national indicators on access to land and other resources, transparency and public access to land data; and,
- safeguard the political and democratic space of civil society organizations and people's organizations, and conduct regular consultations and dialogues between government and communities.

These recommendations are necessary to realize the full spirit of the Sustainable Development Goals that “no one should be left behind.”

Rohini Reddy  
Chairperson

Chet Charya  
Vice Chairperson

Nathaniel Don Marquez  
Executive Director

## Land Watch Asia Land Monitoring Working Group (LWA LMWG)

### BANGLADESH



**Association for Land Reform and Development (ALRD)** was established in January 1991 as single-focused rights based national networking organization, mandated to facilitate the land and agrarian reform advocacy, mobilization and capacity building of its partners and allies in enabling access to and control over natural resources of the poor, landless and marginalized communities in Bangladesh. In the subsequent decades, ALRD emerged as a professionally trained knowledge network in the land sector to amplify the collective voice of the marginalized communities in Bangladesh. Currently, it has a network of 200+ NGOs and civil society organizations all across the country.

1/3 Block-F; Lalmatia  
Dhaka-1207  
Phone: +88 02 9114660  
Fax: +88 02 8141810  
Email: alrd@agni.com  
Website: www.alrd.org

### CAMBODIA



**STAR Kampuchea (SK)** is a Cambodian non-profit and non-partisan organization established in 1997 dedicated to building democracy through the strengthening of civil society. SK also provides direct support to communities suffering from resource conflicts like land grabbing and land rights abuses through capacity building and legal services.

No. 71, Street 123, Sangkat Toul Tompoung 1  
Khan Chamkar Morn, Phnom Penh  
Phone: (855) 23 211 612  
Fax: (855) 23 211 812  
Email: star@starkampuchea.org.kh  
Website: starkampuchea.org.kh

### INDIA



The **Foundation for Ecological Security (FES)** works towards conservation of nature and natural resources through collective action of local communities. In India, FES has played a pioneering role in furthering the concept of *Commons* as an effective instrument of local governance, as economic assets for the poor and for the viability of adjoining farmlands.

Post Box No. 29 At-Jahangirpura  
PO-Gopalpura Vadod-388 370 Hadgud  
District-Anand Gujarat  
Phone: +91 261238-39  
Email: ed@fes.org.in  
Website: www.fes.org.in



Founded in 1984, the **South Asia Rural Reconstruction Association (SARRA)** has the mandate to strengthen grassroots democracies in the South Asia region. SARRA has functioned as the regional partner of ANGOC in building the capabilities of the NGO sector, CSOs and academic institutions to contribute in their empowerment and to enable them to actively participate in development processes. SARRA emphasizes the importance of traditional knowledge by blending with modern development techniques for the empowerment of the poor and powerless communities for their sustainable development.

Lumbini, 2nd Cross, 1st Main  
Veerabhadra Nagar, Marathahalli Post  
Bengaluru-560035  
Landline: 00-91-80-25232227  
Mobile: 00-91-9985947003  
Email: kodirohini@gmail.com/  
sarraindia@gmail.com  
Website: www.cgnfindia.org

### INDONESIA



Established in 1994, the **Consortium for Agrarian Reform (KPA)** currently consists of 153 people's organizations (peasants, indigenous peoples, rural women, fisherfolk, urban poor) and NGOs in 23 provinces in Indonesia. KPA fights for agrarian reform in Indonesia through advocacy and the strengthening of people's organizations. KPA's focus on land reform and tenurial security, and policy advocacy on these issues has put the coalition at the forefront of the land rights struggles of Indonesia's landless rural poor, especially with indigenous peoples in several areas in Outer Java. KPA encourages a participatory and pluralistic approach which recognizes the development of different systems of land use and tenure to ensure land rights. KPA is a people's movement that has an open and independent character.

Komplek Liga Mas, Jl. Pancoran Indah I  
No.1 Block E3  
Pancoran, South Jakarta 12760  
Phone: (021) 7984540  
Fax: (021) 7993834  
Email: kpa.seknas@gmail.com  
Website: www.kpa.or.id

## KYRGYZSTAN



Established in 13 May 2010 as non-profit organization— Association of legal entities, the **Kyrgyz Association of Forest and Land Users (KAFLU)** unites 141 organizations from all regions

of the country. KAFLU promotes the principles of sustainable management of land and forest resources adaptive to climate change, preventing conflicts and improving the living standards of villagers, making a worthy contribution to poverty reduction and food security in Kyrgyzstan.

36 Baitik Baatyr Str.  
Bishkek 720016  
Tel/Fax: +996 312 551406  
E-mail: kyrgyzaflu@gmail.com  
Website: www.landuse-association.kg  
Facebook: www.facebook.com/kyrgyzaflu



The **National Union of Water Users Association (NUWUA)** is a nonprofit organization formed on the basis of voluntary participation, self-government, legality, publicity, openness, acting in the public interest with a view to coordinating and facilitating the

activities and development of water user associations of Kyrgyzstan. The main objectives of the NUWUA are to: a) promote the development of WUAs; b) coordination of their activities; c) settlement of WUA relations with other economic entities and State bodies; and, d) attraction of loans, grants and other funds from donor organizations to provide technical assistance and improve the irrigation infrastructure of the viable water users' associations that have entered the Union.

6 Kamskaya Street, Bishkek  
Tel/Fax: +996 312 564586  
E-mail: wua.union.kg@mail.ru  
Website: www.wuaunion.kg  
Facebook: www.facebook.com/WUAUnion



**Rural Development Fund**

Established as non-profit and non-governmental research organization in 2003, the **Rural Development Fund**

**(RDF)** conducts research, develops policy recommendations and implements activities in the field of rural development. RDF works with specific objectives in the field of forest community/joint management and rangelands, agricultural land, including working with small farmers on irrigation and gardening, working with local communities and developing policies to protect and secure their rights.

Geologicheskij Str., Office 1  
Bishkek 720005  
Phone: +996 (312)590828  
Email: general@rdf.in.kg  
Website: www.rdf.in.kg

## NEPAL



**Community Self Reliance Centre (CSRC)** has been at the forefront of land and agrarian rights campaign in Nepal. CSRC educates, organizes, and empowers people deprived of their basic rights to land to lead free, secure, and dignified lives. The organization's programs focus on strengthening community organizations, developing human rights defenders, improving livelihoods, and promoting land and agrarian reform among land-poor farmers. Since its establishment, CSRC has constantly worked to transform discriminatory and unjust social relations by organizing landless, land poor and marginalized communities to claim and exercise their rights.

Dhapasi, Kathmandu  
Phone: 0977 01 4360486 / 0977 01 4357005  
Fax: 0977 01 4357033  
Email: landrights@csrcnepal.org  
Website: csrcnepal.org

## PAKISTAN



Established in 1990, the **Society for Conservation and Protection of Environment (SCOPE)** is an NGO registered under Societies Act 160 of Pakistan. SCOPE's main focus is working for the protection of

natural resources and environment. SCOPE works with national and international partners in order to achieve its objectives. SCOPE is engaged in highlighting issues of land governance in Pakistan through local partners.

With the collaboration of Oxfam Pakistan, the National Peasants' Coalition of Pakistan (NPCP) has been formed to build and strengthen capacity of grassroots peasants and land rights organizations.

1st Floor, Sufi Mansion, 7 Edgerton Road, Lahore  
Phone: +92 42 36372139  
Email: scope@scope.org.pk  
Website: www.scope.org.pk  
Skype: scopepk

## PHILIPPINES



**People's Campaign for Agrarian Reform Network, Inc. (AR Now!)** is an advocacy and campaign center for the promotion of agrarian reform and sustainable development. Its vision is to achieve peasant empowerment, agrarian and aquatic reform, sustainable agriculture and rural development.

38-B Mapagsanguni St., Sikatuna Village  
Diliman, 1101 Quezon City  
Phone: +63-2-4330760  
Fax: +63-2-9215436  
Email: arnow.inc@gmail.com  
Facebook: www.facebook.com/ar.ngayon



**Center for Agrarian Reform and Rural Development (CARRD)** is a non-stock, non-profit organization working for agrarian reform and rural development. CARRD believes in an inclusive rural development that is based on equitable access to and ownership of productive resources.

No. 22 Matipid St., Sikatuna Village  
Quezon City 1101  
Phone: +63-2-7382651  
Fax: +63-2-9267397  
Email: carrdinc@gmail.com  
Website: www.carrd.org.ph



**PAFID** Philippine Association  
for Intercultural  
Development, Inc.

**Philippine Association For Intercultural Development (PAFID)** is a social development organization which has been assisting Philippine indigenous communities to secure or recover traditional lands and waters since 1967. It forms institutional partnerships with indigenous communities to secure legal ownership over ancestral domains and to shape government policy over indigenous peoples' issues.

71 Malakas Street, Quezon City  
Phone: +63-2-9274580  
Fax: +63-2-4355406  
Email: pafid@skyroadband.com.ph/  
pafid@yahoo.com  
Website: www.pafid.org.ph



**Xavier Science Foundation, Inc. (XSF)** is a non-political, non-stock, non-profit organization established and designed to encourage, support, assist, and finance projects and programs dedicated to the pursuit of social and educational development of the people in Mindanao. It is a legal and financial mechanism generating and managing resources to support

such socially-concerned and development-oriented projects and programs.

Manresa Complex, Masterson Avenue  
Upper Balulang, Cagayan de Oro City  
Phone: +63-88-8516887  
Website: www.xsfoundationinc.org

## REGIONAL



**Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)**, founded in 1979, is a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance and rural

development. ANGOC network members and partners work in 10 Asian countries together with 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs) and international financial institutions (IFIs).

ANGOC is a member of the Global Land Tool Network (GLTN), Global Forum on Agricultural Research (GFAR), Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium and the International Land Coalition (ILC).

ANGOC is the regional convener of the Land Watch Asia (LWA) campaign.

33 Mapagsanguni Street, Sikatuna Village  
Diliman, 1101 Quezon City, Philippines  
Phone: +63-2-3510581  
Fax: +63-2-3510011  
Email: angoc@angoc.org  
Website: www.angoc.org  
Facebook: www.facebook.com/AsianNGOCcoalition



## Regional Summary: **Land Governance and Tenure Rights in Eight Asian Countries**

By Antonio Quizon, ANGOCC

### **RELEVANCE OF THE LAND ISSUE**

Land rights are essential for the full enjoyment of other rights – shelter, food and livelihood, water, space & movement, health, access to basic services, personal security, right to shelter and assistance in cases of disaster, and in some cases - citizenship and enjoyment of political rights. The right to land and security of tenure may therefore be seen as a human right, regardless of how existing laws see them.

In Asia, landlessness is a major cause and indicator of rural poverty. In India, landlessness – more than either caste or illiteracy – is the best indicator of rural poverty. However, land distribution in India closely follows social hierarchy. As land is an important socially valued asset, its unequal distribution helps maintain the hierarchical structure and strengthens the basis of dominance of the privileged groups who, in turn perpetuate inequality and deprivation (Mohanty, 2001).

In all countries, there are different groups of marginalized people such as ethnic and religious minorities, indigenous people, fisherfolk, rural women, agricultural laborers and small farmers who either sharecrop or work in leased lands – who lack any kind of effective land rights, and who are systematically excluded from the existing land regime. Their living conditions have two basic features – poverty and political powerlessness. Political powerlessness can be seen as the reason behind lack of their land rights; poverty is its consequence. Even if they are legally entitled to some land, they fail to secure those lands. And often, these lands are grabbed by politically powerful, influential people, which leads marginalized people to poverty (Barkat and Suhrawardy, 2018). Land ownership in many countries remains skewed and unjust, creating conflict and discrimination.

**Box A: Land and population in eight Asian countries**

Country	(a) Total land area (1000 ha)	(b) Agricultural land		(c) Population		(d) Population density (per km <sup>2</sup> )	(e) Poverty incidence (%)	(f) Human Devt Index (Rank)
		Area (1000 ha)	As % of total land	Total population (millions)	Rural population (%)			
Bangladesh	13,017	9,194	70.6	164.7	64.0	1,265	24.3	138
Cambodia	17,652	5,455	30.9	16.0	79.8	91	17.7	146
India	297,319	179,721	60.5	1,339.2	65.1	450	21.9	129
Indonesia	181,157	57,000	31.5	264.0	44.4	146	10.6	115
Kyrgyzstan	19,180	10,541	55.0	6.0	62.3	32	25.4	121
Nepal	14,335	4,121	28.8	29.3	80.0	204	25.2	148
Pakistan	77,088	36,844	47.8	197.0	59.4	256	29.5	149
Philippines	29,817	12,440	41.7	104.9	55.9	352	21.6	111

**Sources:** Columns (a), (b), (c) and (d) are based on online FAOSTAT data. The population data is for 2017. Columns (e) and (f) are taken from UNDP, 2018. Poverty incidence (e) refers to the population living below the national poverty line.

Poor people without secure land tenure are most vulnerable to the direct effects of natural disasters and climate change. Poverty forces people to cultivate marginal lands that may be too steep, too dry, too wet or prone to erosion, or else to occupy fragile public land, drainage systems, easements, or coastal areas that are vulnerable to flooding, high tides, and storm surges. Moreover, they live in poor housing, without the incentives and capacity to invest in improvements or to modify their living environment to protect their homes against floods, landslides, etc. Thus, many poor households fall into a constant cycle of disrepair and rebuilding after each disaster. The lack of tenure security limits people's choices, diminishes their capacity to recover and rebuild, and creates cycles of poverty, vulnerability, and displacement.

In recent years there has been growing global recognition that secure rights to land and property especially for poor and vulnerable women and men, is a critical element in fighting poverty and social exclusion by ensuring rights to economic resources. Land tenure security is seen as essential to ensure shelter and to enable people and families to access needed services. In 2015, Member States of the United Nations committed to the implementation of the Sustainable Development Goals (SDGs) within a timeframe of 15 years by endorsing the 2030 Agenda for Sustainable Development as adopted by the General Assembly under UN Resolution 70/1. Secure rights to land, property and other assets is seen by the SDGs as a cornerstone in reducing global poverty, as expressed under SDG Target 1.4: “By 2030, ensure that **all men and women, in particular the poor and vulnerable, have equal rights to economic resources**, as well as access to basic services, **ownership and control over land and other forms of property, inheritance, natural resources**, appropriate new technology and financial services, including microfinance.” (emphasis added)



It should be noted that all human rights are universal, indivisible, interdependent, and interrelated. Thus, the governance of tenure should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights. In doing so, States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists, and rural workers (FAO, 2012).

## **INTRODUCTION TO THE STUDIES**

The main objective of this study is to monitor trends in land governance. It is part of the Land Watch Asia (LWA) Campaign convened by the Asian NGO Coalition (ANGOC) which, since 2007, has supported the work of partners through: (i) development of evidence-based information; (ii) identification of strategic policy areas for discussion with governments; and, (iii) facilitate support for in-country and regional dialogues.

For 2017-2018, country monitoring reports on land governance have been prepared with the following objectives:

1. Provide an overview of the current policy and legal environment on access to land and tenurial security for the rural poor;
2. Describe the current status and emerging issues on land rights and land access affecting the rural poor;
3. Describe and assess the transparency in land governance and public access to land-related information; and,
4. Identify strategic opportunities for advancing land rights for the rural poor in the country.

The papers are also directed towards contributing to the Commitment-Based Initiatives (CBIs) of the International Land Coalition (ILC) – particularly on the CBI 8 theme: “transparent and accessible information for responsible land governance”.

The country studies rely heavily on secondary sources of data, information and analysis. These sources include reports of government institutions, research studies by civil society organizations, scholarly articles and journals, statistical yearbooks and publications, media reports and analysis, books and e-publications.

Primary sources include interviews with experts for more in-depth understanding and analysis of collected information. Moreover, one-day in-country workshops were convened to discuss and validate the studies. Participants included representatives from basic sectors of the rural poor, civil society organizations, the academe, and representatives from relevant government agencies.

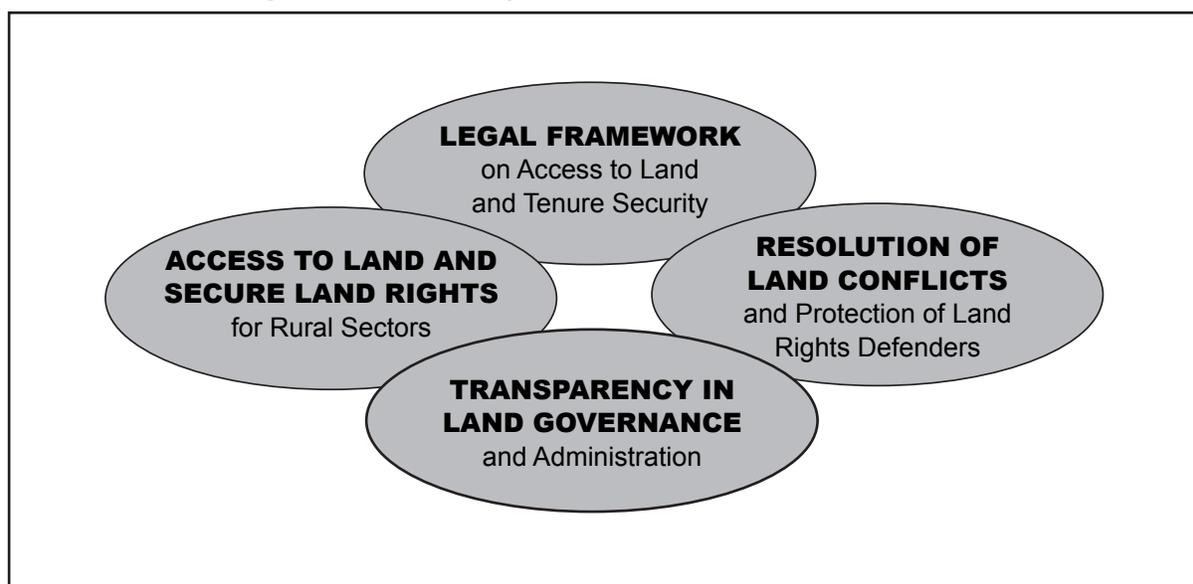
**Table 1. Researchers/institutions for country papers**

Country	Lead CSO and Participating Research Institutions	Researchers
<b>Bangladesh</b>	<ul style="list-style-type: none"> <li>● Association for Land Reform and Development (ALRD)</li> <li>● Human Development Research Centre (HDRC)</li> </ul>	Abul Barkat, Gazi Mohammad Suhrawardy
<b>Cambodia</b>	<ul style="list-style-type: none"> <li>● Analyzing Development Issues Centre (ADIC)</li> <li>● STAR Kampuchea</li> </ul>	Oeur II, Cham Soeun, Keo Bora
<b>India</b>	<ul style="list-style-type: none"> <li>● Foundation for Ecological Security (FES)</li> <li>● South Asia Rural Reconstruction Association (SARRA)</li> </ul>	Barna Baibhab Panda, G.N. Reddy, Satyanarayana, M. Somasekhar, M. Kumar Raju, B. Madhavi, Arun Arasan, Vishnuvardhan Dileep
<b>Indonesia</b>	<ul style="list-style-type: none"> <li>● Konsorsium Pembaruan Agraria (KPA)</li> </ul>	KPA Team
<b>Kyrgyzstan</b>	<ul style="list-style-type: none"> <li>● National Union of Water Users Association (NUWUA)</li> </ul>	Sairagul Tazhibaeva, Elvira Maratova
<b>Nepal</b>	<ul style="list-style-type: none"> <li>● Community Self Reliance Centre (CSRC)</li> </ul>	Jagat Basnet, Nisha Neupane
<b>Pakistan</b>	<ul style="list-style-type: none"> <li>● Society for Conservation and Protection of Environment (SCOPE)</li> </ul>	Tanveer Arif
<b>Philippines</b>	<ul style="list-style-type: none"> <li>● Xavier Science Foundation, Inc. (XSF)</li> <li>● Philippine Association For Intercultural Development (PAFID)</li> <li>● NGOs for Fisheries Reform (NFR)</li> <li>● People's Campaign for Agrarian Reform Network, Inc. (AR Now!)</li> </ul>	Roel Ravanera, Dave de Vera, Marita Rodriguez, Anthony Marzan, Maricel Tolentino, Timothy Salomon

Land governance is defined as “the **rules, processes and structures** through which decisions are made about **access to land and its use**, the manner in which the decisions are implemented and enforced, and the way that **competing interests in land are managed**” (FAO, emphasis supplied). As such, the definition of land governance involves three key elements, namely: (i) a set of rules, processes and structures, whether these are defined by legal, customary or traditional systems; (ii) decisions on land distribution, access and use, including the enforcement of rights; and, (iii) management of conflict due to competing interests on land.

Thus, the country studies are organized along four broad themes that define the key areas for land governance in Asia.

**Figure 1. Four Key Themes in Land Governance**



**Table 2. Thematic areas on land governance, and fields for study**

Themes	Fields for study
<p><b>1. Legal and policy environment providing access to land and tenure security</b></p>	<ul style="list-style-type: none"> <li>• What is the legal framework that defines ownership, control, and access to land? Are the rights to land of poor and vulnerable sectors ensured and safeguarded?</li> <li>• Do the laws recognize and protect customary rights, and provide for collective tenure systems (i.e., for indigenous peoples, forest dwellers, informal settlers, pastoralists, etc.)? Do the laws recognize informal rights, and equal land rights for women?</li> <li>• Do the laws provide for community self-management of ecosystems, based on customary and traditional use?</li> </ul>
<p><b>2. Access to land for rural poor sectors</b></p> <p><b>2.1 Land access and tenure security for small farmers and rural producers</b></p> <p><b>2.2 Secure land rights for indigenous peoples</b></p>	<ul style="list-style-type: none"> <li>• How equitable is the distribution of land?</li> <li>• To what extent are small-scale farmers and rural producers able to have documented land rights under the legal system, and to benefit from security of tenure?</li> <li>• Is agricultural development supportive of family-farms and small-scale producers?</li> <li>• Have there been land redistribution and tenure reform programs to address the poor's access to land and tenurial security? To what extent have reforms been implemented?</li> <li>• Issues and threats faced?</li> <li>• Is there legal recognition, protection, and enforcement of indigenous peoples' rights to land?</li> <li>• Is there legal recognition of traditional land use and management, culture, and rights to self-governance?</li> <li>• Actual extent of exercise of land rights and self-governance?</li> <li>• Issues and threats faced?</li> </ul>

<p><b>2.3 Equal land and property rights for rural women</b></p>	<ul style="list-style-type: none"> <li>● Do the legal framework, policies and programs guarantee women's equal rights to land? Is there gender-responsiveness of land and resource governance laws, policies, or mechanisms?</li> <li>● What is the actual status of women's equal rights to land?</li> <li>● Are there economic, political, social, cultural or religious factors that impede (or facilitate) women's access to land?</li> </ul>
<p><b>3. Resolution of conflicts and protection of land rights defenders</b></p>	<ul style="list-style-type: none"> <li>● Occurrence of land conflicts and disputes and causes of land conflicts, including violence against land rights defenders</li> <li>● Availability and effectivity of mechanisms (legal, administrative, community or customary) for land conflict prevention and dispute resolution, mediation, and management (in addition to court systems)</li> <li>● Effectivity of conflict resolution mechanisms – including corrective measures taken, protection of vulnerable groups, fair compensation and restitution of land rights</li> <li>● Are effective land policy, legal and institutional framework for private and public investments in place and implemented to prevent land grabs?</li> <li>● Are there monitoring and tracking systems on land conflicts, and on the resolution of conflicts?</li> </ul>
<p><b>4. Transparency in land governance and administration</b></p>	<ul style="list-style-type: none"> <li>● Are there mechanisms in place whereby basic sectors, including rural women, meaningfully participate in decision-making and land/resource governance?</li> <li>● Is there public access to information on land and related matters? Is the information provided, timely, relevant, adequate and reliable?</li> <li>● Are there policies on transparency in public office, and on the public right to information?</li> </ul>

## **LEGAL AND POLICY FRAMEWORK ON ACCESS TO LAND**

Land governance is essential in determining how women and men, families and communities are able to acquire rights, and associated duties, to access, use and control land, forests, pastures, and water resources. When governance is weak, tenure problems arise, and attempts to address tenure problems are affected by the quality of governance itself. As noted in the preface to the *Voluntary Guidelines on the Governance of Tenure*:

*“Weak governance adversely affects social stability, sustainable use of the environment, investment and economic growth. People can be condemned to a life of hunger and poverty if they lose their tenure rights to their homes, land, fisheries and forests and their livelihoods because of corrupt tenure practices or if implementing agencies fail to protect their tenure rights... Responsible governance of tenure conversely promotes sustainable social and economic development that can help eradicate poverty and food insecurity and encourage responsible investment.”* (FAO, 2012)

Land governance is defined by different sets of laws in each country. *Annex A* of this paper provides a brief description of the major land laws in each of the eight Asian countries that define how land is accessed, regulated, used, managed, and controlled – along with the associated rights and duties. However, this list is by no means complete or exhaustive.

These sets of laws may be seen in terms of the following:

**Table 3. Types of land laws**

<b>Land-related laws/examples</b>	<b>Description/coverage</b>
Constitution	Governance framework, rights of citizens
Civil Code, Family Code	Private property, transactions over property, inheritance and property rights within the family
Land Code, Land Law	Guiding principles in the management of land and resources, land categories and their legal status, land rights and registration, roles of State bodies and local governments
Land Administration Laws, Land Registration Acts, Land Revenue Acts, Taxation	Land administration, land registration and titling, survey and mapping systems, land records and cadastres, land valuation and taxation
Land Acquisition Acts, Resettlement and Rehabilitation Laws	Government land acquisitions, State expropriations and compensation, resettlement
Land Reform Laws, Tenancy Acts, Khas Land Distribution and Management, Sharecropping Agreement Laws, Protection and Empowerment of Peasants, Right to Food and Food Sovereignty Act, Social Land Concessions	Agrarian and land reforms, land ceilings, agricultural land redistribution, distribution of public lands, protection of tenant-farmer rights, support services to poor and small farmers
Indigenous Peoples Rights Act, Forest Rights Act, Communal Land Titling	Recognition of indigenous peoples' domains and lands under customary use, recognition of customary law, communal land registration and/or titling
Public Lands Act, State Lands Management, Forestry Code, Forestry Laws, Laws on Protected Areas, Law on Specially Protected Natural Territories, Alluvial Lands Act	Delineation and management of lands under the public domain, including protected areas
Community Forestry, Social Forestry, Law on Pastures, Fisheries Code, Water Code	Resource management, including local community approaches to the management of ecosystems (land, water, forests)
Land Use Act, zoning regulations, restrictions on land conversion, Housing Acts	Regulated spatial planning
Local Government Code, Law on Local Self-Government, Laws that grant levels of autonomy or special status to designated regions (CHT Regulation Act, Tribal Areas Act)	Roles of local government, establishment of special regions and autonomous regions
Sub-Decree on Economic Land Concessions, Corporate Farming Ordinance, Mining Act, Special Economic Zones	Public concessions to corporations, incentives for private land investments
Enemy Property Act, Vested Property Act	State powers to confiscate "enemy" property





**Tenure reforms.** Tenure systems define and regulate how people, communities and others gain access to land, fisheries and forests. These tenure systems determine who can use which resources, for how long, and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices (FAO,2012).

In many countries, the high degree of land ownership concentration is usually combined with significant levels of rural poverty, due to the lack of access to land, fisheries, and forests. Thus, over the past decades, several countries have instituted tenure reforms for social, economic, and environmental reasons.

Pro-poor tenure reforms come in several forms. They provide for redistribution of ownership rights; recognize customary land rights and land use; provide for usufruct rights over public lands; strengthen the position of vulnerable sectors under existing tenure arrangements such as tenancy; or provide for the registration of land especially for farmers and those dependent on agriculture. These reform laws include:

- agrarian reform, tenancy reform acts;
- indigenous peoples rights act, forest rights act;
- resource management laws that provide for community-based management of ecosystems, such as social forestry, community-based pasture management, and water users' associations;
- registration-related acts that provide for collective or communal land titling, and/or the granting of social land concessions to disadvantaged groups; and,
- land registration and titling systems, especially in Kyrgyzstan and Cambodia.

However, there are also laws in each country that may run counter to land reform, and which tend to concentrate landholdings rather than provide broad-based land ownership and security of tenure. Examples include the Sub-Decree on Economic Land Concessions in Cambodia, the Corporate Farming Ordinance in Pakistan, and the Laws on Special Economic Zones in India and the Philippines – which are systems by which the State grants land concessions and economic incentives to private corporations and investment entities.

**Land and property rights.** The Constitution in each country provides the overall *policy framework for the governance of tenure*. It defines the State policies, responsibilities and powers in regulating the acquisition, ownership, use, and disposition of property. The Constitution also establishes the basic rights of citizens – including the right to property, protection against arbitrary arrest or eviction, and the right to due process of law.

Personal property rights are usually defined not by the land laws, but by the Civil Code and Family Code. These laws uphold individual rights to land and private property, including the transfer of rights over their use and ownership. These laws also define land and property rights in the *private* sphere, including equal property rights for women regardless of changes in marital status





Secure access to land, even to a small plot or homelot, can help a household improve its nutrition and diversify its livelihood system. It can be used for growing trees, cultivating gardens, growing fodder for animals or raising poultry. Having some land also enables family members, especially women to engage in non-farm economic activities (Quizon, 2005).

Because small family farms are characterized by higher use of labor and family-owned inputs, they also provide employment to a significant proportion of the population. Family farming creates jobs also for related enterprises along the food and agricultural value chains. Land access and secure tenure rights thus become necessary for addressing rural poverty.

In most Asian countries, poverty remains largely rural and agricultural. Landlessness and lack of access to resources remain a major cause of rural poverty.

Yet land ownership remains highly skewed in most countries. In Bangladesh, for instance, functionally landless rural households comprise almost 60 percent and own only 4.2 percent of the land; while rich landowners comprise only 6.2 percent of total households and own at least 40 to 45 percent of lands (as cited in Barkat and Suhrawardy, 2018). The Agriculture Census of 2008 shows that landlessness in Bangladesh has been on an increasing trend over the past decades.

In Pakistan, about 75 percent of rural households are landless. Farms of less than two hectares in size account for 67 percent of landholdings and 18 percent of the total farm area. On the other hand, large landholdings above 20 hectares account for only four percent of all landholdings, yet account for 41 percent of the total farm area (Agriculture Census of 2010).

Over the past decade, smallholder agriculture has been affected and threatened by broader trends:

- expansion of commercial farms; the leasing of agricultural lands by corporate farms;
- demographic trends: outmigration of the rural youth, ageing farmer populations;
- changing urban food preferences and diets;
- trade liberalization, which makes it easier for countries to import food;
- increasing vertical integration of the food industry, as characterized by contract farming, and the rise of supermarket retail; and,
- urbanization and expansion of villages, which results in the conversion of prime agricultural lands to other uses.

In Bangladesh, contract farming, land grabbing, and the out-migration of rural youth are cited as the three major challenges to family farming and small-scale producers. There has been a marked rise in contract farming, where small producers are linked to large agribusiness firms or consolidators. This has exposed smallholders to production and pricing risks, and has increased disparities and disintegration within rural communities.



Moreover, many smallholders remain in the public domain without any security of tenure. In the Philippines, an estimated 17 to 22 million people (roughly 20 percent of the population) who depend on forests for their homes and livelihoods have no legal tenure rights over forestlands (Fortenbacher and Alave, 2014).

In recent years, large-scale commercial agriculture has grown increasingly attractive for new investment, and this has led to a global rush for securing farmlands overseas, including in several countries in Asia. Given that most Asian countries limit foreign ownership of land, leasing has been the most common form of land investment in Asia. Yet conflicts arise when private concessions give little respect for existing community rights and customary tenure systems, thus eroding the well-being and livelihoods of local communities.

### **Agrarian reforms and tenure security**

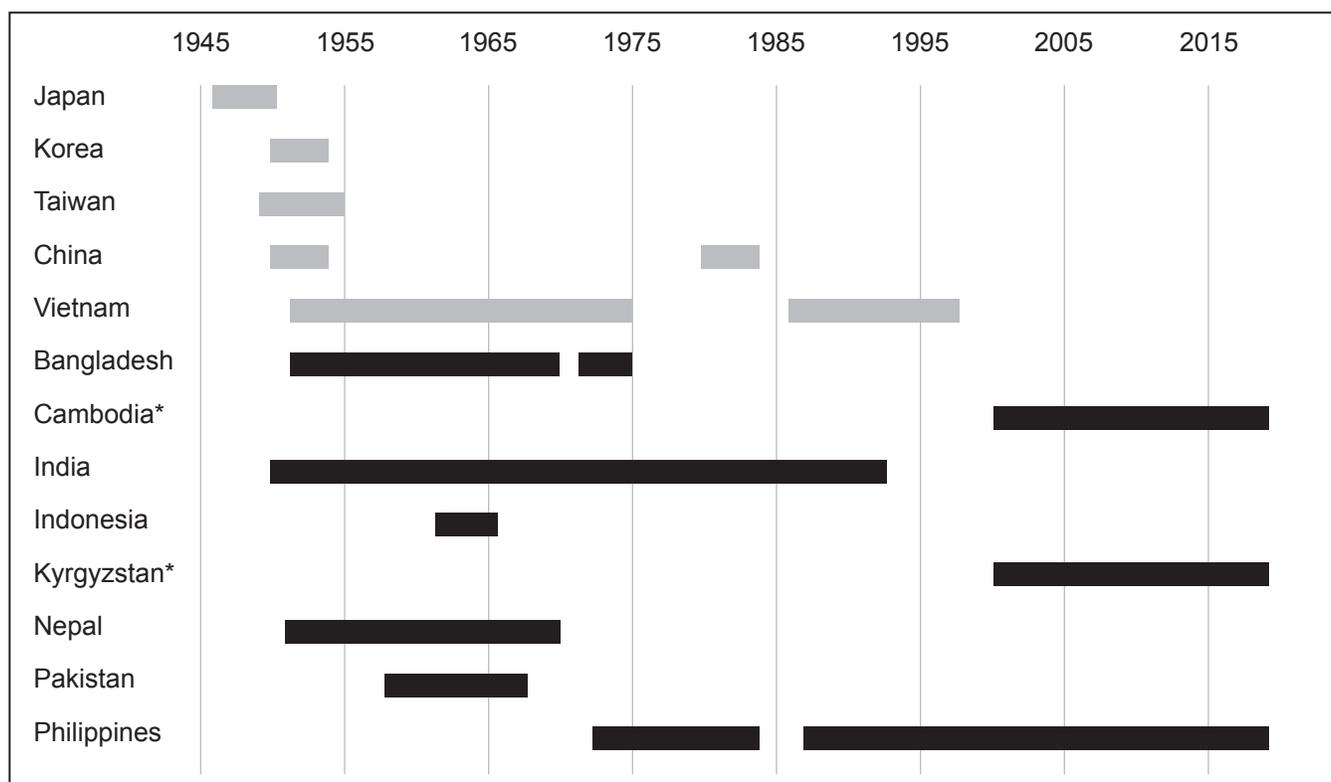
Redistributive land reforms have been instituted in all countries. Land reforms were instituted at different points of history since the 1950s, in order to address growing social unrest, provide for a more egalitarian distribution of land, and to address poverty and social exclusion in the agrarian sector. *Annex B* of this paper provides a summary description of the key land reform laws in the eight Asian countries.

*Figure 2* shows the major time periods of State-led redistributive land reforms in the different Asian countries. Other Asian countries (Japan, Korea, China, Vietnam, and Taiwan) – where agrarian reforms are considered to have been “successful” – are included here for purposes of comparison.

Overall, however, agrarian reform remains an unfinished task in all countries. In Nepal, many tenants remain constrained from filing their tenancy claims, due to threats by their landowners. In Pakistan, the use of *begari* (forced or bonded) labor continues. A bonded Labor (Abolition) Act was passed in 1992 but this has remained ineffective because the rules and guidelines were never drafted. In most countries, tenancy reform acts have not been fully implemented due to the power of the landlords. In most countries, attempts at land redistribution – mostly through establishments of land ceilings – have had limited effectivity, due to circumvention by landowners and weak government implementation.

Land reform programs were abruptly stopped and reversed in some countries (Indonesia, Pakistan) due to the ascension into power of military-led regimes, while in other countries (India, Bangladesh, Nepal), land reform implementation was weak, and grew dormant over time due to prolonged and weak implementation and the lack of funding. Redistributive land reform is still actively being implemented in the Philippines with a significant 90 percent completion of total targets as of 2018. However, the remaining balance of 500 to 700 thousand hectares consists of large private lands where landlord resistance is high and agrarian disputes have increased dramatically since 2009 (Quizon, Marzan, De Vera and Rodriguez, 2018).

**Figure 2. Key periods of redistributive agrarian reforms in Asia**



\*For Cambodia and Kyrgyzstan, agrarian reform involves the redistribution of State lands, private land registration and titling in the post-Socialist period.

Source: Quizon 2013b, as revised

**Two types of country reforms.** Agrarian reforms in the eight countries of study can be seen in terms of two broad categories.

- *Redistributive agrarian reforms based on a “land to the tiller” principle* to address the vestiges of feudalism and colonialism in the post-Independence era. These reforms have been legislated since the 1950s in Bangladesh, India, Indonesia, Nepal, Pakistan, and the Philippines. Their approaches vary slightly and cover tenant rights and tenancy reforms, imposition of land ceilings, and the redistribution of “surplus” private lands above the ceilings to the landless. Many of these reform programs have also involved the redistribution of State lands, and the resettlement of landless into less crowded regions.
- *Redistribution of State lands, towards a more open market-economy* in post-socialist (and post-Soviet) regimes where all lands were previously held by the Central State. These are more recent reforms that have been legislated in Cambodia and Kyrgyzstan since the late 1990s. The approaches to reform focus on the reinstatement of private property rights, restitution of land (to their previous owners), the dismantling of State collectives and redistribution of farms to individual households, land registration, and land titling.

**Coverage.** Overall, redistributive agrarian reforms have had limited impact in most countries. Table 4 shows the coverage of redistributive land reforms in selected Asian countries.

**Table 4. Coverage of redistributive land reforms in selected Asian countries**

Country <sup>(a)</sup>	Data as of (Year)	Redistributed Area (hectares)	As % of Arable Land	Beneficiary-Households	As % of Rural Households
Japan		2,000,000	80.0	4,300,000	60.9
South Korea		577,000	65.0	1,646,000	76.0
Taiwan		278,307	48.0	432,000	62.5
China		64,000,000	50.0	210,000,000	80.0
Vietnam		11,000,000	90.0	---	75.0
India <sup>(b)</sup>	2005	2,630,456	1.4	5,600,000	3.8
Indonesia <sup>(c)</sup>	1967	370,915	---	---	---
Nepal <sup>(d)</sup>	2018	31,624	1.6	154,856	---
Pakistan <sup>(e)</sup>	---	1,400,000	8.0	288,000	---
Philippines <sup>(f)</sup>	2018	7,328,453	58.9	5,250,822	42.3

**Notes:**

- (a) Comparative data for Japan, South Korea, Taiwan China and Vietnam are taken from the study by Alden-Wily, Chapagain and Sharma, 2008.
- (b) As cited by Hanstad, T., R. Nielsen, D. Vhugen and T Hague, 2007. The figure does not include land reforms by civil society, particularly the *Bhoodan* (land gift) movement which started in Andhra Pradesh in 1951 and collected millions of acres of donated land across States for redistribution to the poor.
- (c) As cited in Luthfi and Fauzi, 2018. This covers the period of 1962-1967 following the Basic Agrarian Law of 1960. In 2015, President Joko Widodo announced the implementation of new agrarian reforms.
- (d) Based on reports of Land Reform Commissions, 1990 to 2015, from the Ministry of Land Reform and Management, Nepal. Data generated by Jagat Basnet, 2018. The total land distributed is 46,694 *bigha*.
- (e) As cited in SCOPE, 2018.
- (f) From Quizon, Marzan, De Vera and Rodriguez, 2018, using data from the Department of Agrarian Reform.

The most significant impact has been in the Philippines, where over seven million hectares of public and private agricultural lands have been redistributed over the past 30 years. However, support to farmers has been limited. Thus, several impact evaluations done on the Philippine Agrarian Reform Program have had similar conclusions – i.e., while the Program has contributed to poverty reduction, the improvements have not been bold enough to bring significant numbers of the rural poor out of poverty.

For redistribution of State lands in post-socialist States, the process of land transfer and registration is still ongoing. In Cambodia, there has been a significant growth in the number of households with land titles. However, the more than three million titles issued is only three-fifths of the total target, and more than two million landowners remain without security of their land tenure.



Legal certainty is achieved through the land registration processes. This includes an infrastructure of survey, cadastral mapping, registration of plots and land administration. Thus, land registration plays a strategic role in agrarian reform.

### **Equal land rights for women**

In many Asian countries, women's access to land is mediated by conflicting frameworks. On one hand, the rights of women are legally defined by national Constitutions, Civil Codes, Family Law and statutes that emphasize equal rights to property, and non-discrimination. Yet in reality, women's rights are often dictated by religious and traditional laws which are practiced under claims to minority/customary rights and religious freedoms.

Thus, while the laws guarantee equal rights for both women and men in *public* life, the rights do not necessarily extend to their *private* life, as these are often based on religion and custom. In Bangladesh, cultural norms dictate that a "good sister" will forfeit her share of paternal property in cases of inheritance. In Cambodia, the *Chbab Srey*, the traditional code of conduct for women, reinforces the belief in women's inferior status within the family. While civil laws in Pakistan do not discriminate against women, matters related to succession and inheritance are dealt in accordance with the *West Pakistan Muslim Personal Law*, which stipulates that women be accorded half the share of a male sharer. Under traditional law and customary practice in many Asian countries, women's access to land has been mediated through men, and women acquire land through their husbands or male relatives.

Land reform programs often failed to recognize the importance of the way in which control of assets, in particular land, is assigned within the household. It was wrongly assumed that "women's interests were subsumed within those of the household and could adequately be represented by men." In most countries, the man is often considered as the head of the family, and this status gives him authority over decisions on property and land.

Thus, under the Philippine agrarian reform program, despite existing laws that establish equal land rights, women constitute only 30 percent of all listed agrarian reform beneficiaries, and 29 percent of all holders of land ownership certificates. In Kyrgyzstan, a study conducted in 2012 showed that, after 10 years of land distribution, almost 60 percent of rural women report that they do not own any land, compared to 40 percent of rural men; however, men are more likely to be the sole owner of land (22 percent of men surveyed) than women (three percent of women surveyed) (as cited in Tazhibaeva and Maratova, 2018).

The importance of equal and independent land rights for rural women has taken an added dimension in recent decades as Asian agriculture gets increasingly feminized – as men migrate to the cities in search of work, and women are left behind. Yet many existing laws and regulations discriminate against women farmers. In Bangladesh, under the *Khas Land Management and*

*Distribution Policy*, single, widow or divorced women cannot get the land allotment without an able son.

There are efforts to recognize women's land rights. In Nepal, the government started to issue joint ownership certificates at the cost of 100 rupees (almost one US dollar). In a country with high gender disparities, this is just a small but positive step.

Studies shows that when productive assets (especially land) are placed in women's hands, they can make a big difference. Households where women control greater shares of assets and land at marriage have been shown to spend more on basic household needs such as food and on children's welfare and education.

Independent land rights for women is a necessary first step towards increasing women's control of assets. Women with land would have greater bargaining power. This would enable them to negotiate more equal allocations in the family and higher wages in the labor market. Formal land titles and entitlements would contribute to improving women's access to production credit. Titles would also empower women to assert themselves better with external agencies that provide inputs and extension services. Land rights would further empower women by improving the treatment they receive from other villagers, and by increasing their access to rural decision-making bodies as well as to farmers' institutions.

**Table 5. State of rural women's rights and access to land in eight Asian countries, 2018**

Country	Legal framework	State of land rights and access
<b>Bangladesh</b>	<ul style="list-style-type: none"> <li>▪ Ratified CEDAW, but with expressed reservations on <i>Article 2</i>; committed to the Beijing Platform for Action.</li> <li>▪ Although the Constitution of Bangladesh recognizes equal rights for both women and men in <i>public</i> life, the same does not extend to their <i>private</i> life which is based on religion. For instance, property rights are still directed by religious inheritance law which is discriminatory towards women.</li> <li>▪ <i>Khas Land Management and Distribution Policy</i> – recognizes joint ownership of husband and wife. However, some provisions undermine women's status as an individual which recognizes that single, widow or divorced women cannot get the allotment without an able son.</li> </ul>	<p><b>Land ownership</b> While 53.1 percent of rural population are women, they possess only 15.8 percent of land in the rural areas. The average size of agricultural land (including water-bodies) owned by men in rural areas is 46.2 decimals (0.19 hectares), while women own only 7.2 decimals (0.03 hectares) (Barkat, et. al. (Eds.), 2017).</p> <p><b>Participation in decision-making</b> Women's participation in policy-making is ignored for historical and systematic reasons. All decisions regarding women's access to and rights over land are taken by government officials who are mostly men. There is a pressing need for including women in the positions of leadership, in this case, land bureaucracy (Moni and Sumaiya, 2013).</p>



<p><b>Cambodia</b></p>	<ul style="list-style-type: none"> <li>▪ Ratified CEDAW; committed to the Beijing Platform for Action</li> <li>▪ The <i>1993 Constitution</i> provides, among others, that men and women are equally entitled to own property. Unfortunately, the <i>Chbab Srey</i>, the traditional code of conduct for women, reinforces the belief in women's inferior status within the family, thus promoting inequality.</li> <li>▪ <i>Land Law of 2001</i> seeks to determine the regime of ownership for immovable properties "for the purpose of guaranteeing the rights of ownership and other rights related to immovable property, according to the provisions of the 1993 Constitution." Both wife and husband have the right to hold the collective property, as seen that both their names are on the certificate of land title.</li> <li>▪ Women's property and use rights in personal laws – the <i>Marriage and Family Law of 1989</i> stipulates that men and women are equal in all aspects of the family and have equal rights to use, obtain benefits from, and manage joint property. But according to the Cambodian NGO Committee on CEDAW (NGO-CEDAW) Shadow Report, from 6 September 2013, "The Cambodian law on Marriage and Family has many discriminatory clauses deeming women unequal to men. Women have unequal property rights in Cambodia."</li> </ul>	<p><b>Land ownership</b></p> <p>10.9 percent of rural women own land, 37.9 percent own land jointly with their husbands, and 20.2 percent do not own land (National Institute of Statistics, et. al., 2015).</p> <p>On the other hand, rural men own 9.1 percent of land, 7.9 percent jointly own land with their wives, and 45.7 percent do not own land.</p> <p><b>Participation in decision-making</b></p> <p>Women are voted by the community to be the leaders of the collective land title (CLT) Committee (Cham, S. et. al., 2018). As reported by the Ministry of Women's Affairs in Cambodia, 2014:</p> <p>"While the number of women in public decision-making positions has increased, overall men continue to occupy decision-making positions at all levels. Progress in increasing women's representation is slow. Female representation in the Senate remains unchanged since its inception in 1999 and has remained under 15 percent."</p> <p>"In the National Assembly, female representation has more than tripled in two decades" – from six percent representation in 1993 to 20.33 percent in 2013.</p> <p>"The proportion of women in the Judiciary has increased since 2008, however women continue to be under-represented at all levels of the Judiciary."</p> <p>"Men continue to hold the majority of decision-making positions at Provincial/Capital, Municipal and District levels."</p> <p>"The percentage of female Commune Councilors increased from 15.1 percent in 2007 to 17.78 percent in 2012, however, men hold the majority of decision-making positions at the commune level."</p> <p>"Women remain under-represented in managerial positions within the civil service."</p>
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<p><b>India</b></p>	<ul style="list-style-type: none"> <li>▪ Ratified CEDAW; committed to the Beijing Platform for Action</li> <li>▪ Despite the <i>Constitutional Fundamental Rights</i>, adopted in 1950, which guarantees equality of opportunity and rights to all citizens, and the persistence of the <i>Married Women’s Property Act, 1874</i>, which recognizes the property acquired by any married woman in any employment, occupation or trade carried on by her in her individual capacity as her separate property; landed property is governed by <i>inheritance laws</i> shaped by different religions. The <i>Hindu Succession Act of 1956</i> was amended in 2005 to remove gender discriminatory provisions, entitling a daughter to inherit family property including agricultural land on par with the son. Nonetheless, the prevailing customs, especially in the rural areas, continue to hold sway and prevent women from gaining ownership of ancestral land or property.</li> </ul>	<p><b>Land ownership</b> According to the Agricultural Census (2010-2011), as cited by FAO, 12.8 percent of women in India are agricultural holders (FAO, 2019).</p> <p><b>Participation in decision-making</b> “In the Cabinet, formed after the general election in 2014, there were only 5 women ministers out of total 27 ministers. India’s global rank is 88 in this regard as per the ‘Women in Politics Map 2017’, published by the Inter-Parliamentary Union (IPU) and UN Women” (Golder, 2017).</p>
<p><b>Indonesia</b></p>	<ul style="list-style-type: none"> <li>▪ Ratified CEDAW; committed to the Beijing Platform for Action</li> <li>▪ <i>Article 9 Number (2) of the Basic Agrarian law</i>, stipulates that every citizen, either male or female, has equal opportunity in gaining a land right and in benefiting from the right for his or herself and their families.</li> </ul>	<p><b>Land ownership</b> For centuries now, women farmers in Indonesia only have what is known as ‘access rights’ to land and other resources. Referring to property rights, they have access rights (the right to enter the territory of the resources that have clear boundaries and receive the non-extractive benefits), withdrawal rights (the right to utilize the resources), and the right to produce (Ostrom &amp; Schlager, 1992).</p> <p>Meanwhile, control over land in the form of management rights, the right to determine the rules of resource utilization, exclusion rights, and alienation rights remain in the hands of the men (Yayasan Bina Desa, 2015).</p> <p>According to 2018 Inter-Census Agricultural Survey, more than eight million (24 percent of the total farming population) are women (BPS-Statistics Indonesia, 2015).</p> <p><b>Participation in decision-making</b> “Women’s representation in the House of Regional Representatives is higher than in the Parliament (18 percent in 2009) and increased from 22.6 percent in 2004 to 26.5 percent in 2009... Women’s representation in decision-making roles in government and the civil service remains low” (Ministry of Empowerment, Women, and Child Protection, nd).</p>



<p><b>Kyrgyzstan</b></p>	<ul style="list-style-type: none"> <li>▪ Ratified CEDAW</li> <li>▪ The <i>Constitution</i> prohibits discrimination based on sex; grants equal rights to all and establishes that men and women have equal opportunities and freedoms, thus, it includes international agreements to which Kyrgyzstan is a party.</li> <li>▪ The <i>Family Code of KR (No. 201 of 30 August 2003)</i> establishes the rule that all marital property acquired during marriage is considered joint property and is managed jointly by the spouses. In the event of divorce, the joint property of the spouses shall be divided in equal parts, unless otherwise specified in the marriage contract. In addition, the legislation of the Kyrgyz Republic also determines equal rights to inheritance for sons and daughters.</li> <li>▪ The Law of the Kyrgyz Republic “<i>On the Basics of State Guarantees for Ensuring Gender Equality</i>” prohibits direct and indirect gender discrimination, including traditional ways of life and cultures that discriminate against women. It guarantees equal rights to property, determines equal rights to use land and to protect these rights equally for men and women.</li> <li>▪ The Law of the Kyrgyz Republic “<i>On State Guarantees of Equal Rights and Equal Opportunities for Men and Women</i>” defines State guarantees for granting equal rights and opportunities to persons of different gender in political, social, economic, cultural and other spheres of human life.</li> <li>▪ The <i>National Strategy for Achieving Gender Equality until 2020</i> is the first long-term document in the field of achieving gender equality in Kyrgyzstan.</li> </ul>	<p><b>Land ownership</b></p> <p>At the time of the previous agricultural census (2002), 12 percent of farms were registered with women; however, women owned only 9.2 percent of the total arable land belonging to such farms and 9.3 percent of the acreage. To date, there is no similar data on agricultural land, but according to a study conducted in 2012 (after 10 years), almost 60 percent of rural women report that they do not own any land. It is noteworthy that more than 40 percent of rural men are also not owners of land, but men are much more likely to be the sole owner of land (22 percent of men surveyed) than women (3 percent of women surveyed) (National Statistical Committee of the Kyrgyz Republic, et al., 2013).</p> <p><b>Participation in decision-making</b></p> <p>“The proportion of women among the heads of <i>Ail Okmoty</i> (local governance bodies) does not exceed 5 percent, and only on January 1, 2014 this indicator increased by 0.6 percentage points compared to the year of 2013 – out of 453 heads of <i>Ail Okmoty</i>, 24 were women. The national level of participation of women in government as a whole is also showing a negative trend” (Kyrgyz Republic, nd).</p> <p>There is a “washout” of women in the executive and legislative branches of the government. 2011 data shows that women represented 20 seats in the legislative branch (lowest record since 2008) compared to the 60 of men (Kyrgyz Republic, nd).</p>
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<p><b>Nepal</b></p>	<ul style="list-style-type: none"> <li>▪ Ratified the CEDAW; committed to the Beijing Platform for Action</li> <li>▪ The <i>Constitution</i> provides for the recognition of equal rights of ancestral property without discrimination on gender; equal rights to property and family affairs; equal rights to acquire, enjoy own, sell, have professional gains, and otherwise utilize, or dispose the property.</li> <li>▪ The woman’s right to property is elaborated in the <i>Civil (Code) Act of 2017</i>.</li> <li>▪ <i>Muluki Ain Eleventh Amendment Act, 2058 [2002]</i> – the daughter can inherit parental property when she reaches the age of 35. A wife can also get a share of her husband’s property. However, there some discriminatory provisions still remain (CSRC, 2015).</li> </ul>	<p><b>Land ownership</b> Female ownership over fixed assets (includes ownership of land or house or both in the name of female members of the household) is 19.7 percent. Of this, 18.0 percent are in rural areas. For FY 2016/2017 alone, data shows that 223,359 land ownership certificates in the name of female were dispatched from around the country (CBS, 2011).</p> <p><b>Participation in decision-making</b> “Women’s representation in the Constituent Assembly dramatically increased to 29 percent in the November 2013 elections from 2.9 percent in 1991” (UN Women, nd).</p>
<p><b>Pakistan</b></p>	<ul style="list-style-type: none"> <li>▪ Ratified CEDAW, but expressed reservations about certain articles which include women’s inheritance rights; ratified ILO Convention 169</li> <li>▪ The Constitution pledges equal rights to women. However, social, cultural, and religious structures put women at a severe disadvantage as these promote gender inequality.</li> <li>▪ Civil Laws in Pakistan do not discriminate against women. But matters related to succession and inheritance is dealt with in pursuance of West Pakistan Muslim Personal Law, which stipulates that women be accorded half the share of a male sharer.</li> <li>▪ State-led land reforms have not recognized women as a separate group of stakeholders in property rights. However, some women did receive land when land was redistributed to their families.</li> <li>▪ Women’s land rights are generally absent from general discourse. Women’s empowerment is mostly perceived in terms of welfare – i.e., access to education, health and non-farm assets, and their economic status is measured in terms of employment.</li> </ul>	<p><b>Land ownership</b> Even if women wanted to claim their rights, they could not receive land because they were not enrolled on revenue records as tenants; and no legal mechanisms were developed to acknowledge women’s economic contribution inside and outside home and the agricultural labor that they provide (SCOPE, 2018).</p> <p>It is difficult to determine the extent of women’s access to and control over land, as data is nonexistent (SDPI, 2008). Official documents including census, household panel surveys, and other official surveys do not include gender disaggregated data on these issues. However, anecdotal evidence suggests that very few women own land and even fewer have control over it (SDPI, 2008; GEP, 2011; Morrison et. al., 2007).</p> <p><b>Participation in decision-making</b> Women’s participation in decision-making in farm activities is very low.</p> <p>Women’s overall representation in the legislature after 2013 is at 19.5 percent (True, et. al., as cited in Awan, 2016).</p>



<p><b>Philippines</b></p>	<ul style="list-style-type: none"> <li>▪ Ratified CEDAW; committed to the Beijing Platform for Action</li> <li>▪ Passed the <i>Women in Development and Nation Building Act, 1992</i> and <i>Magna Carta of Women, 2009</i></li> <li>▪ Laws that specifically mention women’s land rights are the <i>Indigenous Peoples Rights Act of 1997 (IPRA)</i>, the <i>Comprehensive Agrarian Reform Program Extension with Reforms (CARPER)</i>, and the <i>Fisheries Code</i>. However, women’s land rights are assumed to be covered as part of the household, especially under IPRA and the Fisheries Code.</li> <li>▪ CARPER, on the other hand, recognizes women’s right to own and control land “independent of their male relatives and of their civil status.” The law also mandates the provision of “equal support services for women.”</li> <li>▪ Themes present in the legal frameworks include titling, access to information, statement of rights and entitlements, share in the produce/recognition for the value of work, right to representation and participation, and budget provisions. However, these provisions do not necessarily translate into actual implementation.</li> <li>▪ The Magna Carta of Women and several administrative orders from the Department of Agrarian Reform (DAR) and the Department of Environment and Natural Resources (DENR) mandate that land titles be issued in the name of both spouses, under joint titling. There are, however, no specific provisions on titling for fisher women and indigenous women.<sup>2</sup></li> </ul>	<p><b>Land ownership</b> Rural women still lack equal rights to own, manage and control land, as women constitute only 29.5 percent of the listed agrarian reform beneficiaries, 13.8 percent of Emancipation Patent (EP) holders, and 32.8 percent of all Certificates of Land Ownership Awards (CLOA) holders. (PSA, 2016).</p> <p><b>Participation in decision-making</b> In 2010, Civil Service Commission (CSC) conducted an inventory of government personnel. The quick survey revealed a total of 1,409,660 government personnel in 2010, up from 1,313,538 in 2008, reflecting a difference of 96,122. It concluded that by the end of December 2010, female government employees outnumbered the males (58.7 percent versus 41.3 percent) (Philippine Commission on Women, 2014).</p>
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## Recognition of land rights of indigenous peoples

Asia is home to 70 percent of the world’s indigenous peoples. In each country, indigenous peoples and communities are known by different names – tribes, *adivasis* (indigenous or original people), indigenous cultural communities, indigenous nationalities or *adivasi janajati*, communities of customary law or *masyarakat adat*, and ethnic minorities.

<sup>2</sup> Panganiban, I. M. (2015). Philippines. Lok Niti: Women stake their claim to land. 19(2):2015. Quezon City: Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC).



In India, “scheduled tribes” is the legal term used for the purpose of “administering” certain specific Constitutional privileges, protection and benefits for specific sections of people historically considered disadvantaged and backward.

In most countries, the population of indigenous peoples is based mainly on estimates. The sole exception is India, which includes “scheduled tribes” in its census – due to the Constitutional recognition given to them.

Today, indigenous peoples are said to comprise as much as 36 percent of the population in Nepal, 12 to 15 percent in the Philippines, 8.6 percent in India, 1.7 percent in Bangladesh, and 1.4 percent in Cambodia. In Kyrgyzstan, “ethnic minorities” constitute an estimated 14.6 percent of the population, according to 2016 government data, with Uzbeks comprising the largest ethnic minority group.

Their actual numbers vary – from 84 million in India (2011) to about 1.6 million in Bangladesh (2011 census) and 190,000 in Cambodia. In Indonesia, AMAN (Aliansi Masyarakat Adat Nusantara) claims that *masyarakat adat* or “communities of customary law” consist of over 1,128 ethnic groups whose territories cover an estimated 40 million hectares of traditional forestlands<sup>3</sup>, or one-fifth of the country’s land area. In India, Scheduled Tribes inhabit about 15 to 20 percent of the country’s land area in largely contiguous areas.

The definition of indigenous peoples varies across countries and institutions. However, there are four universally accepted characteristics—i.e., self-ascription or self-identification, a definable territory, historical resistance to colonization, and continuing cultures and traditions that have historically been differentiated from the majority (Kingsbury, 2013). Other definitions include the presence of customary institutions, the use of indigenous language, and other characteristics.<sup>4</sup>

In India, the identification of Scheduled Tribes has been based on the following characteristics – i.e., “primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large, and backwardness”. These are based on the 1931 Census and have become accepted practice (Bijoy, Gopalakrishnan and Khanna, 2010).

In most Asian countries, indigenous peoples became victims of Western colonization that drove off natives from arable lands, then started to intrude into their forest areas.

After independence, the new emerging nation-States inherited all colonial laws and property. The Regalian doctrine of “all lands belong to the King” became “all lands belong to the State.” Native populations were disenfranchised. Yet the conflicting claims over indigenous peoples’ lands were left unresolved – mainly because the State itself became an interested party or

<sup>3</sup> Presentation of Abdon Nabadan, Secretary-General of AMAN, at the *South-East Asia Sub-Regional Meeting on Extractive Industries and Indigenous Peoples’ Rights to Land and Natural Resources*, 24-25 June 2013, Bangkok, Thailand.

<sup>4</sup> As defined under the World Bank Operational Procedure 4.10 of 2005.



counter-claimant over these lands. In most countries, this has become a major constraint to the recognition of indigenous peoples' lands (Quizon, 2013b).

Worldwide, indigenous peoples account for five percent of the population but represent 15 percent of those living in poverty (IFAD, nd). Similarly, in most Asian countries, studies show that populations that are predominantly indigenous peoples have higher poverty incidence. In India, for instance, “the incidence of poverty amongst Scheduled Tribes is a high 47 percent (rural areas) and 33 percent (urban areas), compared to 28 percent and 26 percent respectively among the total population in 2004–2005 (Bijoy, Gopalakrishnan and Khanna, 2010).”

While most governments in the region have ratified the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) which was adopted in 2007, some countries assert that there are no indigenous peoples in their territory, or that all peoples within their territory are “indigenous,” as if to say that the Declaration does not apply to them.

Moreover, a policy of assimilation remains as the dominant approach among most governments in Asia in dealing with indigenous peoples. Some indigenous practices, such as shifting cultivation or *jhum* farming are outlawed in many countries, thus affecting the capacity of indigenous communities to practice their occupations and to exercise their tenure rights.

In terms of providing special legal recognition and protection of the land rights of indigenous peoples, different States have taken on different approaches. These include, i.e., collective land titling (Cambodia, Philippines), providing for a level of regional autonomy in areas where indigenous peoples are dominant (India, Pakistan, Bangladesh), and issuing entitlement rights to indigenous communities over specific forest and public areas from which derive their livelihoods (India).

In addition, some countries promote political and social inclusion through: (i) devolution & local governance; (ii) incorporating elements of customary law into legal system; and, (iii) peace-building efforts, including addressing discrimination. In particular, the Indian Constitution institutes a number of special provisions for scheduled tribes.

Other policies include the mandatory representation of indigenous peoples in national commissions and recommendatory bodies, and in local government councils and *panchayats* which take decisions on the allocation of local resources.

The two most progressive legislations are the Philippines' *Indigenous Peoples' Rights Act (IPRA) of 1997*, and India's *Recognition of Forest Rights Act (FRA) of 2006*.

In the Philippines, over the past 21 years (1997-2018) some 221 Certificates of Ancestral Domain Titles (CADTs) have been issued for over 5.4 million hectares, representing 18 percent of the country's land area. However, the integrity of Native Title is continually challenged by conflicting



claims, with the influx of migrants and commercial interests, and the continued entry of State-sponsored projects into IP domains. All indigenous peoples' lands have been threatened by mining applications.

In India, as of 31 March 2014, some 3,742,000 claims had been filed and 1,432,000 titles distributed in accordance with the FRA (as cited in Errico, 2017). It is noted that some 70 percent of indigenous peoples' lands are in forest areas (Bijoy, Gopalakrishnan and Khanna, 2010).

In Cambodia, while the law provides for collective land titling (CLT) for indigenous peoples, the process has proven to be tedious, time-consuming, and costly. Moreover, lands under the CLT process continue to be threatened by conflicting claims and government concessions.

In Bangladesh, British colonial laws (i.e., CHT Regulation of 1900) placed the Chittagong Hill Tracts under special administration, that gave it a level of autonomy and the indigenous communities in the CHT a level of self-governance. However, there has been increased intrusion into the CHT over the past two decades, by some of which have been State-sponsored. Similarly, Pakistan's Tribal Areas were designated during the British colonial period.

Laws and regulations that affect indigenous peoples matter remain patchy and many do not sufficiently recognize the *collective* nature of these rights. Even where these rights are legally recognized, their application is often defective, due to a lack of coherence among laws and sector policies or the weak capacity of the responsible State institutions. Thus, indigenous peoples continue to be exposed to land tenure insecurity. A major challenge that countries face is the need to ensure the proper coordination between customary and State law governing land.

*Table 6* presents the state of land rights of indigenous peoples in the eight Asian countries.

Today, discussions over “global goods” are providing an additional negotiating point for indigenous peoples' land rights. These include the role of indigenous communities in:

- *conserving forests* crucial for absorbing greenhouse gases & regulating hydrological flows;
- *providing environmental services* that protect the global commons: safe water, air quality, etc.;
- *maintaining biodiversity and indigenous knowledge systems; and,*
- *maintaining peace and social harmony.*

Conservation and management approaches, such as Indigenous and Community Conservation Areas (ICCA) thus provides an intermediate level of recognition and tenure for indigenous communities. In the Philippines, for instance, the last remaining forests lie in indigenous peoples' domains. Out of the 128 key biodiversity areas, 96 sites or 75 percent are with traditional territories of indigenous communities (De Vera, 2018). These resource-rich areas, which provide essential

ecosystem services such as watersheds, are often targeted for exploitation by investors, as shown by the staggering number of mining applications in ancestral domains. The emergent trend of large-scale agricultural investments also threaten the tenurial security, access and control of indigenous communities over their ancestral domains. In light of climate change and the need to protect land and forests, this provides a new compelling reason for society to recognize and protect indigenous peoples' rights to land and self-governance.

**Table 6. State of land rights of indigenous peoples in eight Asian countries, 2018**

Country	Legal framework & State recognition of land rights
<p><b>Bangladesh</b></p>	<p><b>Indigenous peoples</b></p> <p>Based on conservative estimates, some 2.5 million people (1.7 percent of the total population of 150 million) are indigenous people. They belong to 27 ethnic groups with 26 languages. However, other estimates claim that indigenous peoples in Bangladesh would be around five million, belonging to 49 ethnic groups, having 40 different languages, and dispersed in 48 out of the 64 districts (Barkat and Surawardy, 2018).</p> <p><b>Legal framework</b></p> <p>Indigenous peoples are not formally or constitutionally recognized as such. Article 6(2) of the Constitution states that “The people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis.” This is a declaration of monolithic nationhood which excludes all IPs from the idea of nation. However, Article 23(1) states that “<i>The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.</i>” (Barkat and Surawardy, 2018)</p> <p><b>Legal recognition of land rights</b></p> <p>In the Chittagong Hill Tracts (CHT), most of the land laws were formalized in the British colonial era. The CHT was recognized as a “fully-excluded area.” With the <b>CHT Regulation of 1900</b>, in-migration was strictly controlled, and outsiders were not allowed to acquire land within this territory. In the Pakistan era, an amendment to <b>Rule 34</b> of the Regulation allowed land grants in a restricted manner. An amendment in 1979 further watered down the restriction.</p> <p>Following a 20-year armed conflict in the CHT (1977 to 1997) and the signing of the CHT Peace Accord in 1997, some new laws – i.e., <b>CHT Hill District Commission Laws of 1989</b> and <b>CHT Land Commission for Dispute Resolution Law of 2001</b> were formulated. These provided the IPs with some rights, but not enough to protect their lands.</p> <p>Meanwhile, there is no separate legal framework for indigenous peoples of the Plains, and their distinctive identities in the country continues to be threatened.</p>
<p><b>Cambodia</b></p>	<p><b>Indigenous peoples</b></p> <p>In Cambodia, there are as many as 190,000 indigenous peoples, representing approximately 1.4 percent of the population. Cambodia’s indigenous population comprises 24 different indigenous ethnicities, and 23 minority languages have thus far been identified. Indigenous populations inhabit 15 of Cambodia’s 24 provinces (Vannak, 2016). However, a large majority of the indigenous population in Cambodia live in the four northeastern provinces of Ratanakiri, Mondolkiri, Stung Treng, and Kratie. In the first two of these provinces, indigenous people constitute the majority.</p>



<p><b>Cambodia</b></p>	<p><b>Legal recognition of land rights</b></p> <p>The <b>Land Law of 2001</b> establishes the broad legal framework for collective ownership designed for the protection of indigenous peoples’ lands and traditional ways of life. The law explicitly includes not only the lands that are actually cultivated but also reserves necessary for shifting cultivation. <b>Sub-Decree 83 on Communal Land Titling (2009)</b> provides indigenous communities with legal tenure rights over land, through registration of collective ownership. It requires that all people in the community must agree to communal land identity.</p> <p><b>Current status</b></p> <p>The communal land title (CLT) process is complicated, time consuming (and costly) for local communities. As of 2017, CLTs have been issued to only 15 out of the country’s 458 indigenous communities<sup>5</sup>. These consist of 519 issued titles covering 16,271 hectares for 1,784 households. Moreover, lands under CLT continue to be threatened by the issuance of economic land concessions to private companies. Thus, many communities have abandoned communal land titling in favor of private titling which was perceived to be simpler than the CLT process (Il, Cham &amp; Bora, 2018).</p>
<p><b>India</b></p>	<p><b>Indigenous peoples</b></p> <p><i>Adivasi</i> make up 8.6 percent of India’s population (or 104 million people), with about 700 tribal groups, according to the 2011 census. They constitute 11.3 percent of the total population of rural areas and 2.8 percent of urban areas. They are also referred to as “Scheduled Tribes” (STs) – a term used for the purpose of “administering” certain specific constitutional privileges, protection and benefits for specific sections of people historically considered disadvantaged and backward. More than half the STs inhabit the central or the mid-Indian region while they form the overwhelming majority of the population in some of the Northeastern States. They consist mainly of landless poor forest dwellers and shifting cultivators, small farmers and pastoral and nomadic herders.</p> <p><b>Legal recognition of land rights</b></p> <p>Article 13 of the Constitution recognizes customary law as part of the legal system. Some basic conditions for their recognition as customary law includes whether it finds its source in antiquity; is reasonable; is in conformity with statutory law; is followed openly and freely (as opposed to under coercion); and, and is consistent with morality and public policy. In certain aspects of personal laws, such as marriage, divorce and inheritance, religious texts are also accepted to a limited extent as an additional source of law.</p> <p>The Constitution institutes a number of special provisions for STs, including:</p> <ul style="list-style-type: none"> <li>● Special State provisions for the advancement of backward classes (including STs);</li> <li>● Creating a National Commission for Scheduled Tribes (Art 338A);</li> <li>● Promoting the educational and economic interests (especially of Scheduled Castes and STs), and protection from social injustice and all forms of exploitation;</li> <li>● Reservation of seats for STs in the <i>Lok Sabha</i> (House of the People), the State Legislative Assemblies, and the <i>Panchayats</i> (village councils); and,</li> <li>● Special status to the States of Nagaland, Assam, Manipur, Sikkim, Mizoram, Arunachal Pradesh, and Administration of Tribal Areas in Assam, Meghalaya, Tripura and Mizoram</li> </ul>

<sup>5</sup> The quoted total figure of 458 indigenous communities is taken from Vannak, 2016.



<p><b>India</b></p>	<p>Key legislations include <b><i>The Scheduled Castes and the STs (Prevention of Atrocities) Act of 1989</i></b> which is aimed at checking and deterring atrocities against STs (and Scheduled Castes), and <b><i>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act of 2006</i></b> that recognizes the rights of STs and other forest dwellers over forests and forest resources.</p> <p><b>Status</b></p> <p>Approximately 70 percent of the traditional homelands of indigenous peoples in India has historically been designated as forest and has been brought under the control of the Government since colonial time. Around 4.3 million indigenous people live inside protected areas and some of the forest areas have actually been regarded as “encroached” by indigenous peoples.</p> <p>The Forest Rights Act recognizes individual and collective rights to forest lands and resources, including water bodies and grazing areas, in favor of scheduled tribes and other traditional forest dwellers, and the granting of substantive decision-making power to the village assembly, whose consent is required, for instance, in the case of relocation (Preamble, Art. 4 ff). As of 31 March 2014, some 3,742,000 claims had been filed and 1,432,000 titles distributed in accordance with the Act (as cited in Errico, 2017).</p>
<p><b>Indonesia</b></p>	<p><b>Indigenous peoples</b></p> <p>There are no official figures on the population of indigenous peoples in Indonesia. But according to AMAN (Aliansi Masyarakat Adat Nusantara or the Indigenous Peoples’ Alliance of the Archipelago) <i>masyarakat adat</i> or “communities of customary law” consist of over 1,128 ethnic groups whose territories cover an estimated 40 million hectares of traditional forestlands<sup>6</sup>, or one-fifth of the country’s land area.</p> <p><b>Legal recognition of land rights</b></p> <p>Overall, the lack of harmonization between statutory and customary (<i>adat</i>) law results in an overall situation of tenure insecurity for indigenous communities. <i>Masyarakat hukum adat</i> (community customary law) is recognized under the <b>1945 Constitution</b>. Article 18 recognizes Indonesia as a united but diverse nation. A <b>2000 amendment</b> to Article 18 further provides that “the state shall acknowledge and respect <i>masyarakat adat</i>” but that this recognition shall be in accordance with the unitary state and shall be regulated by law.” The <b>Basic Agrarian Law of 1960</b> recognizes <i>adat</i> land rights, yet its implementing regulations were issued only in 1999, or 39 years later. Thus, while <i>masyarakat adat</i> has been recognized as a matter of State policy, there has been no enabling legislation focused specifically on <i>adat</i> land or customary land rights (Quizon, 2013a).</p> <p>The <b>amended Forestry Law 41 of 1999</b> establishes a new category of Customary Forest (<i>hutan adat</i>), but this refers more to a system whereby indigenous communities are given rights to exercise forest management. Further, the amended Forestry Law classifies <i>adat</i> forests as territories that fall within the boundaries of State Forests. However, in May 2013, the <b>Constitutional Court</b> declared certain provisions in the 1999 Forestry Law as unconstitutional, noting that customary forests (<i>hutan adat</i>) should <i>not</i> be classified as falling forests within the State Forest Zone (Quizon, 2013a).</p>

<sup>6</sup> Presentation of Abdon Nabadan, Secretary-General of AMAN, at the *South-East Asia Sub-Regional Meeting on Extractive Industries and Indigenous Peoples’ Rights to Land and Natural Resources*, 24-25 June 2013, Bangkok, Thailand.

<p><b>Indonesia</b></p>	<p><b>Current status</b></p> <p>Over the past four years (2014-2018) under the Jokowi government, 33 certificates have been issued for “indigenous peoples’ forests” covering 25,110 hectares. In terms of area coverage, this represents 0.5 percent of the government’s stated target to recognize five million hectares of customary forests, and 0.3 percent of the total 9.3 million hectares of indigenous peoples’ lands that have been mapped out by AMAN (KPA, 2018).</p>
<p><b>Kyrgyzstan</b></p>	<p><b>Indigenous peoples</b></p> <p>“Ethnic minorities” constitute an estimated 14.6 percent of the population, according to 2016 government data. Uzbeks comprise Kyrgyzstan’s largest ethnic minority and are concentrated mainly in the southern and western parts of the country (Minority Rights Group International, 2018).</p>
<p><b>Nepal</b></p>	<p><b>Indigenous peoples</b></p> <p>Indigenous peoples are officially described as “indigenous nationalities” (or <i>adivasi janajati</i>) and constitute 36 percent (approximately 8.5 million) of the country’s 26 million population. Based on the 2001 census, Nepal has 125 castes and ethnic groups speaking 123 languages.</p> <p><b>Legal recognition of land rights</b></p> <p>The Government does not officially recognize indigenous territories or community ownership of land. With the <b>Land Reform Act of 1964</b>, the traditional <i>kipat</i> land system was officially abolished. <i>Kipat</i> is a system of land tenure that is based on communal land ownership, management and cultural governance. In the 2015 Constitution, the lack of reference to indigenous peoples’ rights to land and natural resources has been regarded as one of the “most glaring omissions.” Only <i>individual land rights</i> are protected under <b>Article 25</b> of the 2015 Constitution. <b>Article 261</b> of the Constitution merely provides for the establishment of an Indigenous Nationalities Commission, but fails to specifically recognize IP rights to land, territory, resources, and sacred sites.</p> <p>Although the Government does not recognize traditional land tenure systems of indigenous peoples, customary practices like <i>kipat</i> continue without legal recognition. Thus, indigenous peoples have been struggling to protect their ancestral land and resources against encroachment.</p>
<p><b>Pakistan</b></p>	<p><b>Indigenous peoples</b></p> <p>Pakistan’s population is made up of six principal ethnic groups. One of these are the Pashtun, which comprise 15 percent of the population, and are the principal inhabitants of Pakistan’s two Tribal Areas, which are the poorest regions on the country. These tribal areas stretch along the eastern border of Afghanistan and are administratively divided into the Provincially Administered Tribal Areas (PATA) and the Federally Administered Tribal Area (FATA) (SCOPE, 2018; USAID, 2018). In May 2018, the special status of FATA was formally dismantled by merging the tribal agencies with the neighboring province of Khyber Pakhtunkhwa (KP).<sup>7</sup></p> <p><b>Legal recognition of land rights</b></p> <p>Tribal Areas are administrative subdivisions designated under Article 246(b) of the Constitution. In Tribal Areas, people regulate their own affairs in accordance with customary law, and the government functions through local tribal intermediaries.</p>

<sup>7</sup> Prior to the merger with KP province, the FATA was governed by a special set of laws known as the Frontier Crimes Regulations, enacted in 1901 by the British Empire to confront Pashtun insurgents. The law was amended in 2011.

<b>Pakistan</b>	Pakistan has a highly diverse body of customary laws governing land rights. Customary law covers issues from marital property rights to principles governing boundaries and is enforced by established tribunals known as <i>jirgas</i> . Tribes recognize individual land ownership, ownership by extended families, and collective ownership by a tribe (SCOPE, 2018).
<b>Philippines</b>	<p><b>Indigenous peoples</b></p> <p>The National Commission on Indigenous Peoples (NCIP) estimated the population of indigenous peoples in the Philippines between 12 to 15 million, constituting 10 to 15 percent of the country’s population in 2009. They are distributed among 110 ethno-linguistic groups or ‘cultural communities’ spread across 65 of the country’s 78 provinces, with a large majority (61 percent) found in Mindanao.</p> <p><b>Legal recognition of land rights</b></p> <p>The <i>Indigenous Peoples Rights Act (IPRA) of 1997</i> is a landmark legislation that recognizes the rights of indigenous peoples (IPs) to their ancestral domains and lands, self-governance, and cultural integrity. The law recognizes the “ownership” of the indigenous community over their traditional territories which include land, bodies of water, and all other natural resources therein.</p> <p><b>Current status</b></p> <p>From 1997 to 2018, some 221 Certificates of Ancestral Domain Titles (CADTs) have been issued over 5.4 million hectares, representing 18 percent of the country’s land area. However, the integrity of Native Title<sup>8</sup> is continually challenged by conflicting claims, with the influx of migrants and commercial interests, and the continued entry of State-sponsored projects into IP domains.</p>

## On secure tenure rights for small fisherfolk, pastoralists, and other sectors

Another issue is related to fisheries rights. In Pakistan, fisheries is controlled by provincial departments, which sanction fishing contracts on payment of fees. However, this lease system often deprives traditional fisher communities of the right to fish freely and forces them to sell their catch to leaseholders at miserable rates.

In the Philippines, the Fisheries Code of 1998 grants preferential fishing rights to small fisherfolk over municipal waters (i.e., inland waters and the open sea within 15-kilometers from shore). While this has helped protect the livelihoods of small fisherfolk, law enforcement remains a challenge. The law also provides for the establishment of fishing settlements in public land in the proximity of traditional fishing areas, although none has been established over the past 20 years in the absence of implementing rules and regulations for this provision. Municipal fisherfolk still rank among the poorest of the poor in the country.

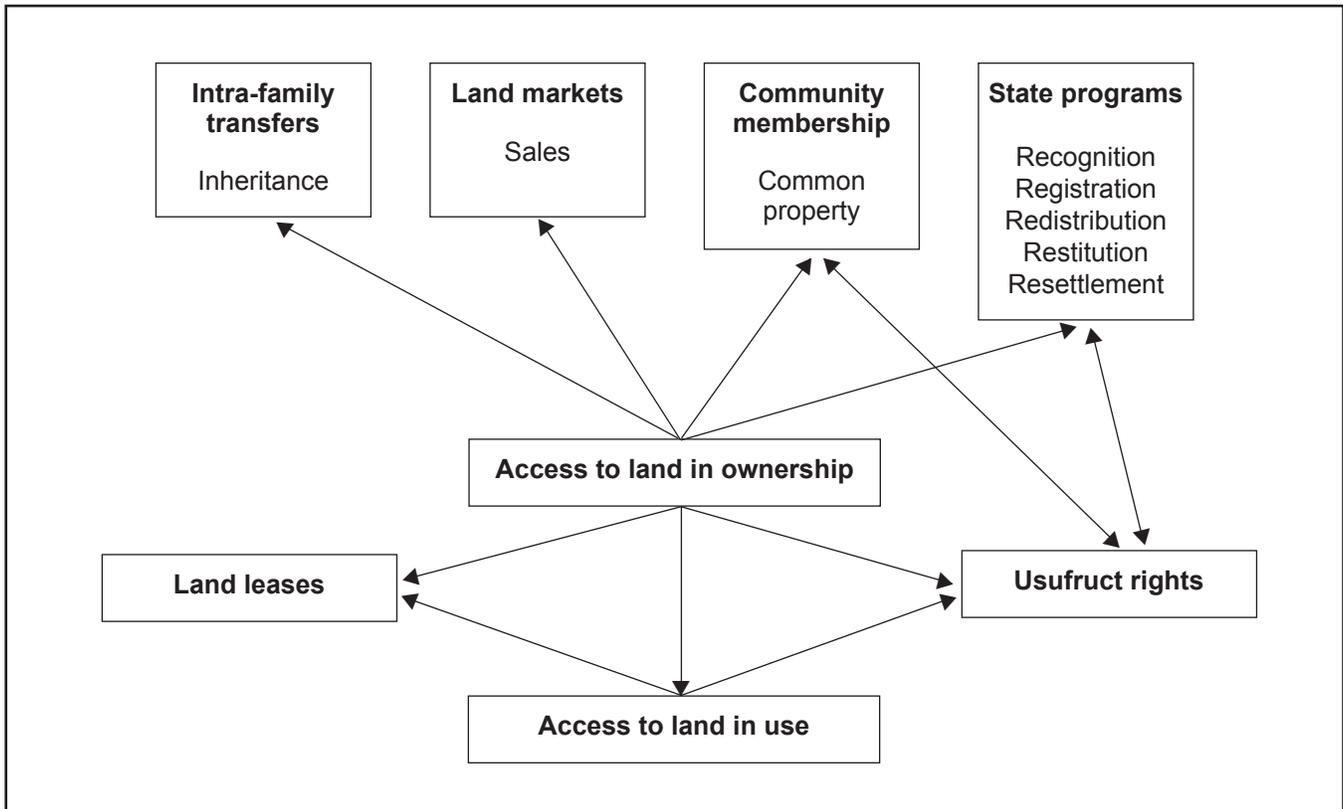
<sup>8</sup> *Native title* is the right of indigenous peoples to own their traditional lands and waters, as recognized by common or customary law.

## SUMMARY OF FINDINGS

### On access to land by rural poor sectors

In summary, there are some pathways by which the rights to land for rural poor sectors should be negotiated and ensured.

**Figure 3. Pathways on access to land<sup>9</sup>**



*First* is through *intra-family* transfers (through gifts, purchases, agreements or inheritance). It is within families and households that equal land rights for women should first be negotiated and ensured, as women and girls often lose their land rights at times of inheritance, marriage, separation, and divorce.

The *second* pathway is through markets, or *purchases of land*. Although it is highly unlikely for poor peasant families to purchase land, there are special cases where remittances from family members working in towns or abroad enable poor households to purchase a homelot or a small garden plot. Also, traditional systems of leasing lands enable those investing with money or labor to secure user rights over small plots.

<sup>9</sup> Quizon, Antonio (2011). Framing the Asian Land Debates. Powerpoint presentation. Adapted and revised from the work of De Janvry, Alain and Elisabeth Sadoulet (2001). Access to Land and Land Policy Reforms. Helsinki: UNU World Institute for Development Economics Research (UNU/WIDER).



The *third* pathway is through *community or organizational membership*, especially where State laws provide recognition of customary rights, traditional use, and collective management.

Finally, the *fourth* pathway is through *State-led* programs that emphasize land reforms and land redistribution for disadvantaged and marginalized sectors of the rural poor.

### **On land conflicts and the protection of land rights defenders**

There is a general lack of comprehensive data or estimates of land conflicts in each country.

Only a portion of the incidents are reported in media, brought before authorities, or litigated in court. Hence, CSOs and non-State actors have played a key role in monitoring and analyzing land conflicts. In Indonesia, the Consortium for Agrarian Reform (KPA) has been monitoring land conflicts in the country since 2008. In Cambodia, the NGO Forum, along with several other CSOs (including LICADHO and ADHOC) have been monitoring land conflicts arising from the government's issuance of Economic Land Concessions (ELCs) for several years. In Bangladesh, the Kapaeeng Foundation has annually produced *Human Rights Reports on Indigenous Peoples in Bangladesh* since 2015. In the Philippines, the Asian NGO Coalition (ANGOC) collected and analyzed cases of land conflict over an 18-month period in 2017 to 2018. In India, there is a Land Conflict Watch portal (<https://www.landconflictwatch.org/>) which is a network of researchers and journalists across the country that records the major ongoing land conflicts in the country, with an account of 600 ongoing land conflicts.<sup>10</sup>

The data generated from these and other sources indicate the high prevalence of land conflicts:

- In Indonesia, KPA recorded 937 cases of agrarian conflict in a 20-month period (January 2017 to August 2018) – affecting 711,243 families, and a total land area of 1.14 million hectares. And during the 11 years between 2004 to 2015, KPA reports that there have been 1,770 documented agrarian conflicts with a contested land area of nearly seven million hectares affecting over one million households in Indonesia (KPA, 2018b).
- In the Philippines, ANGOC collected 352 documented cases of land conflicts from January 2017 to June 2018. The total land area under dispute was 1.28 million hectares, equivalent to four percent of the total territory of the Philippines.
- In Bangladesh, land in general is cited as the source of almost 60 percent of all legal disputes in the country (TIB, 2015). In the Chittagong Hill Tracts which is the principal home of the country's indigenous people with a separate legal regime, some 30,000 applications are still pending with the CHT Land Dispute Resolution Commission.

<sup>10</sup> For further reading, refer to: Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). (2019). *In defense of land rights: A monitoring report on land conflicts in six Asian countries*. Quezon City: ANGOC. See <https://angoc.org/portal/in-defense-of-land-rights-a-monitoring-report-on-land-conflicts-in-six-asian-countries/>

- In Nepal, nearly 25,000 land-related cases are filed in court each year, based on data for 2012 to 2016, although the numbers are gradually decreasing. This data is based on the Supreme Court Annual Reports.
- In Cambodia, an estimated 400,000 to a million people are said to have been affected by land disputes. ADHOC, a Cambodian human rights group, estimates that some 60,000 people have been forcibly evicted from their homes.
- In Pakistan, between 50 to 75 percent of all court cases are land-related disputes, with some one million land cases pending country-wide.
- In Kyrgyzstan, land conflicts are exacerbated by the scarcity of water and ethnic tensions in the region.

In many Asian countries – historical prejudice, inequitable access to land, weak implementation of land reforms, tensions between statutory and customary tenure systems, misappropriation of State domains, and the lack of regard for human rights of disadvantaged and vulnerable sectors – lie at the roots of many land conflicts.

Moreover, many of the lands under private possession and cultivation remain unregistered. Many poor families lack formal land registration, making them highly vulnerable to landgrabs and eviction over the land that they possess but which others covet. Corruption and landgrabs only serve to escalate conflicts.

Contributing to this problem is the fact that in many countries, land administration systems are obsolete, weak, corrupt, and dysfunctional. This is exacerbated by the multiplicity of laws, overlapping agency jurisdictions and sectoral arrangements on land administration that often undermine people's interests on land.

In Indonesia, for example, land tenure systems are regulated by the State through sectoral law, such as on spatial planning, forestry, plantations, water resources, management of coastal areas and small islands, and land acquisition by the State. However, these sectoral laws contain problems such as unclear mechanisms for land acquisition by private companies, overlapping allocation of areas for different purposes, and failure to recognize customary law (KPA, 2018b).

*Table 7* shows the incidence of land conflicts, and their cited structural causes. Over the past decade, land conflicts have increasingly been driven by:

- Urbanization and land use conversion;
- Increasing commercial pressures on land and the rise of property markets;
- State-led expropriations for development infrastructure, economic zones; and,
- State concessions to private corporations for mining, fisheries, forestry including forestry plantations; plantation agriculture, and property development.



Especially in Cambodia and Indonesia, the awarding of large-scale concessions to private corporations for plantations, mining and logging operations have led to increasing land conflicts between small farming communities and corporations. Many of these have also led to an increasing incursion into indigenous peoples' lands, and takeover of community areas that have long been managed and used by rural people under customary arrangements.

While the existing mechanisms for the resolution of land conflicts differ for each country, these can be categorized as follows:

- Judicial courts
- Administrative bodies
- Local governments
- Community mediation
- Customary systems
- Political negotiation

Each mechanism has its own strengths and limitations. *Judicial courts* are generally slow, cumbersome and costly. *Administrative bodies* may resolve disputes quicker than courts, but they can only address issues within their sectoral jurisdiction (ex, forestry). Also, their impartiality as arbiters come into question when State agencies or State officials are themselves involved in the dispute.

*Local government* systems are more accessible for certain types of local disputes, such as over public land, user boundaries, wages, trespassing, sources of water, pasture land and collection of grass and firewood. They cover disputes between members of the same community. However, when community mediation is done through local political leaders, they can also be used for dispensing political favors, or can exacerbate existing social discrimination against certain sectors (women, IPs) and minority groups. Alternatively, *community mediation* systems, where disputants select a panel of mediators available in the village community, has proven to provide an alternative dispute resolution mechanism for people who have weak access to the formal justice system.

In Nepal, this approach has been recognized through the Mediation Act of 2010. However, the community mediation approach requires building people's capacities for analyzing problems and for negotiating solutions.

Overall, there is need to strengthen especially non-judicial mechanisms for dispute resolution.

Finally, *political negotiation* may be necessary for addressing broader land-related conflicts that are political in nature and require changes in policy or priorities. These include discussions on broader issues of land governance, such as allocating land for informal settlers, instituting agrarian reform policies, recognizing customary land rights, providing preferential access to

marginalized sectors in the granting of public lands and resources, and preventing arbitrary evictions and displacement.

**Table 7. Incidence of land conflicts, and cited causes<sup>11</sup>**

Country	Incidence and drivers of land conflict
<b>Bangladesh</b>	<p><b>Incidence</b></p> <ul style="list-style-type: none"> <li>• Increasing incidence of land conflicts</li> <li>• More than 900 thousand hectares disputed</li> <li>• 80 percent of pending court cases are related to land</li> <li>• 250,000 land-related cases pending in court</li> <li>• 9.5 years on average for disposal of each land case (Barkat, 2015)</li> <li>• Land in general is the source of almost 60 percent of all legal disputes (TIB, 2015)</li> </ul> <p><b>Drivers</b></p> <ul style="list-style-type: none"> <li>• Disputes over private property (intra-family, boundary disputes, sales, rents, and leases)</li> <li>• Conflicts over property rights arising from non-registration of land parcels, missing or inaccurate records, falsification of deeds</li> <li>• Agrarian conflicts, including landowner-tenant disputes, evictions by landowners</li> <li>• Commercialization of agricultural land, contract farming, agribusiness investments with political interests</li> <li>• Indigenous peoples' rights vs. statutory laws (Bengali settlers vs. indigenous peoples in the plains and the CHT)</li> <li>• Unsettled "Vested Property" and "Abandoned Property"</li> <li>• Undistributed <i>khas</i> lands; grabbing of <i>khas</i> lands</li> <li>• Favored State concessions and grabbing of water bodies</li> <li>• Urbanization, rising land prices and real estate/property markets</li> <li>• Land grabs, often involving political corruption</li> <li>• State land acquisitions/ expropriations for infrastructure (e.g., power projects, eco-parks,) and investment areas (i.e., special economic zones)</li> </ul>
<b>Cambodia</b>	<p><b>Incidence</b></p> <ul style="list-style-type: none"> <li>• Increasing number of disputes since 2000s</li> <li>• 400,000 to 1 million people have been personally affected by land disputes, according to estimates. ADHOC reckons that 60,000 people have been forcibly evicted from their homes.</li> <li>• According to the data, State-owned private land grabbing is the most frequent cause, followed by private land grabbing by powerful people.</li> <li>• Violations and abuses over land rights are among the most prevalent human rights violations</li> <li>• There are 190 Economic Land Concessions (ELCs) that had been granted, or for which approval had been sought. All land concessions had been agreed to in principle by the Council of Ministers, covering an area of 2,139,552 hectares, under the MAFF. Economic Mine Concessions agreed to by the Ministry of Mine and Energy cover an (additional) area of 2,318,585 hectares (Open Development Cambodia, 2016).</li> </ul> <p><b>Drivers</b></p> <ul style="list-style-type: none"> <li>• State-led land grabbing of unregistered lands of citizens</li> <li>• Private land grabbing of unregistered lands by powerful people/public officials</li> <li>• Economic land concessions (plantations, mining, hydropower dams, etc.)</li> </ul>

<sup>11</sup> This table is taken from the 2018 land conflict monitoring reports prepared by Land Watch Asia partners to understand the nature, causes, and impacts of land and resource conflicts, and to highlight human rights issues in the context of land conflicts. The published report, "In Defense of Land Rights: A Monitoring Report on Land Conflicts in Six Asian Countries" may be accessed at: <http://angoc.org/portal/in-defense-of-land-rights-a-monitoring-report-on-land-conflicts-in-six-asian-countries>



<p><b>Cambodia</b></p>	<ul style="list-style-type: none"> <li>• Evictions from city development (property markets) and establishment of Special Economic Zones</li> <li>• Government infrastructure projects (roads, railways)</li> <li>• Encroachments on community land (forest lands, communal forests and lands of indigenous people)</li> </ul>
<p><b>India</b></p>	<p><b>Incidence</b></p> <ul style="list-style-type: none"> <li>• Many of the land disputes involve forest lands, thus affecting tribal groups or indigenous peoples</li> <li>• Government considered as primary party in the dispute, together with the aggrieved communities and individuals. In some cases, government acts in behalf of the private/business sector.</li> <li>• According to a 2016 study by Rights and Resources Initiative (RRI) and Tata Institute of Social Sciences (TISS), around 12 trillion rupees worth investment was tied-up in various land conflicts in India. According to another study by RRI and Bharti Institute of Public Policy, Indian School of Business (ISB), 14 percent of almost 40,000 projects initiated between January 2000 and October 2016 were stalled due to land acquisition conflicts. This study notes that projects most likely to be stalled are power projects (including dams), followed by various industrial projects and mining activities (RRI and ISB, 2016).</li> <li>• There are also many conflicts that have been festering for decades. Such long delays usually lead to the huge increases in the costs incurred by the companies making the investment.</li> </ul> <p><b>Drivers</b></p> <ul style="list-style-type: none"> <li>• State-led land acquisitions and expropriations for infrastructure (roads, railways, dams and power projects, ports, tourism, etc.) and Special Investment Areas (i.e., Special Economic Zones)</li> <li>• State-led expropriations for direct investments by private entities</li> <li>• Privatization of community lands that are under common property use and tenure</li> <li>• Land conversion of forests to other uses</li> <li>• State-led takeover of forest lands in the name of afforestation and conservation areas</li> <li>• Mining and plantation concessions</li> <li>• Land encroachment, dispossession (land grabs) against Dalits and Tribals by elites and upper castes</li> <li>• Ethnic conflicts, social and religious tensions that escalate and involve land disputes</li> <li>• Environmental issues (pollution, erosion) and resource conflicts (water) arising from misuse of land and poor management of resources</li> </ul>
<p><b>Indonesia</b></p>	<p><b>Incidence</b></p> <ul style="list-style-type: none"> <li>• From January 2017 to August 2018, there were a total of 937 cases involving 1,144,731 hectares and affecting 711,243 families.</li> <li>• From 2017 to August 2018, most conflicts occurred in the plantation sector (mostly oil palm)</li> <li>• Aside from the plantation sector, there has also been a significant increase in conflicts in the property sector, which is linked to the development of toll roads, airports, and railway networks in certain regions.</li> </ul> <p><b>Drivers</b></p> <ul style="list-style-type: none"> <li>• Private and State-owned plantations (oil palm, rubber) through State land concessions and facilitation</li> <li>• Government infrastructure projects (roads and toll highways, airports, railways, seaports)</li> </ul>



<p><b>Indonesia</b></p>	<ul style="list-style-type: none"> <li>• Property development (housing, hotels, commercial areas, offices and multi-use complexes) and urbanization (including land reclamation, seizure of water resources) – usually involving land grabs and evictions</li> <li>• Forestry (concessions for logging, industrial forests; boundary conflicts between State forests/<i>Perhutani</i> and local communities)</li> <li>• Mining and logging concessions/leases</li> <li>• Coastal and marine conflicts</li> <li>• Agrarian conflicts in the agriculture and food sector</li> </ul>
<p><b>Kyrgyzstan</b></p>	<p><b>Incidence</b></p> <ul style="list-style-type: none"> <li>• There are widespread violations of the procedure for the provision of land, including for holding tenders and auctions for the sale of land, as well as in matters of transformation and the targeted use of land. Thus, in 2015 and nine months of 2016, the prosecution authorities of the Kyrgyz Republic identified 3,311 violations of land legislation in the course of supervision.</li> <li>• The total number of recorded cases of offenses related to the protection of land resources is 668 in 2016 (increased from 2014).</li> <li>• There were 154 offenses related to the use of water resources in 2016.</li> <li>• There were 452 offenses related to the preservation of biodiversity in 2016.</li> <li>• According to the Bishkek City Hall, in 2015, 1,012 prescriptions were issued for violations in individual housing construction (compared to 790 in 2014). For non-compliance with these regulations, 369 administrative protocols were drawn up (compared to 288 in 2014), on which 120 court decisions and rulings were issued (compared to 110 in 2014).</li> <li>• 175 different objects of individual construction were demolished (in 2014, 120 objects were demolished).</li> </ul> <p><b>Drivers</b></p> <ul style="list-style-type: none"> <li>• Among the problems that cause the greatest number of conflicts and disputes, the following issues on land resources are identified:             <ul style="list-style-type: none"> <li>○ Changing the boundaries of land shares;</li> <li>○ Land seizure: unauthorized seizure of land; problems in expropriation of land resources that arise due to the lack of procedures for the seizure of land for public use (part of land, municipal land); fair compensation for owners and land users;</li> <li>○ Imbalance in decision-making between “obligatory providing every citizen of the Kyrgyz Republic once throughout the territory of the land plot for the construction of a dwelling house” and “preserving agricultural lands for solving the issue of ensuring food security.”</li> </ul> </li> <li>• The main causes of water users’ conflicts are: “theft” of irrigation water; water losses due to poor technical condition of irrigation channels; and violation of irrigation schedules of farm plots.</li> <li>• The primary unresolved issues facing the government of Kyrgyzstan are managing the economic failure in spite of land privatization and the ethnic polarization increased by land privatization. Within the broad themes of economic and ethnic problems, five specific ones come to mind:             <ul style="list-style-type: none"> <li>○ a scarcity of land in the south;</li> <li>○ an abundance of land in the north;</li> <li>○ Uzbeks moving to available land in the north;</li> <li>○ an overall lack of irrigated land; and,</li> <li>○ the inequities of the land distribution fund (Jones, 2003)</li> </ul> </li> </ul>



<p><b>Nepal</b></p>	<p><b>Incidence</b></p> <ul style="list-style-type: none"> <li>• With escalating land prices, population growth, and the inheritance law, there has been increasing fragmentation of landholdings.</li> <li>• During the period 2012 to 2016, over 20,000 land-related cases were filed in various courts in the country. Around 70 percent of these cases have been decided. Compared to the years 2012 and 2013, the number of cases filed has been decreasing, as a result of increased land literacy among the people, as well as the expanded reach of mediation programs.</li> <li>• At the same period from 2012 to 2016, approximately one-fourth of all cases filed in Nepalese courts were land-related.</li> <li>• As of 2017, more than 146,900 cases between landlords and tenants remain in land reform offices.</li> <li>• New conflicts from State-supported infrastructure projects (roads, airports, park expansions) and increasing army camps under a federal system.</li> </ul> <p><b>Drivers</b></p> <ul style="list-style-type: none"> <li>• Local disputes within families or among community members (i.e., inheritance, property transfers, boundary disputes, production sharing)</li> <li>• Land and resource conflicts (informal settlers in forestlands, indigenous peoples and dwellers in protected areas, overlapping land use)</li> <li>• Non-recognition of customary tenure, abolition of <i>kipat</i> system</li> <li>• Urban expansion, growth of property markets and squatting/informal settlers especially in the <i>terai</i> (lowland region)</li> <li>• Government land acquisitions (eviction, compensation issues), infrastructure projects (army camps, roads, airports), and government federal restructuring (new infrastructure, new boundaries and delineations, taxation and local revenue generation)</li> <li>• Agrarian conflicts, landowner-tenant issues (land rents, tenancy land separation, evictions)</li> <li>• Post-conflict issues (1996 to 2006 insurgency) and post-disaster issues (2015 earthquake)</li> </ul>
<p><b>Pakistan</b></p>	<p><b>Incidence</b></p> <ul style="list-style-type: none"> <li>• Between 50 to 75 percent of all court cases are land-related disputes</li> <li>• Some one million land cases are pending country-wide</li> <li>• According to <i>The News International</i> (October 2016), up to 80 percent of Pakistan's civil case load is related to land acquisition and titling disputes, with a large percentage of those disputes arising from land grabbing and misappropriation of property.</li> <li>• Land cases can take from four to 10 years to resolve; parties in possession of the land often delay adjudication to prolong their beneficial use of the land.</li> </ul> <p><b>Drivers</b></p> <ul style="list-style-type: none"> <li>• Major causes of land conflicts are inaccurate or fraudulent land records, erroneous boundary descriptions that create overlapping claims, and multiple registrations to the same land by different parties</li> <li>• Over the last 10 years, the major reasons behind land conflicts have been political, economic, cultural, demographic, legal and judicial, administrative, technical and driven by gender and religious/caste discrimination.</li> <li>• There is growing incidence of land grabbing. In July 2016, a Supreme Court judgement stated: "In our society, the acts of illegal dispossession are largely committed at the behest of persons who are rich, powerful feudal lords, politicians, builders, government functionaries or persons who head large communities ..."</li> <li>• There are few legal and institutional frameworks in respecting, protecting, and resolving land conflicts and the violence that escalates from those conflicts. Laws and institutions are not as effective as expected.</li> </ul>



<b>Philippines</b>	<p><b>Incidence</b></p> <ul style="list-style-type: none"><li>• Some 352 cases of conflicts documented in this study are concentrated in four percent of the total territory of the Philippines. Nearly half (48 percent) of this number were conflicts between communities and business establishments. A significant percentage (36 percent) occurred between and among community members, while the remainder (16 percent) is comprised of conflicts between community members and the government. The duration of conflict ranges from less than a year to sixty-eight years, with a mean of 14 years.</li><li>• Some 431 instances of human rights violations (HRVs) were found in 233 of the conflict cases studied.</li><li>• Rural communities bear the brunt of the impacts of land and resource conflicts. HRVs committed at the community level involved displacement, damage to livelihood, unfair/exploitative economic arrangements, criminalization of actions of community leaders and members, forcible entry without FPIC, and denial of participation in decision-making processes affecting land and resource rights.</li></ul> <p><b>Drivers</b></p> <ul style="list-style-type: none"><li>• Government infrastructure (Economic Zones, water systems, power, buildings) and private investments (power, real estate, tourism, industry)</li><li>• Agribusiness investments (unfair business/lease contracts, land grabbing for plantations)</li><li>• Mining and extractive industries (for metals, coal, natural gas and sand/gravel quarrying)</li><li>• Forestry (logging, reforestation, industrial tree plantations)</li><li>• Conflicts over resource use (informal settlers in forestlands, indigenous people and dwellers in protected areas, conflicts over land classification and use)</li><li>• Overlapping claims among communities, due to overlapping land laws and multi-agency jurisdictions, and the multiplicity of titles, leases and permits issued over the same land, often in ancestral domains</li><li>• Agrarian conflicts, including landowner resistance to agrarian reform</li></ul>
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## On participation and transparency in land governance and administration

To ensure land access and tenure security for the rural poor, there should be transparency and accountability in all levels of land governance. In particular, there should be unhindered and timely public access to all information necessary to ensure public debate and decision-making on land issues at all stages.

Also, power and decision-making should be decentralized to the lowest effective level, in order to facilitate participation, accountability, and the identification of locally appropriate solutions. Especially in relation to public domains, when large valuable lands remain under centralized State control, they become conducive to mismanagement, poor resource utilization and corruption.<sup>12</sup>

Finally, there should be effective and meaningful participation especially by poor people in decisions (and institutions) that affect their tenure over land, resources and their livelihoods. This

<sup>12</sup> Today, over half of the land mass in most countries is controlled by the State, and in some countries, it is closer to 100 percent. In Indonesia, some 120 million hectares, or about 63 percent is State lands, also known as “forestlands” or the “public domain”. It is 54 percent in the Philippines, and a high 80 percent in Cambodia.



will ensure a more equitable allocation of tenure rights over land, water and forest resources, and promote their sustainable management and use.

*Table 8* presents a brief summary assessment of participation and transparency in land governance and administration in each of the eight Asian countries. From this, a number of general observations can be made:

**Access to information.** A number of countries have instituted Freedom of Information (FOI) laws and policies. In India, the Right to Information Act (RTI Act) of 2005 replaced the earlier Freedom of Information Act, 2002. In several pronouncements, the Supreme Court of India had interpreted the Indian Constitution to read the Right to Information as a fundamental right as embodied in the Right to Freedom of Speech and Expression and also in the Right to Life.

In Nepal, the Right to Information is imbedded in the 2015 Constitution as a fundamental right. Nepal has the Right to Information Act of 2007, which stipulates the right of a citizen to ask for, and obtain, information of public importance is held by public bodies. Bangladesh has a Right to Information Act of 2009. In the Philippines, the president signed in 2016 an Executive Order on FOI, and in Pakistan, there is a Freedom of Information Ordinance of 2002.

As noted in a few country studies, the FOI laws have certainly helped in making information and data more accessible to the general public, free of cost, and in ways that are relevant and reliable.

However, there are still many problems relating to the implementation and functioning of FOI laws. The main problems stem from a lack of political will and transparency of government. The others include bureaucratic and procedural constraints, enforcement problems, a lack of knowledge of rights by citizens and a lack of understanding and appreciation of the law by officials and agencies, and formal limitations on the types of information and documents that can be accessed. Clearly, much more needs to be done to ensure unhindered and timely public access to information.

In some countries, there are more basic issues – i.e., related to the general poor state of land records and land administration. Many of the land record systems are outdated, poorly maintained, and dysfunctional. In many countries there is a general lack of systematic, reliable, and accurate information about landownership, tenure, boundaries, location, actual land uses, and land valuation – including at the local government level. In Bangladesh, land records are still based largely on the manual system. In the Philippines, there are several land agencies that issue titles, permits and licenses; and since each agency maintains separate land records with different systems of recording and mapping this sometimes leads to conflicting information and overlapping rights (Quizon and Pagsanghan, 2014).



Where the required data is publicly available and accessible, they are often presented in a format that is not useful for improving land tenure policy. Data may not be disaggregated (women, indigenous peoples), or the information might focus on agency accomplishments, but without data on the scope of the problem (i.e., data on landless populations or forest dwellers).

In some countries such as Nepal, information remains very much centralized in the capital and it is very difficult to access reliable data at local level. Also, different agencies sometimes produce conflicting data on the same topic. It is hoped that all these will improve with devolution under Nepal's new Federal Constitution.

**Decentralization.** There are three parallel processes by which centralized State control is often devolved. Of these, the latter two are the relevant and more important processes.

- *Shift from State to the private business sector.* This includes the granting of public land concessions to private corporations, “build-operate-transfer” schemes, “public-private partnerships,” the privatization of public services such as on water allocation and distribution, and the privatization of public services such as ports and highways.
- *Shift from the national to local.* This often involves the transfer of powers and responsibilities of national agencies to local governments.
- *Shift from State to civil society,* such as the transfer of ownership or management rights over land, forests and fisheries to local user groups, indigenous communities, and non-State actors that include community associations and groups.

It is often claimed that the *shift from the national to local government* will bring decisions and programs closer to the community. However, problems arise when power is merely transferred from national to local elites. Thus, it will still be important to ensure that vulnerable and marginalized groups of the rural poor are able to directly participate in local government, and that their voices are heard.

*The shift from State to civil society,* that emphasizes locally-managed ecosystems under customary tenure systems could ensure greater access to land and resources for vulnerable and marginalized groups (including small farmer water users, pastoralists, forest dwellers, small fisherfolk, and indigenous communities). However, the rights of vulnerable groups should be ensured especially where traditional and customary systems are paternalistic and biased against women, particular castes or indigenous peoples.

**Participation in decision-making.** In terms of the participation in land policy and governance bodies by poor and marginalized sectors, a number of formal established mechanisms may be found in the eight countries of study. These include:

- Policy bodies and oversight mechanisms;
- Local government councils;
- Local resource management councils; and,
- User groups.



Perhaps some of the best examples may be found in India and the Philippines. In India, the Constitution institutes special provisions for the advancement of Scheduled Tribes (STs) and Scheduled Castes (SCs). This includes the reservation of seats for STs and SCs in the *Lok Sabha* (House of the People), the State Legislative Assemblies, and in the *Panchayats* (village councils).

In the Philippines, the participation of farmers, indigenous peoples, and fisherfolk is mandated by law, and pertinent mechanisms have been established. These include farmer representatives in the Presidential Agrarian Reform Council (PARC), and in provincial and barangay (village) agrarian reform committees. Fisherfolk participate in Fisheries and Aquatic Resource Management Councils (FARMCs) at the municipal level. Likewise, the State is mandated to ensure that the indigenous cultural communities and indigenous people be given representation in policymaking bodies and local legislative councils, if the IPs choose to participate.

While some countries have established mechanisms for participation in land governance, in other countries like Pakistan, the opportunities consist more of “invited spaces” where CSOs and representatives of the rural poor are invited to participate, albeit on ad hoc basis.

In view of the limited spaces for participation, CSOs also create their own public spaces for participation of vulnerable and marginalized sectors. These include community monitoring, community scoring, community advocacy, social auditing, public hearing, policy advocacy, mass campaign, and other advocacy activities – whereby land rights CSOs, and through them, the marginalized sectors of small farmers, rural women and indigenous people are able to participate in land governance.

**Table 8. Participation and transparency in land governance and administration**

Country	Summary assessments
<b>Bangladesh</b>	<ul style="list-style-type: none"> <li>• Information on land and tenure-related issues are available to some extent, partly due to the Right to Information Act of 2009. Some of the information and data are accessible to the general public, are free of cost, and are relevant and reliable. However, there is much more to do to make them timely and more user-friendly by completing the on-going digitalization process, along with other reform initiatives.</li> <li>• Decision-making in the land governance is not inclusive, and there is limited space for CSOs for participation in land governance. Thus, CSOs are trying to widen their scope for participation.</li> <li>• There are some CSO-led mechanisms like community monitoring, community scoring, community advocacy, social auditing, public hearings, policy advocacy, mass campaign etc. whereby land rights CSOs or NGOs, and through them, rural women and indigenous people are able to participate in land governance. However, these mechanisms are effective only to a limited extent.</li> </ul>
<b>Cambodia</b>	<ul style="list-style-type: none"> <li>• An assessment of citizen participation in policy processes showed little participation and a general lack of access to information from government. The sub-national authorities at Commune and District level do not provide complete and updated documents on Economic Land Concessions. For conflict resolution, Cambodian citizens rely more on commune authorities, and often bypass district and provincial authorities, to go directly to the national government to raise their issues.</li> </ul>



<p><b>Cambodia</b></p>	<ul style="list-style-type: none"> <li>• Information related to laws, policies, reports on the improvement of land registration and dispute solving, and other legal documents are available on the websites of relevant ministries and of NGOs working in the land sector. For example, The NGO Forum on Cambodia updates every year the information on land dispute cases throughout the country through RAC and LAHRIN member (The NGO Forum on Cambodia, 2015). CCHR and LICADHO gather information using different methods and share them on their own sites. Most data appear at the Open Development Cambodia (ODC) website. However, it is hard to find complete and updated data on these sites and there are questions about their credibility. Disagreements over the veracity or accuracy of the statistics involving land conflicts can be attributed partly to poor monitoring.</li> <li>• In 2004, the government started to develop the <i>Law of Freedom of Information (FOI)</i>, and the National Assembly passed the legislation in 2010. There are also provisions for Freedom of Information in existing laws such as the Article 35 of the Constitution, the International Covenant on Civil and Political Rights ratified in 1992, the 1995 Law on the Press, the 2005 Archive Law, and the 2010 Anti-Corruption Law. However, these laws do not necessarily lead to free or easy access to most pieces of government-held information.</li> <li>• It was considered an innovative way to empower and educate people for better access and control over land and natural resources. However, there is no any survey or evaluation on how many people can access the service and how much impact from this media to the people awareness and their behavior change (STAR Kampuchea, 2018).</li> </ul>
<p><b>Indonesia</b></p>	<ul style="list-style-type: none"> <li>• In 2014, President Joko Widodo promised an agrarian reform in the form of land redistribution to poor people. In 2018, Presidential Decree No. 86/2018 on agrarian reform was issued.</li> <li>• However, the civil society movement, through the Consortium for Agrarian Reform (KPA), has been critical of the way by which agrarian reform has been implemented using a top-down approach. Thus, KPA began to identify proposed priority locations for agrarian reform, using a bottom-up approach.</li> <li>• The Agrarian Reform Priority Locations (LPRA) identified by KPA with its members are comprised of those areas where communities are organized, peasants have been working on their lands, and agrarian reform data on peasant families and lands have been compiled and completed with the support of local governments.</li> <li>• From potential agrarian reform locations covering 1.4 million hectares, KPA and its membership have prioritized 444 locations covering 654,392 hectares with 144,808 identified peasant families. These LPRA locations are proposed by 103 civil society organizations in 20 provinces and 98 districts, and the data has been officially submitted to the national government, and to all levels of local governments. Discussion on the LPRA is still ongoing with the agrarian reform common secretariat in two ministries.</li> </ul>
<p><b>Kyrgyzstan</b></p>	<ul style="list-style-type: none"> <li>• The Law on Regulatory Legal Acts requires the holding of preliminary public hearings (including focus groups) when adopting laws, but this process is not always followed. The law requires that the process of legislation should be open and accessible to the public at all stages.</li> <li>• Local communities play a crucial role in the planning and management of the country's pasture, forest and water resources:             <ul style="list-style-type: none"> <li>○ Pastures were transferred to the management of Pasture Committees consisting of representatives of pasture users, deputies of the local <i>kenesh</i> (a representative of the authorized body on environment and forestry), heads of the executive body of local self-government.</li> <li>○ Joint Forest Management is undertaken with the participation of local governments, the public, and local communities. The tools of joint forest management involve the lease of forest land and community forest management. There are about 25 thousand leased land lots in the State Forest Fund (SFF).</li> </ul> </li> </ul>



<p><b>Kyrgyzstan</b></p>	<ul style="list-style-type: none"> <li>○ Water management was transferred to local communities through Water User Associations (WUAs) - for the purposes of operating and maintaining irrigation systems.</li> <li>● Regarding the management and use of natural resources, various national platforms have been created – i.e., the National Council for Sustainable Development, Coordination Council on Macroeconomics and Investment Policy, Coordinating Commission on Climate Change (CCoCC), Council for Business Development and Investment, National Water Council. These bodies are mainly consultative and recommendatory. In addition, there are public platforms for discussions of issues – on pastures, climate change, sustainable mountain development, and water policy.</li> <li>● The government collects information on land resources annually, compiles reports on the distribution of land by type, and publishes annual and quarterly reports. The census is conducted every 10 years, and there is an accessible and complete system of land ownership by type of categories and forms of ownership.</li> <li>● Despite measures to provide open access to official legal information through the official websites of the government, there is a low level of information among the population especially in rural areas. This is primarily due to the lack of practice of public discussion and clarification of the meaning of laws, as well as the lack of awareness of legislation for the average rural resident.</li> </ul>
<p><b>Nepal</b></p>	<ul style="list-style-type: none"> <li>● The right to information is imbedded in the 2015 Constitution as a fundamental right. The Right to Information Act of 2007, stipulates the right of citizens to ask for, and obtain, information of public importance held by public bodies. Also, the Good Governance Act of 2008 makes it mandatory for all government offices <i>responsible for delivering public service</i> to maintain a Citizens Charter <i>in prescribed form and to locate it in the visible place of the office</i>.</li> <li>● Despite these policy provisions, information access remains very difficult. This is due largely to the inability of government to supply the data needed, and the questionable quality of data available, as different agencies sometimes produce conflicting data on the same topic. The culture of scientific research and data management system is lacking. Information is very much centralized in Kathmandu and it is very difficult to access reliable data at local level.</li> <li>● Certain land-related laws provide for the involvement of user-groups in land and resource management:             <ul style="list-style-type: none"> <li>○ The <i>Rangeland Policy of 2012</i> aims to enable and support pastoralists, IPs, forest people and fisherfolk in productive rangeland systems. Some 22.6 percent of the country's land is rangeland. This policy recommended the establishment of various rangeland management institutions at the ministry, departmental, district and user levels, with their corresponding roles and responsibilities.</li> <li>○ The <i>Forest Act of 1993</i> establishes a category of "Community Forests" which are managed by Community Forest User Groups (CFUGs). Some 1.2 million hectares (25 percent of existing forests) are managed by over 14,000 CFUGs.</li> </ul> </li> </ul>
<p><b>Pakistan</b></p>	<ul style="list-style-type: none"> <li>● There is no <i>mandated</i> representation or participation of civil society in land governance or in the formulation of policies. Instead, the Government provides a range of support measures including the promotion of "invited spaces" where CSO representatives sit in different government committees, such as the National, District, and <i>Tehsil</i> Land Management and Distribution Committee, and for dialogues on policy matters.</li> <li>● The country's system of land records is outdated and unreliable. Thus, in 2012, the Punjab State government started digitization of land records across 36 districts. Some 10 million pages of old records, and land records for over 55 million landowners were digitized, and land title information title made accessible online. This resulted in a dramatic decrease in the time needed to complete a transaction – from two months to 50 minutes. The system also helped reduce fraud and corruption but did little to change the culture of <i>patwaris</i> (field officials of the land revenue department). As land records fed into computers are provided by the same <i>patwaris</i>, some 4.7 million errors in land documentation were found during the documentation process (SCOPE, 2018).</li> </ul>



<p><b>Pakistan</b></p>	<ul style="list-style-type: none"> <li>• There is no central land register that conclusively records all rights pertaining to land from where a prospective buyer can check land titles for any encumbrances. In Pakistan, the State is not the guarantor of title. A buyer must carry out due diligence by investigating the seller's title and bear responsibility if the title is proven to be defective. The State does not even guarantee the accuracy of the land record it maintains. Thus, many land cases are under court litigation.</li> <li>• There is scope for forming Land Management Committees and inclusion of CSOs in them along with water users' associations, <i>kisan</i> (farmer) committees and district and <i>tehsil</i> (sub-district) committees for lease settlement. It is also possible to include representatives of farmers associations, water users' associations, women's groups, and NGOs in National Land Settlement Committee in order to ensure transparent land governance and administration in the country.</li> <li>• CSOs establish their own mechanisms – community monitoring, community scoring, social audits, public hearings, policy advocacy, mass campaigns – whereby land rights CSOs, together with the poor and marginalized sectors are able to participate.</li> </ul>
<p><b>Philippines</b></p>	<ul style="list-style-type: none"> <li>• The participation of farmers, indigenous peoples and fisherfolk is mandated by law, and pertinent mechanisms have been established accordingly, i.e.:             <ul style="list-style-type: none"> <li>○ <i>Comprehensive Agrarian Reform Program (CARP)</i>:                 <ul style="list-style-type: none"> <li>- The <i>Presidential Agrarian Reform Council (PARC)</i>, has six farmer representatives, and has the power to issue rules and regulations.</li> <li>- The <i>Land Bank of the Philippines (LBP)</i> has two agrarian reform beneficiaries' representatives to the Board of Trustees. The Bank is responsible for land valuation, compensation to landowners, and collection of amortizations from CARP farmer-beneficiaries. It also provides credit to small farmers.</li> <li>- <i>Provincial Agrarian Reform Coordinating Committee (PARCCOM)</i></li> <li>- <i>Barangay (Village) Agrarian Reform Committee (BARC)</i></li> </ul> </li> <li>○ <i>National Anti-Poverty Commission (NAPC)</i> which recommends policy measures to ensure implementation of the Social Reform Agenda.</li> <li>○ <i>Local Development Councils (LDCs)</i> at the <i>barangay</i> (village) level</li> <li>○ The <i>Indigenous Peoples Rights Act (IPRA)</i> provides that indigenous cultural communities/indigenous peoples (ICCs/IPs) have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State should ensure that ICCs/IPs be given mandatory representation in policymaking bodies and in local legislative councils.</li> <li>○ The <i>Fisheries Code</i> mandates the establishment of Fisheries and Aquatic Resource Management Councils (FARMCs) at municipal level, to include fisherfolk organizations and CSOs, for the management, protection, and utilization of all fish and fishery/aquatic resources within the respective municipal waters. Fisherfolk also participate in law enforcement through the <i>Bantay-Dagat</i> (sea guardians), a community-based patrol against illegal fishing in coastal waters.</li> </ul> </li> <li>• However, some of these mechanisms have had limited effectivity:             <ul style="list-style-type: none"> <li>○ The representatives are appointed by the government and the criteria for selection is not clear;</li> <li>○ Convening of the mechanism is a decision of the Chair who is a government official;</li> <li>○ The mechanisms are recommendatory, not executory in nature; and,</li> <li>○ Given their size, there is difficulty in mustering a quorum.</li> </ul> </li> <li>• Information on land policies and regulations are generally available. However, accessibility to administrative and management information varies, as responsible agencies have their own information management systems. In some agencies, users have to pay fees to access data.</li> </ul>



<b>Philippines</b>	<ul style="list-style-type: none"> <li>• The quality of the data is another story. Much of the data are outdated, not user-friendly, and are pre-tabulated. There is also no nationally-consolidated land data catered to by government agencies. In most cases, shapefiles of land data (maps) are not available or incomplete. Further, there is no available data on landlessness and informal settlers.</li> <li>• Overall, the land administration system in the Philippines can be described as <i>obsolete, complex and dysfunctional</i>. It is governed by multiple, at times contradictory regulations, and is managed by a multitude of institutions with inadequate coordination and overlapping mandates and functions. Land titling and registration processes undergo both judiciary and administrative processes. The Torrens Titling System is particularly contentious due to the requirement of court intervention in the registration process. This has further bogged down the justice system; it is found that some 15 percent of all cases handled by courts are related to land registration (De Vera, 2015).</li> </ul>
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### SUMMARY OF RECOMMENDATIONS

The recommendations from the eight country studies was discussed at a planning meeting of Land Watch Asia partners, and subsequently presented at the “*Regional Workshop on the State of Land Rights and Land Governance in Eight Asian Countries*” last 14 to 15 February 2019 in Bangkok, Thailand. The collective recommendations are summarized as follows:

**On legal and policy environment providing access to land and tenure security:**

- **Repeal and reverse discriminatory land policies.** In Bangladesh, the Vested Property Repeal Act (Amendment) of 2011 should immediately be implemented without delay, and government should return all seized lands to their rightful owners. Repeal discriminatory laws against marginalized sectors – such as laws against women’s equal rights to land and inheritance. In Nepal, implement the new provisions of the 2015 Constitution that guarantee equal rights to land for women, peasants, landless, and *Dalits*.
- **The legal framework on land should recognize, respect and protect the diversity of tenure systems** upon which people’s livelihoods depend, including communal, customary and informal tenure systems. Provide legal recognition and protection to lands under customary laws and practices of indigenous communities, forest dwelling people, and pastoralists in a new and vibrant policy framework. National land policies should not treat land solely as an economic asset, commodity or source of State revenue, but should recognize the deeper value of land in its socio-cultural aspects, and should provide people and communities with legal security of tenure accordingly.
- **Formulate comprehensive National Land Use Policies** through broad public consultation and participation, especially of rural poor sectors and civil society organizations. Such policies should lead to the optimization of scarce land resources, promote public interest and general welfare, protect the environment, prevent conflicts among different sectors that arise from competing land uses and needs, and especially ensure land rights for women and men living in poverty. Specifically, the Land Use Policy should also protect agricultural lands prime arable lands against continued land use conversion. In the Philippines, legislate the National



Land Use Act (NLUA) to protect agricultural and forest lands from land use conversion, and to protect the rights of smallholders and indigenous communities. Governments should prevent arbitrary evictions and forced displacements.

- **Following a National Land Use Policy, implement a system of land zoning by use**, especially of State resources. Conduct a full inventory and delineate the areas which are alienable and disposable, areas where transitory possession may be allowed, critical areas where no development is allowed, areas under common usage and community purposes, etc. There should be full public disclosure, transparency and accountability in the management of all State lands.
- **Promote locally-managed ecosystems**. National Land Policies should emphasize the role of local land users in territorial and ecosystem management, recognizing that sustainable development and the stewardship of ecosystems are best achieved through participatory decision-making and management at the territorial level, empowering local land users and their communities with the authority, means and incentives to carry out this responsibility. This implies recognizing community tenure and traditional governance systems of indigenous peoples, pastoralists, and forest users. In line with this, Governments should also adopt and promote the practice of Indigenous Peoples and Community Conserved Areas (ICCAs) for developing national protected areas systems.<sup>13</sup>

#### **On land access and tenure security for small farmers and rural producers:**

- **Implement agrarian reforms**. Revive land reforms through more responsive legislations in order to address the sluggishness of government processes that have plagued the implementation of past land reforms, and to address deficiencies in agrarian reform policy. Specific proposals include:
  - **Indonesia**: Agrarian reform program should be founded on the principles of, among others: (a) reducing inequalities in agrarian land tenure and ownership, and (b) addressing land conflicts through social justice. Presidential Regulation 86/2018 on agrarian reform, issued in September 2018, represents a progressive first step in the revival of agrarian reform in Indonesia, and provides an entry point for the participation of civil society and peasant organizations in agrarian reform implementation at national and local levels. However, there is need for legal breakthroughs and decisions, so that land redistribution can be implemented in agrarian conflict areas, in relation to State assets – in particular, on lands of State-owned businesses, PERHUTANI<sup>14</sup> areas, extracted forest areas, abandoned lands and lands with problematic business user rights. Furthermore, following a bottom-up approach, government should start the implementation of land reforms in those specified priority areas (or “LPRA”) that have been mapped out by local communities and CSOs.<sup>15</sup>

<sup>13</sup> The ICCA approach was adopted in 2010 by the Conference of Parties (COP 10) of the Convention on Biodiversity.

<sup>14</sup> PERHUTANI stands for *Perusahaan Hutan Negara Indonesia* (the Indonesian State forestry company).

<sup>15</sup> KPA-Indonesia has mapped out and proposed “Priority Locations for Agrarian Reform (LPRA)”, and submitted these to the government in September 2018. These areas were identified through members of the KPA in various regions and areas affected by land conflict.



- **Nepal:** Amend the Land Related Act of 1964 to include provisions aimed at ending the remaining cases on dual ownership in Nepal. Include provisions for the recognition of unregistered tenants and protect them against forced eviction from their landlords. Review the reports and proposals developed by past High-Level Land Reform Commissions, and conduct public consultations to solicit views and concerns on needed land reform measures.
- **Bangladesh:** Conduct a full inventory of all *khas* land and water-bodies, and distribute all agricultural *khas* land to the poor and landless immediately.<sup>16</sup> Institute effective mechanisms to ensure the successful retention of *khas* land by the landless poor. Retrieve all *khas* lands seized illegally by local elites and landgrabbers.
- **Pakistan:** Distribute all agricultural State land to the poor and landless immediately. Institute support systems to provide relevant productive assets (cattle, plough, irrigation machinery, and equipment) and recurrent inputs (seed, fertilizer, water, etc.) to small-scale rural producers, along with fair-price support systems to enable small producers to get the most benefit from their harvests. Organize small farmers and landless agricultural producers into cooperatives for inputs, credit, marketing, and other productive purposes. In this regard, there is need to review and reform the Cooperative Law so that cooperatives can provide solutions for landless and small farmers.
- **Complete agrarian reform, and protect the gains.** In countries (e.g., Philippines) and areas where land has been redistributed under agrarian reform programs, small farmers and producers should be assisted by government to make their lands productive, and to protect their lands from landgrabbers and predatory investors. Farmers should be provided with support services, infrastructure, productive and climate-resilient technologies, value-chain processes (especially for women) and socialized credit – so that farmers, IPs, and fisherfolk are able to hold on to their lands by making them productive. If farmers need to deal with private land investors, then they should be assisted to get a fair deal. This can be achieved by enhancing their capacities on FPIC processes, establishing standards and indicators on fair investments and by learning the art of negotiating with investors.

Meanwhile, CSOs should continue to push for the completion of the agrarian reform program, form and strengthen community-based organizations, especially involving the youth and women, and protect agrarian reform gains through the economic empowerment of farmers.

- **Protect the rights of tenants, sharecroppers, leaseholders and agricultural laborers on the land, including those without documented tenure or contracts.** In countries where

<sup>16</sup> Khas land means government owned fallow land, where nobody has property rights. It is land which is deemed to be owned by government and available for allocation according to government priorities. "Khas Land" or "Land in khas possession", in relation to any person, includes any land let out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity. [S. 2(15) of the State Acquisition and Tenancy Act, 1950]



tenancy protection laws already exist, these should be implemented to their full extent, and policies should be reviewed to address factors that impede reform.

- **CSOs should continue to work with peasant organizations in the advocacy for agrarian reform legislation policy, and in undertaking field implementation.** Meanwhile CSOs and peasant organizations should overcome the differences within their respective sectors and unite in the pursuit of land rights.

#### **On equal land rights for rural women:**

- ***CEDAW should be fully ratified by governments*** by removing expressed reservations on specific provisions which include those that impact on women's inheritance rights. This will also contribute to the upholding of the Constitutional guarantees of equality.
- ***A National Policy of Equal Rights for Women (NPERW) should be formed to formalize equal land rights of women***, with the aim of abolishing the discriminatory personal/family laws that are often based on religious provisions or custom that create unequal land and property rights (in the event of marriage, divorce, inheritance, guardianship, and custody). There should be a law review process to harmonize domestic legislation with CEDAW obligations – in partnership with religious leaders, indigenous peoples, lawyers, and CSOs.<sup>17</sup>
- ***Enforcement, monitoring, and public discussion.*** Aside from a policy and legal framework that clearly recognizes the equal entitlement rights of women, there is need to develop effective enforcement and monitoring mechanisms in place. This should include, for instance, a mechanism for registration of inherited land shares. There should be efforts to raise public awareness about existing laws, particularly among women. There is a need to train the authorities, and to conduct community discussions on marriage and inheritance, as well as on the tensions between these practices and normative law, and on possible solutions for their harmonization. There is also a need to develop the capacity of organizations that support women's rights and to recognize their role in raising awareness and in undertaking strategic interventions.
- ***Strengthen the disaggregation of land data by sex***, to reflect the differentiated realities of the lives of women and men, and the policy issues relating to gender.

#### **On secure land rights for indigenous peoples:**

- ***States to provide legal recognition for the land and territorial rights of indigenous peoples.*** The Philippines' *Indigenous Peoples Rights Act (IPRA) of 1997* provides a leading example of a policy and program for the recognition and protection of indigenous peoples'

<sup>17</sup> Specific recommendation for Bangladesh, from Barkat and Suhrawardy, 2018.



rights and could provide concrete lessons that could help inform new policy initiatives (such as the proposed law on *Masyarakat Hukum Adat* in Indonesia). Constitutional recognition as well as special laws are needed to recognize and protect IP land rights having a retrospective effect. India's *Recognition of Forest Rights Act (FRA) of 2006* provides another example of a law that legally recognizes the rights of communities to live in and from their forests, and to protect and manage their lands.

- ***In countries where collective titling and collective land registration are provided for under national Land Administration programs (such as Cambodia), government and CSOs should provide special support to indigenous communities*** in order to take the first step in establishing and protecting their tenure rights, in line with national legislation.
- ***In countries where some level of legal recognition and protection of indigenous peoples' rights exist, all necessary legislative and administrative measures should be taken by the government to implement the land rights of indigenous peoples.*** In Bangladesh, the collective land rights to forests and swidden cultivation areas in the CHT – as partially acknowledged in the CHT Regulation of 1900 – should be pursued. The government should take all measures to fully activate the CHT Land Commission, including the need to rectify discrepancies in the Land Commission Act of 2001 that differ substantially from the relevant articles of the Peace Accord of 1997.
- ***Stop the continued incursion into indigenous peoples' lands.*** A complete moratorium should be imposed on further acquisition of lands of indigenous communities – by settlers and nonresidents, by investors and corporations, and by the Forest Department, the security forces and other agencies of the State, as well as by State-led development projects.
- ***Establish impartial commissions of inquiry and systems of redress for serious human rights violations.*** States, in conjunction with indigenous peoples, should establish independent commissions of inquiry or investigative mechanisms to look into the human rights concerns of indigenous peoples, and to put an end to serious violations of indigenous peoples' rights, particularly in connection to militarization and repression on public/community protests over land and extractive operations.
- ***Implement restitution and recovery to address historical injustices against indigenous peoples.*** States should cease the removal of indigenous peoples from their ancestral lands and territories. In cases where they are being, or have been, removed, displaced or dispossessed, States should conduct independent inquiries and provide appropriate restitution. States need to undertake national dialogues and to find comprehensive solutions to provide just, fair, and equitable compensation, including the return of land and humanitarian assistance as required by the affected peoples. This is particularly important in conflict or post-conflict areas, and where indigenous peoples have been disenfranchised.

- **Strengthen the principle and practice of FPIC, and other safeguards.** Together with the full and effective participation of indigenous peoples, States should establish mechanisms to ensure the implementation of FPIC prior to the entry of development activities or investments in the lands and territories of indigenous peoples. However, an FPIC process should not be seen as an end in itself, nor as a stand-alone right. Additional safeguards should include prior impact assessments, the establishment of mitigation measures to avoid/minimize impacts on the exercise of those rights, benefit-sharing, and adequate compensation for impacts in accordance with relevant international standards. Overall, such safeguards should adopt a *precautionary approach* that should guide decision-making about any measure that may affect rights over lands and resources, and other rights that are instrumental to the survival of indigenous peoples.
- **Identify and protect indigenous peoples.** Regardless of the disagreements over terminology concerning indigenous peoples in the region, there is a critical need to undertake serious dialogue and concerted efforts at the country level to identify, recognize, and protect substantive issues of those people who identify themselves as indigenous peoples. In Bangladesh, there is a critical need to recognize and protect the indigenous peoples in the Plains.
- **Strengthen disaggregated data on indigenous peoples.** States and indigenous peoples' organizations – in line with the principles of indigenous consent, ownership and access – should jointly collect, analyze, and disaggregate data on indigenous peoples, including women. This would aim to protect the rights of indigenous peoples, including their sustainable development practices, traditional knowledge, and customary lands and domains.
- **Promote learning and exchange on policy and tools development.** CSOs and IP network organizations from different countries can learn from each other on policy development. These can involve exchanges on laws, ordinances, policy studies, as well as share experiences and best practice in the implementation of laws related to indigenous peoples. Possible tools and approaches for sharing include participatory mapping and resource inventories, conflict management and resolution, recognition of customary rights, and paralegal training.

#### **On secure tenure rights for small fisherfolk, pastoralists, and other rural producers:**

- **Secure land and water tenure rights for small fisherfolk.** In Bangladesh, for instance, there is scope to form a National Water Use Policy (NWUP) exclusively for ensuring access to, and rights over land for the small fisherfolk. This will include special provisions on the *jalmahals*<sup>18</sup> or inland water resources. A National Committee for Water Rights of the Fishermen (NCWRF)

<sup>18</sup> In Bangladesh, there are about 10,000 fisheries *Jalmahals* covering rivers and tributaries, estuaries, canals, *haors*, *baors* and *beels* which are all owned by the Ministry of Land (MoL). The MoL directly owns the rivers, their tributaries and seasonal as well as perennial wetlands. For the sole purpose of revenue generation, the MoL leases out *Jalmahals* to *Jjaradars* through auction. Through the auction process, the lease is given to the highest bidder. (Shamsuzzaman, Md. Mostafa & Xiangmin, Xu & Islam, M., 2016).



can be formed to look after the issues of water rights of the fishermen, and this committee should be endowed with enough power so that it can take on bold actions against the water-body grabbers.

- **Where fisheries reform has been enacted ensure the full implementation of the law.** In the Philippines, this includes Section 108 of the Fisheries Code which mandates the creation of fisherfolk settlement areas on public lands near fishery areas.
- **There is a clear and urgent need to address the tenure rights of communities and populations living in classified State forest lands.** It is necessary to clearly delineate the boundaries of State forests, and to define a mechanism and pathway for securing or registering tenure rights to existing household plots, farm plots and common areas of settlements within forest lands. In the Philippines, an estimated 20 percent of the population (17 to 22 million people) live in classified forestlands, many with no security of tenure (Esplana and Quizon, 2017). In Indonesia, nearly a fourth of the total population live in forest areas with millions more found in villages surrounding the forests who are dependent on forest resources (Bachriadi and Sardjono, 2005, citing a 2004 CIFOR Study).
- **States should cooperate to address tenure issues related to land, fisheries, pastures, and forests which transverse national boundaries.** Countries should contribute to the understanding of transboundary tenure issues affecting communities, such as with rangelands or seasonal migration routes of pastoralists, forest areas and ancestral domains of indigenous peoples, and fishing grounds of small-scale fishers, which may lie across international boundaries.

In the case of pastoralists in Kyrgyzstan, the government should engage in constructive dialogue on the rational and efficient use of natural resources in the border areas. Regular monitoring of pasture management and pasture use by the responsible State administration bodies and maintaining pasture cadastres will make it possible to more effectively regulate the ownership and use rights of pasture resources and more accurately determine the potentials (and limits) of livestock farming. The Kyrgyz government should support the development of sustainable pasture management as the basis for the livelihoods of local communities.

#### **On resolution of conflicts and protection of land rights defenders:**

- **Address the root causes of land and resource conflicts by completing land and resource reform programs and ensuring tenure security for the rural poor.**
- **Institute effective and efficient mechanism to resolve overlapping claims on land.**
- **Since State expropriation of land has been one major source of land conflict, existing policies and legislations on State expropriation should be reviewed and revised in**



**order to address gaps and discrepancies in the law.** A National Policy and Regulatory Framework on State expropriation of land should be developed – in which reasonable restrictions are placed on the government’s power to forcibly seize (buy) land, and requirements and process of State expropriation is clearly defined. An important factor is the sense of security of citizens in the observance of public interest and the ability to work out a strategy to minimize damage to citizens and their environment. The policy should clearly define the scope of “public interest.” In planning and conducting expropriation, transparency and full participation of stakeholders should be ensured, and the views of all potentially affected persons should be sufficiently informed and sought. There should be a strategy to minimize damage, especially where the territories proposed for expropriation are of cultural, religious or ecological importance, or where the land, fish, and forest resources considered are especially important as means of subsistence for the poor or vulnerable populations. A fair assessment and immediate compensation should be in place where land users should be paid equivalent compensation, which is not more or less than the losses received as a result of the compulsory withdrawal (redemption) of their land. Moreover, there should be assurance of a fair trial in resolving land conflicts and disputes where they arise.

- **Ensure the integrity of safeguard mechanisms that regulate land investments by integrating the UN Guiding Principles on Business and Human Rights (UNGP BHR) in land and resource governance.** Unanimously adopted by the UN Human Rights Council in 2011, the UNGP BHR not only affirms the duty of States to protect human rights, but also the responsibility of corporations to respect human rights, and the need to ensure access to remedies where business-related human rights abuses occur. The private sector has a responsibility and duty to respect human rights of people in all their operations, regardless of the State legal framework or government actions in the host countries. In adopting the UNGP BHR, governments should take the lead in promoting good business practice by immediately applying UNGP BHR principles in all State-run corporations and plantations.
- **Enhance the awareness of government functionaries on the need to uphold human rights,** especially among the police and military. *Train government staff* (including those working at the district land offices, as well as the police and military) on alternative dispute resolution, gender and culturally sensitive approaches, and respect for human rights.
- **Establish independent land dispute commissions to speed up the response to, and resolution of, land-related cases.** For Bangladesh, establish an independent land commission for indigenous peoples in the Plains, and strengthen the CHT Land Dispute Resolution Commission.
- **Strengthen local mediation mechanisms for addressing local land conflicts,** especially those involving civil cases at community level. Conduct capacity building programs for local mediators, as well as public awareness campaigns for local people to consider mediation over adjudication mechanisms.



- **Institute Alternative Dispute Resolution (ADR) mechanisms at the local level in which community members and CSOs may play pivotal role.**
- **Strictly implement social and environmental impact assessments, and adherence to free, prior and informed consent (FPIC) of affected communities – as preconditions for all large-scale private and public land-related investments and transactions.** In Cambodia, strictly implement FPIC prior to issuing any licenses for Economic Land Concessions (ELCs).
- **Establish an independent monitoring mechanism on large-scale land investments and concessions** so as to guarantee respect for human rights and responsible investment standards. Explore alternatives to large-scale land investments that forcibly displace communities from their homes and sources of livelihood. In Cambodia, apply an immediate moratorium on the issuance of Economic Land Concessions (ELCs), and undertake a full contractual compliance review of all land concessions.
- **Protect land rights defenders.** In line with the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopt effective measures to combat the culture of violence and impunity, and to protect human rights defenders, including indigenous leaders and peasant activists.
- **CSOs should connect with, organize, and mobilize communities that are victims of land rights violations.** Since land conflicts may take years to resolve with potential threats to communities and land rights defenders, CSO work should be closely linked to affected communities. CSOs should recognize that communities take the lead and should own the initiative. CSOs should provide support and assistance to affected communities, and to victims of human rights violations where they occur. Cases of land rights violations should be properly documented and brought before competent forums, to hold rights violators accountable for their actions. CSOs also have to be proactive to connect the voices of the afflicted in order to influence the policy level. Strategies should aim to gain traction with the public by bringing land rights issues to the mainstream, and by proposing possible solutions. In all their actions, land rights advocates and defenders should live and practice non-violence.
- **In monitoring and advocating for land rights, CSOs should build linkages with international/global platforms to create pressures on highly influential actors who aggravate the land inequality and poverty situation.** In the context of increasing globalization and with similar land issues arising in different countries, land rights advocates should link their advocacy work with international agreements and global initiatives, such as on Sustainable Development Goals, and on Agenda 1 and 2, in particular. Similarly, the campaign for the recognition of indigenous peoples' rights in managing their ancestral domains can be linked to UNDRIP, the Convention of Biodiversity, and to ICCA. This will



not only strengthen policy work at the national level, but also contribute to the international agenda.

### **On participation and transparency in land governance and administration:**

- **Government should provide adequate and effective systems for recording individual and collective tenure rights (registration, cadaster, licenses, and leases) – in order to improve security of tenure.** This includes tenure rights held by the State and public sector, private entities, and indigenous and other communities under customary tenure systems. These should include all licenses and leases issued over public lands and water bodies. These systems should record, maintain and publicize the tenure status and respective rights and duties, the holders of rights, and the plots or parcels associated with these rights and duties. The system should likewise record land and water bodies under dispute and conflict. The information should be suitably classified and organized, so that it can be retrieved quickly, in forms suitable for specific purposes. Systems of land registration and recording should be modernized so that forgery in the land registration process is stopped, processing time is reduced, and opportunities for bribes and extortion is eliminated.
- **Where necessary, develop appropriate systems for recording individual and collective tenure rights of indigenous and other communities under customary tenure systems.** These should be transparent and compatible with existing recording systems. Where it is not possible to record tenure rights of indigenous peoples and other communities with customary tenure systems, or occupations in informal settlements, a *precautionary approach* should be taken to prevent the registration of competing rights in those areas, including the issuance of government licenses and leases.
- **Government (particularly land agencies) should strive to ensure that everyone is able to record their tenure rights and to obtain information without discrimination of any kind or basis.** Governments should ensure accessibility of recording systems to women, the poor and vulnerable groups. This implies simplified procedures, minimal costs, and public accessibility of offices at the local level.
- **Governments should make every effort to prevent corruption,** particularly through increasing transparency, holding decision-makers accountable, and ensuring that impartial decisions are delivered promptly.
- **Curb corruption in all its forms within land agencies.** Prosecute violators along with the government officials engaged in bribery and extortion, preparation of fake documents, forgery, and related crimes in grabbing land and property.



- **Create independent land monitoring commissions** for major land registration programs (particularly for Cambodia, Kyrgyzstan) and for the implementation of agrarian/land reforms (all countries). These independent commissions should be formed with the active participation of civil society in order to review the progress of land registration and reforms, monitor land rights violations, and to prepare independent reports for policy and action. These Commissions could provide the platform for engaging the wider public – such as in the identification of surplus and *khas* lands, identifying vacant State lands, and lands for redistribution under agrarian reform. Meanwhile, land agencies should have wider forms of consultations and partnerships in formulating of policies and programs with various stakeholders in order to maintain transparency and accountability.
- **Sectors of the rural poor should have legislated representation in land reform committees, municipalities, local councils, resource management committees and other policy bodies where decisions are made on the allocation and disposition of land, grazing areas, forest and water resources.** Rural poor organizations should select their own representatives to these bodies. It may be necessary to ensure participation of women through quotas in these policy and management bodies to strengthen gender equality in the access, control and disposal of natural resources.
- **At the local level, emphasis should be placed on locally-managed ecosystems through bodies that include pasture committees, water users' groups, forest management communities, municipal fisheries associations, as well as indigenous cultural communities.** The participation of women and more vulnerable groups in the community should be emphasized.
- **CSOs should develop “watch-dog” mechanisms (i.e., citizens' committees) to monitor and follow-up key issues in land governance.** These include key themes such as the resolution of land conflicts, women's land rights, agrarian reform implementation, the protection of indigenous peoples' rights, and securing tenure rights for vulnerable sectors such as small fishers and pastoralists. Reports should be publicized in order to contribute to public awareness and discussion on the issues.
- **Finally, CSOs should address the shrinking political and democratic space in their countries.** In some Asian countries there appears to be a growing trend towards the curtailment of civil and political rights, as elite interests tighten their hold on power. Some of the threats come in the form of restrictions on media and cases brought against journalists, stifling of protests, and harassment of opposition leaders. With CSOs, the threats may come in more subtle, institutional forms – registration requirements, restrictions on foreign funding, investigative inquiries, and others. It is thus important to reassess the legal and policy environment for civil society and non-profit development organizations. ■

## ANNEX A

### Legal framework on access to land: key legislations in eight Asian countries

Country	Legal Framework
<b>BANGLADESH</b>	
<b>Land Reform Laws, i.e. – East Bengal State Acquisition and Tenancy Act of 1950 (EBSATA), Land Reform Policy of 1972, and Land Reform Ordinance of 1984</b>	<p><i>EBSATA (1950)</i> abolished the <i>zamindari</i> (rent-collectors) system earlier established under British Rule. It eliminated all rent-receiving interests and intermediaries between the State and the cultivator. It prohibits subletting with the aim of eliminating rent-seeking by absentee landowners. The Act established a land ceiling of about 13.5 hectares per family, plus 1.3 hectares for a homestead.</p> <p>The <i>Land Reform Policy of 1972</i> gives government the mandate to acquire surplus land and to redistribute these to landless peasants. It also authorizes government to acquire flooded and accreted land and to treat these as <i>khas</i> land. It exempts smallholders (less than 3.33 hectares) from paying land tax.</p> <p>The <i>Land Reform Ordinance of 1984</i> reduces the land ceiling to eight hectares, prohibits the transfer of land to another person to conceal the true owner, fixes the minimum wage of agricultural laborers (equivalent to 3 kilos of rice), and institutes a 3-way sharing of farm produce: one-third to the landowner, one-third to the sharecropper, one-third to be shared between landowner and sharecropper on the basis of expenses incurred by each one.</p>
<b>Rules for the Administration of the Chittagong Hill Tracts, 1900</b> (or CHT Regulation of 1900)	The <i>CHT Regulation of 1900</i> gave the Chittagong Hill Tracts special administrative status. It recognized the chiefs and the traditional institutions as part of the administrative system and designated the CHT region as a “special” tribal-dominated area, with restrictions on permanent settlements and acquisition of land by outsiders.
<b>Khas Land Management and Distribution Policy of 1997</b>	Grants joint ownership of <i>khas</i> land to husband and wife.
<b>Acquisition and Requisition of Immovable Property Act, 2017</b>	The law for land acquisition and requisition for Bangladesh, with the exception of the CHT. The <i>Chittagong Hill Tracts (Land Acquisition) Regulation of 1958</i> is the law that applies to the acquisition of land in the CHT.
<b>Alluvial Lands Act of 2010</b>	This is a special law that seeks to prevent disputes concerning the possession of <i>char</i> lands – or lands gained by alluvion, i.e., new lands formed by deposits due to the action of the sea or a river.
<b>Vested Property Restoration Act of 2001</b>	Abolishes the <i>Vested Property Act (VPA)</i> – formerly the <i>Enemy Property Act</i> – that allowed the Government to confiscate property from individuals it deemed as <i>enemies of the state</i> . These included several laws against non-Muslims passed while Bangladesh was part of Pakistan (1948-71), which was at war with India. Even



	<p>after Bangladesh independence in 1971, the VPA continued, and resulted in the confiscation of 850,000 hectares of Hindu property, affecting some 750,000 households (Barkat, 2000). In 2001, the VPA was repealed by the Supreme Court, citing that it violated provisions of the Bangladesh Constitution.</p>
<b>CAMBODIA</b>	
<b>Cambodian Constitution of 1993</b>	<p>Provides that “all persons, individually or collectively, shall have the right to ownership. Legal private ownership shall be protected by Law. The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law, and shall require fair and just compensation in advance.”</p>
<b>Land Law of 2001</b>	<p>Key provisions:</p> <ul style="list-style-type: none"> <li>• outlines concepts of land classification including <i>State public land, State private land, private, and collectively owned land</i>.</li> <li>• creates a status of registerable ownership of land, and puts women on an equal footing with men</li> <li>• establishes the legal framework for a <i>collective ownership</i> arrangement specifically for the protection of indigenous land and traditional ways of life</li> <li>• provides for a land distribution policy to benefit the rural poor, through Social Land Concessions (SLCs)</li> <li>• provides for the establishment of land dispute resolution mechanisms</li> <li>• <i>Article 33</i> states that if the immovable property is taken violently or by abuse of power of the authorities, the property shall revert to the State and it cannot be the subject of any new possession if there is no claim from the lawful possessor of the immovable property of which he was dispossessed</li> </ul>
<b>Forest Law of 2002; Sub-Decree on Community Forestry, 2003</b>	<p>These laws:</p> <ul style="list-style-type: none"> <li>• provide the framework for forest classification</li> <li>• provide for the creation and management of community forests, such that communities are granted an area within the Permanent Forest Reserve to manage and derive benefit from</li> <li>• guarantee the entry rights of local communities into forest concessions</li> <li>• prohibit logging of certain trees valuable to local communities as well as trees and areas of cultural or religious significance, such as spirit forests</li> <li>• mandate the sustainable logging of natural and plantation forests</li> </ul>
<b>Sub-Decree on Economic Land Concessions, 2003</b>	<ul style="list-style-type: none"> <li>• Outlines the scope and criteria for awards of economic land concessions, establishing a ceiling of 10,000 hectares</li> <li>• Requires the concessionaire to conduct prior public consultation with the local community and comply with safety measures</li> </ul>
<b>Sub-Decree 83 on Communal Land Titling</b>	<p>Focused on “Procedures of Registration of Land of Indigenous Communities.” Supports the rights and culture of IPs with the objectives to provide indigenous communities with legal rights</p>

	over land tenure, to ensure land tenure security, and to protect collective ownership by preserving the identity, culture, good custom, and tradition of each indigenous community (RGC, 2009).
<b>Sub-Decree on State Land Management, 2005</b>	Gives the principles and mechanisms for the identification, registration, and classification of State land
<b>Sub-Decree on Social Land Concessions, 2003</b>	Provides the mechanism for transferring private or State lands to the landless poor for residential and/or family farming purposes to meet their basic needs
<b>Sub-Decree on Community Forestry, 2003</b>	Establishes the procedures by which forest-dependent communities could have temporary control of forest resources
<b>Sub-Decree on Land and Property Acquisition</b>	Outlines the legal procedure for State acquisition of land for development projects. It includes information on procedures for environmental and social impact assessments and mechanisms for compensating displaced persons.
<b>INDIA</b>	
<b>Constitution of India, 1950</b>	<ul style="list-style-type: none"> <li>• Basic tenets are equity and social justice</li> <li>• Provides that ownership and control of the material resources of the community should be distributed in such way that the common good is best served and that the economic system does not result in the concentration of wealth and the means of production to the common detriment</li> <li>• Stipulates that “States [must] direct policies to ensure that all citizens have the right to adequate means of livelihood and that all community resources be distributed so as to serve the common good”</li> <li>• Gives each State, rather than the central government, exclusive power to make laws with respect to land, including land reform laws</li> </ul>
<b>State Land Reform Laws</b>	<p>Every State has enacted its own land reform laws on subjects such as:</p> <ul style="list-style-type: none"> <li>• abolition of the Zamindari system to eliminate intermediaries;</li> <li>• ceilings on landholdings, and to redistribute ceiling-surplus land among the landless;</li> <li>• tenancy reforms to ensure tenure security, regularization of rent/revenue, and ownership for tenants;</li> <li>• regulation of sharecropping to safeguard the interest of sharecroppers;</li> <li>• protection against alienation of land belonging to weaker sections such as Scheduled Castes (SCs) and Scheduled Tribes (STs);</li> <li>• consolidation of fragmented landholdings;</li> <li>• provision of homestead to landless households;</li> <li>• provision of government land to the landless on long-term lease including tree-lease; and,</li> <li>• minimum wages for agricultural laborers</li> </ul>
<b>Forest Rights Act, 2006</b>	Recognizes and gives forest rights (including rights to occupy forestland) to Scheduled Tribes and traditional forest dwellers. The law also provides the framework for recording forest rights.

<b>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (LARR) of 2013</b>	<p>This Act replaces the antiquated Land Acquisition Act of 1894. It stipulates certain safeguards during acquisition of land. Except for when land is acquired for “public purpose,” informed consent is to be taken from 80 percent of people affected in cases where the land is acquired for private companies and 70 percent when it is acquired for public-private projects. Affected families have to be compensated at rates above the market value of the land. Further, the government is obligated to conduct social impact assessments for project involving land acquisition.</p>
<b>INDONESIA</b>	
<b>Basic Agrarian Law of 1960 (UUPA) or Law No. 5 of 1960</b>	<p>This agrarian reform law of 1960 remains legally valid, though it was not fully implemented. Key provisions:</p> <ul style="list-style-type: none"> <li>• devolves power to exercise State rights to control land to the province, regency, district and village levels. The same rights could be exercised by communities practicing customary law</li> <li>• authorizes the State to grant ownership/property rights to Indonesian citizens; prohibits/limits foreign ownership of the country’s land, and provides safeguards against foreign expropriation of the country’s natural resources</li> <li>• prohibits absentee land ownership in agricultural land</li> <li>• sets the minimum size for landholdings to ensure that the landowner has enough land to provide for his/her family</li> </ul>
<b>Law No. 56 PRP/1960</b>	<p>Creates different kinds of rights that may be awarded to persons, groups, or legal entities: property rights, lease rights, right to build, user rights, right to rent, right to open the land and to collect forest products, and water use rights. It also sets the ceiling for landholdings of families and legal entities. Land in excess of the ceiling must be turned over to the State upon compensation.</p>
<b>Government Regulation (PP) No. 224 of 1961</b>	<p>Sets the criteria for lands to be subject to land reform; and for identification of land reform beneficiaries.</p>
<b>Law No. 2/ 1960 on Sharecrop Agreement (UUPBH)</b>	<ul style="list-style-type: none"> <li>• Seeks to protect sharecroppers from exploitation by landowners</li> <li>• Provides that the share of the tiller and the landowner would be decided by the regent, according to type of crop and land density.</li> <li>• Specifies a ceiling of three hectares for landholdings</li> <li>• Requires that sharecrop agreements between landowner and tiller be put in writing before the head of the village, and witnessed by one representative from each of the contracting parties</li> </ul>
<b>Presidential Decision No. 30/ 1990</b>	<p>Prohibits the conversion of irrigated agricultural lands to non-agricultural use</p>
<b>Decree of the People’s Consultative Assembly (MPR) No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management, or TAP MPR No. IX/2001</b>	<p>Seeks to correct errors of past agrarian reform implementation (under the Basic Agrarian Law) and mandates the government to:</p> <ul style="list-style-type: none"> <li>• conduct a study of various laws and regulations related to agrarian matters in order to harmonize the policies of sectors;</li> <li>• implement a land reform program based on the “land to the tiller” principle;</li> </ul>

	<ul style="list-style-type: none"> <li>• conduct a land registration program/survey of the control, use, ownership, and exploitation of the land;</li> <li>• resolve all agrarian disputes, and forestall future conflicts by strictly implementing the law;</li> <li>• strengthen the institution responsible for implementing agrarian reform; and,</li> <li>• seek out funding for agrarian reform implementation</li> </ul>
<b>Law No. 19/2013 on the Protection and Empowerment of Peasants</b>	Articles 12 and 18 stipulate that “the national and regional governments with their respective authorities have the obligation to provide agricultural land plots sufficient for agricultural livelihood.” The article also stipulates that the government has to provide two hectares of agricultural land from state lands which are settled as agricultural areas for each peasant who has already been working in agriculture for at least five consecutive years. <sup>19</sup>
<b>Presidential Decree No. 45/2016 and Presidential Decree No. 70/2017</b>	Refers to Government’s Work Plan for 2018. Agrarian reform is placed among the national priority programs.
<b>Presidential Regulation on Agrarian Reform No. 86/2018</b>	Addresses the settlement of agrarian conflicts, agrarian reform implementation, and the identification of TORA (Agrarian Reform Land Areas) – in line with the Jokowi administration’s stated commitment to agrarian reform.
<b>KYRGYZSTAN</b>	
<b>Constitution of the Kyrgyz Republic, 2010</b>	<ul style="list-style-type: none"> <li>• Recognizes diversity of ownership forms and guarantees equal legal protection of private, State, municipal and other forms of ownership.</li> <li>• Protects the property of its citizens and legal entities.</li> <li>• Common ecological systems as the basis of life and activity of the people are under special protection of the State; pasture lands cannot be privately owned.</li> <li>• The limits and procedure for the exercise by owners of their rights and the guarantees of their protection are determined by law.</li> </ul>
<b>Law on State Registration of Rights to Immovable Property and Transactions with It (No. 230/ 2011)</b>	Stipulates that rights and encumbrances on real estate, as well as transactions with it, are subject to mandatory State registration.
<b>Land Code of the Kyrgyz Republic (LC KR) No. 45/1999</b>	The <i>Land Code</i> regulates land relations in the Kyrgyz Republic: the grounds of origin, the procedure for exercising and terminating land rights and their registration; determines the roles of State bodies and bodies of local self-government in the sphere of regulating land relations; determines the legal status of lands of all categories; and stipulates provisions on land protection and State control over land use.

<sup>19</sup> The Consortium for Agrarian Reform (KPA) does not consider the law as ideal for protecting and securing peasants’ rights over their lands, to wit: (a) the law establishes rental rights (rather than ownership) as mechanism for providing land for peasants; (b) it does not include land redistribution; (c) it provides a very limited range of lands (free land and abandoned land); and, (d) it does not give any freedom or legal certainty for existing peasants organizations, instead it imposes State corporatism over the peasants.

<b>Law on the Transfer (Transformation) of Land Plots No. 145/2013</b>	This law defines the transfer (transformation) of lands from one category to another. It provides two main options for obtaining the right to a land plot: (1) the provision by an authorized State body to own or use a land plot in State or municipal ownership (the primary market for granting rights); and, (2) the transfer of the right to a land plot (i.e., alienation by the owner or land user of the right to a land plot to another person through civil law transactions (the secondary land use market).
<b>Law on Pastures (No. 30/2009)</b>	Regulates the use of pastures, which are deemed as “the exclusive property of the State.” It identifies part of the pastures as under the jurisdiction of the <i>ayil okmotu</i> (local self-governing administrative bodies), and the other part of the pastures as part of the lands of the State Forest Fund (SFF) – the legal regimes of which are different from each other.
<b>NEPAL</b>	
<b>Nepal Constitution of 2015</b>	The New Constitution ensures right to food for every citizen (Article 36). It also incorporates: the right to property, women’s equal rights, rights of the religious, and policies related to agriculture and land reform. However, it does not explicitly commit to provide land to peasant or landless farmers, especially to tillers who do not have legal evidence of ownership over the land. Although it mentions the need to provide tenure security to farmers in order to enhance productivity of the land, it does not state this as an obligatory function of the State.
<b>Land Reform Act of 1964, and related amendments</b>	<p>Establishes land ceilings on agricultural landholdings (approximately 16 hectares in the Terai, four hectares in the hilly regions, and two hectares in Kathmandu valley). It seeks to protect the tenant rights by including their names in the owner’s land title. It fixes the land rents and reduces interest on rural loans, and allows tenants to apply for tenancy rights at the District Land Reform Office (DLRO) provided that they had tilled the land the previous year and could present proof, such as a grain payment receipts.</p> <p>The Land Reform Act of 1964 has been amended seven times:</p> <ul style="list-style-type: none"> <li>• 4<sup>th</sup> Amendment (1996) sought to abolish “dual ownership” of land by providing that the land cultivated by the tenant be divided equally between landlord and tenant, and that a credit facility would be made available to the tenant who wished to buy the landlord’s half. Through this, tenants would become landowners themselves.</li> <li>• The 5<sup>th</sup> Amendment (2001) lowered land ceilings.</li> <li>• The 7<sup>th</sup> amendment (2018) seeks to provide land to landless Dalit communities within a 3-year period.</li> </ul>
<b>Land Acquisition Act of 1977</b>	Requires the State to fulfill certain detailed procedures and to provide just compensation in its exercise of the power of eminent domain; land may be acquired by the State only “for public interest.”

<b>Environment Protection Act of 1997; Environment Protection Regulation of 1997</b>	Requires proponents to carry out Initial Environmental Examinations and Environmental Impact Assessments of proposed projects.
<b>Land Use Act of 2018</b>	Classifies land according to specific purposes, and establishes seven categories of land use: agricultural, residential, commercial, industrial, forest, public, and others. The Act was passed in order to address unmanaged urbanization – that directly reduces arable land and agricultural production and threatens food security.
<b>Financial Act of 2015</b>	Includes specific provisions that minimize the costs of land ownership registration for women, Dalits, and other marginalized and disadvantaged sectors.
<b>Right to Housing Act of 2018</b>	Seeks to implement the fundamental right to housing under <i>Article 37</i> of the new 2015 Constitution.
<b>Right to Food and Food Sovereignty Act of 2018</b>	Institutionalizes the right to food and food sovereignty under <i>Article 36</i> of the new Constitution. It seeks to ensure and maintain food security by providing farming households with adequate access to land.
<b>PAKISTAN</b>	
<b>Pakistan Constitution of 1973</b>	<p><i>Article 3</i> allows citizens equal rights to property but provides the State with the right to intervene should these rights conflict with the public interest.</p> <p><i>Article 24</i> allows the State to intervene in property rights to protect the ownership rights of the disadvantaged i.e., women and children.</p> <p><i>Article 38</i> declares that the State shall secure the well-being of people by preventing the concentration of wealth and by ensuring equitable adjustment of rights between employers and employees, landlords and tenants.</p>
<b>Land Registration and Land Revenue Acts</b> – i.e., Land Registration Act of 1908, Land Revenue Act of 1967. <b>Rules and Manuals</b> – including the Land Record Manual, Land Administration Manual, Settlement Manual, Land Revenue Rules	<p>The 1908 Act defines the establishment of Registrars, and the procedures and requirements for registration of documents on land. Normally, revenue officers are declared as registration authorities.</p> <p>Land Revenue Acts have been adopted and amended by the provinces; they deal with the issues of record of rights and land revenue.</p>
<b>Property Transfer and Land Acquisition Acts</b> – i.e., Transfer of Property Act of 1882, Land Acquisition Act of 1894	<p>The 1882 Act relates to the transfer, sale/mortgages charges, leases exchanges, and actionable claims in respect of property.</p> <p>The 1894 Act defines the acquisition of land for public purpose and for determining the amount of compensation to be paid for such acquisition.</p>



<p><b>Provincial Tenancy Acts</b> – i.e., Punjab Tenancy Act of 1887; Government Tenants (Punjab) Act of 1893, Colonization of Government Lands (Punjab) Act of 1912, Provincial Tenancy Acts of 1950 (Sindh, Punjab &amp; NWFP), Baluchistan Tenancy Ordinance of 1978</p>	<p>Seeks to legalize/regularize the relationship between landlords and peasants with a view to protecting tenant rights – i.e., rights to land occupancy, land succession, share of produce, duties of landlords and tenants, issues of debt, and ejection of tenants due to non-payment of rent. Many of these old tenancy acts/ordinances remain in effect.</p>
<p><b>Land Reforms</b> – i.e., Martial Law Regulation 64 (West Pakistan Land Reforms Regulation of 1959); Land Reforms Regulation of 1972; Land Reforms Act of 1977</p>	<p><i>MLR 64</i> established high land ceilings on individual landholdings: 500 acres (202 hectares) of irrigated land and 1,000 acres (405 hectares) of non-irrigated land. It abolished all <i>jagirs</i> (large lands given by the British Colonial Government to loyal persons for revenue collection).</p> <p>The <i>1972 land reform law</i> lowered the land ceilings to 150 acres (61 hectares) of irrigated land and 300 acres (121 hectares) of non-irrigated land. It provided no compensation for owners' confiscated land and did not charge beneficiaries for land received. It gave tenants the rights of land purchase, increased security of tenure, and lower rent rates.</p> <p>The <i>1977 law</i> further reduced ceilings on private ownership of land to 100 acres (40 hectares) for irrigated land and 200 acres (81 hectares) for non-irrigated land. It exempted small farmers owning 10 hectares or less from paying taxes on agricultural income.</p>
<p><b>Corporate Farming Ordinance, 2001</b></p>	<p>Allows stock-listed corporations to lease land in Pakistan for a period of 99 years, broken into two periods of 50 and 49 years. Enables transnational corporations to take lease of unlimited land with a minimum size of 1,500 acres (607 hectares), with incentives of 100% equity, tax incentives, and full repatriation of profits.</p>
<p><b>PHILIPPINES</b></p>	
<p><b>Philippine Constitution of 1987</b></p>	<p>Declares that it is State policy to promote social justice and to protect human rights. <i>Article 12, sec 6</i> states that “the use of property bears a social function”, and thus the State “shall regulate the acquisition, ownership, use and disposition of property.” The Constitution also introduces social reforms – by mentioning agrarian reform, rights of subsistence fishermen, settlers in public domains, and indigenous peoples.</p>
<p><b>Civil Code</b></p>	<p>Recognizes civil rights, including the right to private property, privacy, security in one’s home, and against deprivation of property without due process and/or compensation. Establishes equal property relations for women especially in cases of marriage, separation and inheritance.</p>



<p><b>Comprehensive Agrarian Reform Program of 1988 and 2011</b> (RA 6657, as amended by RA 9700)</p>	<p>Extends agrarian reform to all agricultural lands, covering private and public lands. Establishes a land ceiling of five hectares in private lands and provides for the redistribution of lands above the land ceiling; strengthens the agrarian justice system; and mandates the delivery of support services (i.e., extension, credit, infrastructure, livelihood assistance).</p>
<p><b>Indigenous Peoples Rights Act (IPRA) of 1997</b></p>	<p>Recognizes and protects the rights of indigenous cultural communities/indigenous peoples (ICCs/IPs) over their ancestral domains through the issuance of collective or individual titles.</p>
<p><b>Urban Development and Housing Act (UDHA) of 1992</b></p>	<p>Provides for a comprehensive urban development program by prioritizing the provision of decent shelter to the poor. Defines the framework for the development and use of urban lands.</p>
<p><b>Philippine Fisheries Code of 1998</b></p>	<p>Gives small fisherfolk the preferential rights to fish in municipal waters (7 kms from shoreline) and enhances their role in the management of aquatic resources.</p>
<p><b>Public Land Use Act of 1936; Forestry Code of the Philippines of 1975; National Integrated Protected Areas System Act of 1992</b> (as amended in 2015)</p>	<p>Defines the scope, management, protection and disposition of lands and areas under the <i>public domain</i>.</p>

## ANNEX B

### Redistributive land reforms and their key periods in eight Asian countries

Country	Key periods of redistributive reform	Brief description
<b>Bangladesh</b>	1950 to 1961	Following Indian partition, the <b>East Bengal State Acquisition and Tenancy Act of 1950 (EBSATA)</b> abolished the <i>zamindari</i> (intermediary rent-collectors) system earlier established under British Rule and gave the control of land back to their tillers. The 1950 Act also established a land ceiling <sup>20</sup> of 13 hectares per family, but this was later increased to 50 hectares in 1961 by the Karachi-based government.
	1972 to 1975	Following independence from Pakistan in 1971, Bangladesh instituted the <b>Land Reform Policy of 1972</b> that brought down the land ceiling again to 13 hectares. However, a military coup in August 1975 rejected the policy of land redistribution (Quizon, 2013b).  Over the years, however, there have been limited efforts at land redistribution and tenure reform, mostly through the imposition of ceilings on land ownership (Barkat & Suhrawardy, 2018).
<b>Cambodia</b>	2001 onwards	Decades of civil war and foreign occupation resulted in the massive dislocation of millions of people and the loss of property rights. In 2001, the <b>Land Law</b> introduced a cadastral system, a central registry of titles, and a land classification system. It also provided for two types of land concessions: <i>economic</i> (ELCs) and <i>social</i> (SLCs). However, implementation was accompanied by massive land grabbing, with rural landlessness increasing from 13 percent in 1997 to 20 percent in 2004 (IFAD, 2011).  Mechanisms were later established for private land registration and titling, including <b>Sporadic Land Registration, Systematic Land Titling, Social Land Concessions, Communal Land Titling</b> and <b>Directive 01 (D-01)</b> .
<b>India</b>	1949 to 1993	Under India's federal system of government, <b>land reforms</b> were legislated and implemented by each of the 15 States with guidance from the central government. Starting in the 1950s, the States enacted legislation aimed at: (i) abolishing intermediary interests on land; (ii) regulating tenancy; (iii) setting land-ceilings and distributing surplus lands above the

<sup>20</sup> In agrarian reform programs, the land ceiling refers to the maximum size of land holding that an individual or family can own. Land over and above the ceiling limit is redistributed to landless and near-landless peasants and farmworkers.

<b>India</b>		<p>ceilings; and, (iv) redistributing public lands for agriculture and homesteads. The most notable land reform programs were implemented in the States of West Bengal and Kerala, during the rule of leftist parties, and in Uttar Pradesh immediately after independence in 1947. Over time, however, land reforms began to fade away from national and State priorities.</p> <p>In terms of redistributing surplus lands, by the end of 2005, about 6.5 million acres (2,428,114 hectares) of surplus lands had been distributed to 5.6 million households. This represented one percent of India's agricultural lands and four percent of rural households.</p>
<b>Indonesia</b>	1962 to 1965	<p>The nationalist government instituted two agrarian reform policies – the <b>1960 Basic Agrarian Law</b> and the <b>1962 Land Reform Program</b>. The 1962 law established land ceilings based on the availability of irrigation and on regional population densities. The program was implemented for only four years, and then reversed when the military took power in 1966. All rural organising activities were stopped, freedoms curtailed, thousands killed, and lands that had already been distributed to peasants through the program were taken back by local elites.<sup>21</sup></p>
	2015	<p>In 2015, administration of President Joko Widodo set a target to acquire and redistribute nine million hectares of land in 2015-2019, and to grant small-holder user-rights to 12.7 million hectares of State forests. However, there is still no integrated policy for the implementation of agrarian reform (KPA, 2018).</p>
<b>Kyrgyzstan</b>	1999 onwards	<p>Following the break-up of the Soviet Union in 1989, collective farmlands in five Central Asian republics were de-collectivized and privatized through three different modalities, depending on each country: (i) restitution, or returned to their former owners; (ii) distributed in workers' shares; and/or (iii) distributed in individual farms (as cited in Quizon, 2013b).</p> <p>In Kyrgyzstan in 1995, all land use rights were extended to 99 years, and in 1998, a constitutional amendment was passed through a public referendum which converted all land-use certificates into ownership documents. The <b>Land Code of 1999</b> permitted the purchase and sale of (non-agricultural) lands; the <b>Agricultural Land Regulation of 2001</b> later allowed the State and Kyrgyz citizens to own agricultural land.</p>

<sup>21</sup> Under the New Regime, agrarian reform was systematically ignored with the enactment in 1968 of the Law on Foreign Capital Investment, the Law on Basic Forestry Regulation and the Law on Basic Mining Regulation. (Luthfi and Fauzi, 2018)

<b>Nepal</b>	1964 to 1990	<p>After the downfall of the Rana regime in 1951,<sup>22</sup> land reforms were attempted at various periods of time. Of these, the king's <b>Land Act of 1964</b> made major impact on land distribution, mainly in the Terai region. The law abolished the zamindari system, provided for rights of tenants and instituted sharecropping arrangements (50-50 sharing of the main crop), and resettlement. It imposed land ceilings and provided for the distribution of surplus land to landless people. While the program was said to protect more the interests of landlords than that of tenants, it was nonetheless implemented (Adhikari, 2008).</p> <p>Under the Land Act of 1964, government was able to identify and redistribute only 1.5 percent (29,124 hectares) of total agricultural land. About 1.8 million tillers were identified by the administration until the 1980s, and 1.5 million provisional certificates of tenancy rights were issued (Adhikari, 2008). However, implementation gradually began to wane especially in the 1990s with the growing emphasis on economic liberalization and privatization, and on markets for regulating economic activities.</p> <p>The Land Act was amended several times. The fourth amendment in 1996 sought to eliminate “dual ownership” by reducing the land ceiling and by distributing half of the land to registered tenants and then abolishing tenant rights. However, this negatively affected around half a million tenants who were <i>unregistered</i> in the prescribed period. (Adhikari, 2008) The Government reopened Applications for Tenancy Land claim from 6 May to 20 August 2018. Recent data from the Ministry of Agriculture, Land Management and Cooperatives (MALMC) seem to indicate that 100,000 tenant families still need to file their tenancy claims, but many are threatened by their landowners (Basnet and Neupane, 2018).</p>
	Since 2006	<p>Following the ten-year Maoist insurgency (1996 to 2006), “scientific” land reform became a major policy agenda under the <b>Comprehensive Peace Agreement of 2006</b>. Under the <b>Constitution of 2015</b>, a section on land reforms – to end dual ownership existing on agricultural lands and to discourage absentee landownership.</p>
<b>Pakistan</b>	1959 to 1967	<p>There were three attempts at land reforms in Pakistan:</p> <ul style="list-style-type: none"> <li>• In 1959, the <b>Martial Law Regulation 64</b> that set very high land ceilings (200 hectares for irrigated and 400 hectares for non-irrigated land). This benefitted about eight percent of subsistence farmers.</li> </ul>

<sup>22</sup> In The Rana era (1846–1951) in Nepal refers to the period during which control of the government lay in the hands of the Rana family. Under the Ranas, Nepal maintained relations with the British, who provided it with support. When the British withdrew from India in 1947, the Rana family faced a revolution in 1950. And in 1951, under pressure from India, Nepal's King Tribhuvan took the throne with restored sovereignty.



<p><b>Pakistan</b></p>		<ul style="list-style-type: none"> <li>• In 1972, the <b>Martial Law Regulation 114</b> lowered the ceiling for individual landholding to about 60 hectares for irrigated and 120 hectares for non-irrigated land. But implementation was weak, and many landlords retained their lands by transferring land under family members and sometimes in fake names. Less than 360,000 hectares of land was acquired for distribution.</li> <li>• The <b>Land Reforms Act of 1977</b> further reduced the ceiling to 40 hectares for irrigated and 80 hectares for non-irrigated lands. However, the 1977 Act was followed by the imposition of martial law and much of the momentum fueling reforms dissipated in the years that followed. In 1990, the Supreme Court’s Sharia Appellate Bench declared various provisions of the Act as “un-Islamic,” and the political will to address land issues waned.</li> </ul> <p>According to the Federal Land Commission, the government has, to date, expropriated 1.8 million hectares (less than eight percent of cultivated area) and redistributed 1.4 million hectares to 288,000 beneficiaries. About two-thirds of land expropriation and three-fourths of the land distribution were accomplished under the initial 1959 land reforms (USAID, 2018).</p>
<p><b>Philippines</b></p>	<p>1972 to 1983</p>	<p>Land reforms were legislated in 1955 and 1963 in response to agrarian and social unrest, yet implementation was stifled by landowning interests entrenched in power, and by the lack of government support and implementation.</p> <p>In 1972, the Martial Law regime instituted a land-to-the-tiller act i.e., <b>Presidential Decree 27</b>, although coverage was limited to tenanted rice and corn farms, which were hotbeds of agrarian unrest, while large farms planted to other crops (sugarcane, coconut, etc.) remained untouched.</p>
	<p>1988 to present</p>	<p>Following the 1986 People’s Power Revolution, the restoration of democratic processes and a new <b>1987 Constitution</b>, two key “land reform” programs were instituted, focused on different sectors. The <b>1988 Comprehensive Agrarian Reform Program (CARP)</b> aimed to reform 8.1 million hectares by granting 25-year user-rights for occupants of <i>State forest lands</i>, and through land redistribution of private <i>agricultural lands</i>. For private agricultural lands, the law set a land ceiling of five hectares.</p> <p>The <b>1997 Indigenous People’s Rights Act (IPRA)</b> is a landmark act that formalized the rights of indigenous peoples (IPs) to their ancestral domains and self-governance.</p>



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# Empowering the poor and marginalized through land reform

## CSO Land Reform Monitoring Report in Bangladesh 2018<sup>1</sup>

*An initiative of the Land Watch Asia Campaign*

An estimated 66 percent of the citizens of Bangladesh live in poverty, the highest level in South Asia (The Borgen Project, 2017). And because they are poor, they are also powerless; thus, severely restricting their ability to use and own land to live and work in.

In an agrarian country like Bangladesh, poverty can be considered a direct consequence of the lack of access to or ownership of land. The less land one possesses or has access to, the poorer he or she is and also the more powerless he or she becomes.

This lack of power and influence, and indeed also of education, hampers the ability of the poor – usually coming from marginalized groups such as religious minorities, indigenous peoples, women, and small farmers – to fight for their rights to land. Thus, even if they are legally entitled to some land, they invariably fail to secure the property.

More often than not, those lands have already been secured by politically-powerful and influential people. And so the cycle of poverty continues through generations.

There are other key issues and development trends over the past 10 years that impact on the rural poor's access to land. One of these is the development of commercial

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<sup>1</sup> This is an abridged version of the CSO Land Reform Monitoring Report in Bangladesh: 2018 prepared by the Human Development Resource Centre (HDFRC) and the Association for Land Reform and Development (ALRD) as part of the Land Watch Asia (LWA) campaign. This 2018 LWA country monitoring report focuses on land governance, and is supported through the project "Sustainable, Reliable and Transparent Data and Information towards Responsible Land Governance: Putting Commitment 8 into Action."

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The Bangladesh Economic Zone Authority (BEZA), after acquiring 75,000 acres (30,351 hectares) of land and giving licenses for six economic zones to the private sector, has targeted the acquisition of an additional 100,000 acres (40,469 hectares) of land to establish 100 Special Economic Zones across the country by 2030. They acquired 110 acres (44.52 hectares) land for Mongla Economic Zone in Bagerhat, 496 acres (201 hectares) for Bheramara Zone in Kushtia and 500 acres (202 hectares) for the Mirsharai Zone in Chattogram.

The Forest Department of Bangladesh has set up nine Eco Parks on 20,991 acres (8,495 hectares) of land. These parks have been set up on the lands of the indigenous peoples, threatening their lives and livelihoods.

## **LEGAL AND POLICY ENVIRONMENT ON ACCESS TO LAND**

Land policies are central to the implementation of rights and access to land for the marginalized people. They determine who get the access to land and who do not.

The East Bengal State Acquisition and Tenancy Act of 1950 (EBSATA 1950) is considered the main law covering access to land in Bangladesh. It aimed to make peasants direct tenants of the government without any intermediary. It endowed them with rights to transfer, inherit, and cultivate their land.

In the succeeding years, there have been attempts at re-distributive reform through the establishment of land ceilings. “But whilst ostensibly designed to place land in the hands of the tiller and to return water bodies to those who fish them, these have largely been circumvented by the wealthy and powerful” (Raihan, Fatehin & Haque, 2009).

After independence of 1971, the ceiling of 33.3 acres (13.47 hectares) per family was restored by the first government of Bangladesh, through Land Reform Policy 1972. The policy also mandated the government to acquire surplus land and redistribute it to the landless peasants. This Land Reform Policy 1972 sustained the pro-poor spirit of EBSATA.

In 2001, the government formulated the National Land Use Policy, which aimed to, among others, establish a data bank for *khas*, fallow, *char* lands (lands lost due to erosion during flooding); introduce a Certificate of Land Ownership (CLO), and distribute agricultural and non-agricultural *khas* lands.

Unfortunately, most of these have remained unimplemented.



A new National Land Policy 2016 was recently drafted. The vision is to provide guidance on developing a legal and institutional framework that is necessary (a) to provide every citizen access to land; (b) to promote equitable and efficient land allocation and land use planning systems; (c) to promote an efficient land administration and management system; and, (d) to promote land tenure security for all citizens.

There is no single law that covers the rights of all sections of poor and marginalized people, although there are specific laws that apply to particular people.

In Bangladesh, for example, women's rights of and access to land are determined by the conventional laws of their religion — *Sharia* for Muslim women and *Daibhag* for Hindu women. *Sharia* grants the women limited rights to inherit land and property, but even this limited entitlement is often just in paper, they are discouraged to claim their rights due to the patriarchal nature of society. The condition of Hindu women is worse; they have no formal right to inherit land and property under *Daibhag* (Barkat et al., 2015b).

The indigenous peoples (IPs) living in both the plains and the south-eastern hilly region of Bangladesh — Chittagong Hill Tracts (CHT) — have customary laws of their own, which differ from the land laws of the so-called mainstream people, in its focus on collective rights instead of individual rights over land.

## **STATUS OF ACCESS TO LAND BY THE RURAL POOR SECTORS**

Bangladesh has a huge population but with limited land. It has 37.4 million acres (15.1 million hectares) of land, of which 60 percent are used for agriculture. About 43 percent or 16 million acres (6.47 million hectares) of land are privately owned and 13 percent or five million acres (two million hectares) are under litigation. Around 27 percent or 10 million acres (four million hectares) of land are under government use. Total *khas* land (agricultural and non-agricultural) and water bodies is five million acres (two million hectares). Around one-sixth of all lands are forests. The government became the custodian of 2.6 million acres (1.05 million hectares) under the Vested Property Act (VPA) and one million acres (404,686 hectares) under the Abandoned Property Act (Barkat et al. Eds., 2017d).

### **Small-scale Farmers and Rural Producers**

The distribution of agricultural land in Bangladesh is highly skewed. Marginal and small farmers, who own nothing to a very small amount of land, account for 88 percent of the total farming community. Medium and large farmers, who own medium to large tracts of land, are only 12 percent of the total farming community.

**Table 1: Basic Features of Land and Population in Bangladesh, 2014**

Land/population	Amount
Total land (million acres/hectares)	37.4/15.1
Population (in million)	150.0
Household (in million)	30.0
Land under agriculture (million acres/hectares)	22.2/8.98
Privately owned (rural-urban, disputed, non-identified <i>khas</i> land including community forestry) (million acres/hectares)	21.0/8.5
Land under government use (rail, port, road, office, industry, educational institutions, health, utility service, etc.) (million acres/hectares)	10.0/4.05
<i>Khas</i> land and <i>khas</i> water-bodies (million acres/hectares), of which:	5.0/2.02
Agricultural <i>khas</i> land	1.2/0.49
Water bodies (closed and open)	1.2/0.49
Non-agricultural land	2.6/1.05
EPA/VPA (government as custodian) (million acres/hectares)	2.7/1.09
Abandoned (government as custodian) (million acres/hectares)	1.0/0.40

Source: Barkat et al. Eds. (2017)

**Table 2: Distribution of Land by Farm Size**

Size of Holdings	1960	1983 to 1984	1996 rural	2005
% of holdings owning no land or absolute landless	—	8.67	10.18	14.03
% of marginal farmers (0.02-0.19 of a hectare)	24.3	24.06	28.45	38.63
% of small farm holdings (0.20-1.00 hectare)	27.3	46.28	51.42	49.86
% of medium farm holdings (1.01-3.03 hectares)	37.68	24.72	17.61	10.34
% of large farm holdings (3.04 hectares and above)	10.69	4.94	2.52	1.17

Source: Agricultural Sample Survey of Bangladesh, 2005

Family farming in Bangladesh is recently under serious threat due to the increasing trend of land grabbing, which usually comes in the form of large 'land deals' for projects in fields such as tourism and industry.

This leads to the mass displacement and gross human rights violations of the family farmers, as they often lack any credible deed or certificate that would have secured their land tenure. This is often justified in the name of ensuring food security for all.



## Indigenous Peoples

Indigenous peoples account for approximately 1.7 percent of the total population of Bangladesh of 150 million. Most of them are economically backward and inadequate measures have been taken to improve their condition.

As a result, while the national rate of absolute poverty is 39.5 percent, it is 65 percent in case of IPs living in the CHT, and 60 percent in case of the IPs living in the Plains (Barkat, 2016b).

The land rights of the CHT are based on traditional occupations, with the land and its resources providing the enabling environment for subsistence activities (Roy, 2000). The IPs are historically accustomed to use their land as ‘common property’, which was hindered by the concept of ‘the Doctrine of *terra nullius*’ in the British colonial era. In some cases, custom-based rights have been transformed into customary written laws or have been formally acknowledged by executive orders.

There is no distinct legal framework for the IPs of the Plain districts. However, there are some national land laws applicable to IPs from both the Plains and the Hills. They include Article 97 of EBSATA 1950 and Land Reform Ordinance of 1984. These laws do not directly discriminate against the IPs, but they are very limited in scope to ensure their access to land and land rights.

## Rural Women

In Bangladesh, women are generally treated as second-class citizens. They are routinely denied rights to inherit land, for example, and this contributes to their continuing poverty and social subjugation.

In the rural areas, only men have the right to make decisions on how to use and exploit the land. Women rarely have their names on land titles, certificates, leases, and contracts. While the Constitution of Bangladesh grants equal rights to women and men, the reality is that women do not enjoy the same rights.

Only 15.8 percent of the total land in the rural areas is owned by women, who comprise 53.1 percent of the rural population. Further, men own an average of 46.2 decimals (0.19 hectares) of agricultural land (including water bodies) in the rural area; while women only own an average of 7.2 decimals (0.03 hectares) (Barkat et al Eds., 2017).

The land registration system in Bangladesh – being complex, expensive and time consuming – is also not friendly to women, most of whom are illiterate.



## Fisherfolk

About 10.32 million people are related to professions concerning water bodies. Sixty-one percent of them live in poverty. The main reason behind this poverty, as well as the marginalization of fisherfolk, is their lack of legal rights over land and water bodies. They have no secure access to these resources.

Of the 12 lakh acres (48,562 hectares) of *khas* water bodies, only five percent have been leased out to poor fisherfolk, which means that 95 percent of water bodies are in the hands of rent-seeking water elites (Barkat, 2016a).

### **RESOLUTION OF LAND CONFLICTS AND PROTECTION OF LAND RIGHTS WORKERS**

Due to the large population and scarcity of land, conflict has been inevitable in Bangladesh. Indeed, almost 60 percent of legal disputes in Bangladesh have to do with land (TIB, 2015).

The most common causes of land disputes are distribution of *khas* land to ineligible households, possession of government-allocated land by ineligible persons, and encroachment by the politically powerful and by local elites on public land inhabited by landless people.

Demand for non-agricultural land is on a rise given unabated urbanization. At the same time, agricultural land is shrinking, thus increasing the intensity of ongoing land conflicts (Herrera, 2016; Hossain, 2015).

**Table 3. Causes of Land Conflicts in the last 10 Years in Bangladesh**

Causes	Examples
Political	<ul style="list-style-type: none"> <li>● Lack of political stability</li> <li>● Rising fundamentalism</li> <li>● Political corruption</li> <li>● State capture and land grabbing</li> </ul>
Economic	<ul style="list-style-type: none"> <li>● Evolution of land markets</li> <li>● Increasing land prices</li> <li>● Increasing rent of land</li> <li>● Limited capital markets</li> </ul>
Socio-economic	<ul style="list-style-type: none"> <li>● Poverty</li> <li>● Poverty-related marginalization and exclusion</li> <li>● Unequal distribution of resources</li> <li>● Unequal distribution of power</li> <li>● Inadequate financing options for the extreme poor</li> </ul>

Causes	Examples
Socio-cultural	<ul style="list-style-type: none"> <li>● Deteriorated traditional values and structures</li> <li>● Lack of information on institutions and mechanisms of land markets</li> <li>● Abuse of power</li> <li>● Helplessness of the disadvantaged</li> <li>● Unregistered land transactions</li> <li>● Fraud by land officials</li> <li>● Patronage system</li> <li>● Hierarchical structure of society</li> </ul>
Demographic	<ul style="list-style-type: none"> <li>● Population growth and rural exodus</li> <li>● New refugees (Rohingya)</li> </ul>
Legal and Judicial	<ul style="list-style-type: none"> <li>● Legislative loopholes</li> <li>● Traditional land law without written records</li> <li>● Lack of clearly defined plot and village boundaries</li> <li>● Formal law which is not sufficiently disseminated or known</li> <li>● Limited access to law enforcement and jurisdiction by the disadvantaged</li> <li>● Inadequate implementation of legislation</li> </ul>
Administrative	<ul style="list-style-type: none"> <li>● Partial implementation of formal regulations</li> <li>● Administrative corruption</li> <li>● Insufficient control over State land</li> <li>● Lack of communication, co-operation and co-ordination within and between different government agencies as well as between public and private sector</li> <li>● Lack of accountability</li> <li>● Limited access to land administration, especially for the poor and rural population (distance, illiteracy, costs etc.)</li> <li>● Limited public participation, especially in land use planning and demarcation of concession land</li> <li>● Insufficient staff and technical/financial equipment at public agencies</li> <li>● Lack of transparency</li> </ul>
Technical	<ul style="list-style-type: none"> <li>● Inaccurate surveying</li> <li>● Missing land register</li> <li>● Missing land use planning</li> </ul>
Ecological	<ul style="list-style-type: none"> <li>● Erosion/drought/floods leading to urban migration</li> </ul>
Psychological	<ul style="list-style-type: none"> <li>● Loss of identity</li> <li>● Collective suffering</li> <li>● Desire for revenge</li> <li>● Thirst for power</li> </ul>

**Source:** Prepared on the basis of pertinent literature review following the structure of Wehrmann (2008)

## Mechanisms for Resolving Land Conflicts

Land conflicts are resolved in Bangladesh either through the formal system, where the dispute is brought to court before a judge, or through other systems of conflict resolution. In rural areas, for example, land conflict resolution is often based on *Sharia* or the Islamic Civil Code, since Bangladesh is a Muslim-majority country. No lawyer is needed under this system.

Indigenous people, on the other hand, resort to customary conflict resolution, where a strong conciliatory character, usually a respected elder, is called for arbitration. His/her words are



considered law. There is usually a panel of elders whose main objective is to resolve conflicts and reestablish harmony. This system, however, is not recognized under the Constitution of Bangladesh.

### **Effectiveness of Legal and Institutional Frameworks**

The legal and institutional frameworks have a very limited capacity in respecting, protecting, and resolving land conflicts, and preventing violence. One reason is that land-related laws are often unclear and unnecessarily complicated, which is a legacy from the colonial period. Another reason is the institutional bias towards the rich and the powerful.

There are other factors like institutional inefficiency. In 43 land survey tribunals of the country, there is a backlog of about 250,000 cases related to land conflict, partly due to the dire lack of judges.

Then there are the contradictions within the law that limit the institutional capacity to resolve land conflict and avoid escalation of violence. In the case of the CHT Land Conflict Resolution Law of 2001, the law has been amended, but no rules and regulations to guide the implementation have been passed.

As of the latest count, there are 22,000 conflict resolution applications waiting to be reviewed. Indeed, in 16 years (2001 to 2017), the Commission has not decided on a single case of land dispute (The Daily New Age, 2015).

### **Prevention of Land Conflict**

Measures have been taken to prevent land conflict and protect land rights defenders. The draft National Land Policy 2016 stipulates, for instance, that the government will establish specialized land courts that will help provide speedy, just, and affordable action on land matters. The government is also expected to issue procedural rules to be applied by specialized land divisions and facilitate the use of Alternative Dispute Resolution (ADR) mechanisms for the quick resolution of conflict.

## **TRANSPARENCY IN LAND GOVERNANCE AND ADMINISTRATION**

Land governance refers to the practices and rules of land tenure, land ownership, and land use. These determine who will have access to land and when and how this access is provided. Besides ownership and tenure, land governance also covers land administration, conflict resolution, and land redistribution or land reform (ILC-UNDP/DCC, 2008). The land governance and administration system of Bangladesh is – to a larger extent – worthless, inefficient, ineffective



and non-transparent, thus leading to such problems as dual ownership and land grabbing (Barkat, 2016a).

Making the system more transparent will go a long way in making the system work, especially for the poor and marginalized. This is where civil society and non-government organizations working on land rights can come in. Bangladesh has the largest number of NGOs in the world, with over 2,000 registered with the NGO Affairs Bureau (local and international) and there are ways for some of them to get involved in improving land governance, for example by being part of committees related to land and through policy and advocacy work.

It should be noted that CSOs have been campaigning for improved access to land by the poor and marginalized for years. The CSOs are also getting engaged in government projects and initiatives. The Association for Land Reform and Development (ALRD), for example, provided technical assistance to the Directorate of Land Records and Survey (DLRS) in preparing the *Citizens' Charter*. CSOs like the Human Development Research Centre (HDRC) have also been doing evidence-based research on land and agrarian issues. The findings are widely used in mass campaigns and policy advocacy programs.

### **Access to Land and Tenure-related Data and Information**

Information and data on land and tenure-related issues are available. In this regard, the Right to Information Act 2009 is seen as a significant breakthrough in terms of accountability and transparency of land administration and management.

However, updated information is not widely available as the system is yet to be digitalized.

## **SUMMARY OF FINDINGS**

### **Land Rights and Land Access in Bangladesh**

- Bangladeshi rural poor are powerless and marginalized; they include the hungry, unemployed, disabled, and handicapped people from the historically impoverished Northern region of the country, victims of ecological disasters, religious and ethnic minorities, lower castes, and *dalits*, and also inhabitants of ecologically challenged areas like *char-haor-baor*.
- In rural Bangladesh, there still exists a strong causal relationship between land ownership and poverty; the same goes for land ownership and human development. The more land one owns the more chances that he can escape from the shackles of poverty and develop his life in a better way.
- Over the past 10 years, the key issues and development trends that have adversely affected the access to land of the rural poor are commercial use of land and grabbing of land. Commercial plantations, contract farming, fixed rent leasing, encroachment of IP lands,



problems associated with land registration systems, development projects like the SEZs and Eco Parks, among others, have curtailed the access to land of the poor and marginalized rural people.

### **Legal and Policy Environment on Access to Land**

- The EBSATA 1950, Land Reform Ordinance 1984, National Land Use Policy 2001, National Land Policy 2016 (Draft), among other laws and policies, have set the legal framework that defines ownership, control, and access to land. Some sections of these laws and policies acknowledge the rights of some marginalized groups over land, though there is serious lack of implementation to ensure and safeguard those rights.
- Existing land laws do not recognize and protect customary rights, informal rights, and equal land rights for women as required.
- There have been limited efforts at land redistribution and tenure reform, mostly through land ownership ceilings. Land Reform Ordinance 1984 and Agriculture *Khas* Land Management and Settlement Policy 1997 are two major legal instruments that are aimed at improving the poor's access to land and tenurial security.
- The draft National Land Policy 2016 recognizes the three PCLG Commitments: Secure Tenure Rights, Locally-managed Ecosystems, and Diverse Tenure Systems.

### **Status of Access to Land by the Rural Poor Sectors**

- More than 76 percent of the country's farmers are small and marginal who own 150 to 249 decimal (0.60 to 1.00 hectare) land on average.
- Rural Bangladesh abounds with family farming households. It safeguards food security for marginalized peasants and poor households. It also creates jobs for women, men, and young people, both within their family farms and in related enterprises along food and agricultural value chains.
- Policies (like draft National Agriculture Policy 2018) and development strategies (like 7<sup>th</sup> Five Year Plan) are supportive of family farms and small-scale producers. In reality however, support services, capacity building, rural infrastructure, financing for small farmers and producers are not adequate.
- Land distribution is very unequal in Bangladesh. Functionally landless households account for almost 60 percent of the total households, owning only 4.2 percent of lands; while 6.2 percent of total households are rich landowners, owning at least 40 to 45 percent of lands.
- Contract farming, land grabbing, and migration of the rural youth seem to be major threats to family farming and small-scale production.
- There are about five million indigenous peoples in Bangladesh who belong to at least 49 different groups speaking 40 different languages.
- IPs are treated as second-class citizens lacking Constitutional recognition of their nationhood and guarantee of their land rights. Compared to the national absolute poverty rate, the rate



is 25 percentage points higher for the Hill IPs and 20 percentage points higher for the Plain IPs.

- There is partial legal recognition and protection of the Hill IPs' lands. Traditional land use and customary laws of the IPs through laws dating back to the colonial era are recognized. There is no such legal recognition for the Plain IPs.
- In reality, IPs of the Hill and Plain do not exercise their land rights on the basis of self-governance; the very limited rights they have, by and large, are governed by the State institutions.
- The main threats to IP rights over land include the construction of eco parks and initiation of so-called social forestry and land grabbing by declaring their land *khas*.
- The opportunities for securing IPs rights over land are limited because of rent-seekers' control over government and politics.
- The Constitution of Bangladesh makes no discrimination between the sexes over land rights and access. Moreover, Bangladesh ratified the UN CEDAW in 2000, which is against all forms of discrimination against women, though with reservations about articles that include women's inheritance rights. Despite these developments, the existing legal framework does little to protect women's rights over land.
- Only 15.8 percent of land is owned by rural women and only 7.2 percent of agricultural land (including water bodies) in rural areas is owned by women.
- Women's land rights are impeded by discriminatory religious and customary laws. Apart from religious traditions and cultural beliefs, the patriarchal mindset of society impedes women's equal rights to land. Government land registration system is also complex, expensive, and time consuming.
- The PCLG commitments regarding land rights and access of small-scale rural producers, women, and indigenous peoples are yet to be translated into reality.

### **Resolution of Land Conflicts and Protection of Land Rights Workers**

- In 2011, the absolute number of land-related new cases increased to 65,215 from 63,158 in 2009; with an annual increase of 1.63 percent. However, the actual number of incidents of land conflicts is much higher.
- To redress grievances and resolve conflicts, besides the formal judicial system, there are some consensual (facilitation, moderation, consultation, mediation, and conciliation) and non-consensual (arbitration) mechanisms in place; but they are not sufficient.
- The National Land Policy 2016 is yet to be finalized. The country's legal and institutional framework is not that effective in respecting, protecting, and resolving land conflicts.
- However, due to pressure from vibrant land rights CSOs, among others, measures have been taken to prevent land conflict and protect land rights defenders; but they are unfortunately insufficient most of the time.
- Regarding PCLG commitments, effective actions against land grabbing are grossly absent and the grabbers in this rent-seeking society offer limited space for the protection of land rights defenders.



## Transparency in Land Governance and Administration

- There are some mechanisms like community monitoring, community scoring, community advocacy, social auditing, public hearing, policy advocacy, and mass campaigns – whereby land rights CSOs, and through them, rural women and indigenous people, are able to participate in land governance. However, the effectivity of these mechanisms has been limited.
- Information and data on land and tenure-related issues are available to some extent, for which the Right to Information Act 2009 deserves credit. However, there is a need to update the data and make these more accessible – one way to do this is to complete the on-going digitization process.
- There is limited space for CSOs to participate in land governance. Despite this, CSOs are exerting effort to be part of the discussions given the lobby coming from vested interest groups.
- Decision-making in land governance is rarely inclusive and information accessibility is not up to expectations; hence, there is much to do to put in place a transparent land governance and administration.

## OPPORTUNITIES FOR ADVANCING LAND RIGHTS

The land rights situation in Bangladesh has proven to be dire for the poor and powerless citizens who face both legal and cultural barriers to their access to land. Hence the government and CSOs have to exert extra effort to implement reforms to tilt the balance of power in favor of the poor and the marginalized.

For example, all *khas* lands including the *char* lands ought to be held by landless farmers, but that is not the case. Most of them are grabbed by the rich and powerful. Still there is opportunity to retain a considerable portion of the grabbed lands and distribute them among the landless.

Family farms are one of the building blocks of the rural economy. A department should be established under the Ministry of Land to solely supervise family farms. CSOs working on this issue can form a National Coalition to Ensure Land Rights (NCELR) to coordinate their efforts.

To help women, a National Policy of Equal Rights for Women (NPERW) can also be formed, which will legally ensure equal rights for women, including their ownership of land. NGOs dedicated to the betterment of women's lives and ensuring their land and property rights can form a National Coalition for Advancing Land Rights of Women (NCALRW).

For IPs, a National Adivashi Commission (NAC) should be formed, which will exclusively work on IPs rights. A National Coalition of NGOs working on IP land issues can be formed to coordinate their efforts and make them stronger.



The Enemy Property Act (EPA) is a legacy from the communal State of Pakistan. It is a disgrace that this continues to exist under independent Bangladesh in the form of the Vested Property Act (VPA) that contradicts constitutional policies. However, with the enactment of the Vested Property Return Act (VPRA), there is opportunity to return the remaining vested properties to their rightful owners.

There is likewise scope to form a National Water Use Policy (NWUP) exclusively for ensuring access to and rights over land of the fisherfolk. A National Committee for Water Rights of the Fishermen (NCWRF) can be formed to look after the issues of water rights of the fishermen, and this committee should be endowed with enough power so that it can take bold actions against the water body grabbers.

## **ADDITIONAL RECOMMENDATIONS**

### **On Policy and Programs:**

#### ***Secure Tenure Rights***

- National Land Use Policy 2001 and National Land Policy 2016 should be finalized and implemented as soon as possible so that the land rights of women and men living in poverty can be respected, protected, and strengthened.
- Effective mechanisms need to be devised to ensure successful retention of *khas* land by the landless poor.
- To ensure empowerment of the tenancy rights, all sharecroppers must be provided with a legal deed.
- The Vested Property Repeal Act (Amendment) 2011 should be implemented immediately.
- A uniform system of Certificate of Land Ownership (CLO) should be instituted. Under this reform, the three Land Offices, namely the Union Land Office, Sub-register's Office, and Settlement Office shall be merged under one ministry to ensure proper recording of land.
- Attempts should be made to identify the real owners or the successor(s) of the land. Prior to registration of a piece of land, the sub-register or land office should investigate to determine, for example, if the seller is the real owner. The registration system should be modernized so that forgery can be stopped.

#### ***Strong Small-scale Farming Systems***

- Immediately distribute all agricultural *khas* land to the poor and landless.
- A support system needs to be instituted to provide assets (cattle, plough, irrigation machineries, and equipment) and inputs (seed, fertilizer, water, pesticide, etc.) to the landless and small-scale rural producers.
- Organize cooperatives for input, credit, marketing, and other productive purposes.



### ***Diverse Tenure Systems***

- Recognize tenure-related customary laws and practices of forest dwelling people, pastoralists, and IPs of Hills and Plains by formulating a new and vibrant policy framework.

### ***Equal Land Rights for Women***

- Law of inheritance should be enforced with adequate provisioning for women's inheritance. If the male heirs of the property are absent and the female(s) are permanently residing in Bangladesh, the property should be leased-out to them until final settlement is made.
- A national policy framework should be formed to formalize equal land rights of women, abolishing the existing discriminatory traditional laws.

### ***Secure Territorial Rights for Indigenous Peoples***

- All necessary legislative and administrative measures should be taken by the government to formally institute the land rights of the indigenous people which are partially acknowledged in the CHT Regulation of 1900, e.g. their collective and common land rights on forests and Swidden cultivation areas.
- The government should fully activate the Land Commission to enable it to operate effectively in the manner stipulated in the Peace Accord.
- Lands given to non-local individuals for rubber and other plantations should be cancelled if these have not been properly used for more than 10 years.
- Establish a transparent and pro-active Land Reform Commission for the Plain land indigenous peoples.

### ***Locally-managed Ecosystems***

- The draft National Land Policy 2016 should include a policy directive to formalize the role of local land users in territorial and ecosystem management, recognizing that sustainable development and the stewardship of ecosystems are best achieved through participatory decision-making and management at the territorial level.

### ***Inclusive Decision-making***

- The committee that identifies *khas* land should be reorganized to include civil society representatives.
- A “watchdog” mechanism (e.g., citizens committee) needs to be developed to check on the identification, distribution, and post-distribution situations.
- A committee should be formed under the leadership of the Union Parishad to resolve land-related disputes at the local level. The committee should include representatives



from key sectors such as landless groups, NGOs, and law enforcement agencies. Parties should try to resolve disputes at the Union Parishad before going to the district courts.

- Other recommendations include bringing land registration offices under the Ministry of Land and digitization of the entire process of land registration.

### ***Transparent and Accessible Information***

- The government should establish a “Land Data Bank.” This Bank shall have a computerized database containing detailed information about the following: a) records on *khas* land and water bodies by types, locations, distribution status, disputes, and conflicts; b) account of all vested land by types, location, lease status, and other variables; and, c) data on illegal takeover of indigenous people’s land by force, fraud and manipulation, as well as subsequent disputes and conflicts. The information should be suitably classified and organized, so that it can be retrieved quickly, in forms suitable for specific purposes.

### ***Effective Actions against Land Grabbing***

- All *khas* land illegally occupied by the land grabbers should be recovered, as soon as possible.
- Measures should be taken to minimize the influence of powerful interests such as politicians and local officials in the committee that determines *khas* land.
- All those who fake land documents should be punished severely to deter others from following suit. The government should also punish those who resort to forgery and terrorism to grab land.
- A moratorium should be imposed on further acquisition of the private and common lands of the *Paharis*.

### ***Protection for Land Rights Defenders***

- The draft National Land Policy should include a directive protecting the land rights defenders.
- The land rights defenders should be provided with training facilities, online courses, and other relevant resources to build their capacity.
- Government should provide the land rights defenders with urgent medical support in case of injuries in a conflict, legal assistance in case of litigation, and financial support for their families in case of death.

### **Recommendations for CSOs:**

- Many land-water-forest related laws have been analyzed using a rights-based approach and accordingly, new laws/amendments have been devised. The CSOs can now take these to Parliament so that relevant laws can be passed.

- The local and sub-district level civil society organizations should call for the free and fair distribution of relevant land and water bodies to the landless rural producers.
- All the peasants' organizations should be united on the issue of poor people's rights over *khas* land, and launch a movement against corrupt practices and inefficiencies of the government, to ensure poor people's legal and justiciable rights over land and water bodies.
- Organize pro-active advocacy towards recognition of customary ownership of indigenous peoples.
- The government must establish Alternative Dispute Resolution (ADR) mechanisms where land rights related CSOs may play a pivotal role.
- CSOs can initiate research on new land-rights issues (like individual tenurial security, gender sensitive land governance mechanisms, etc.) as well as lingering ones (*khas* land, land litigation, etc.). ■

### ACKNOWLEDGMENTS

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### LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
ALRD	Association for Land Reform and Development
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
APA	American Psychological Association
BDT	Bangladesh Taka
BEZA	Bangladesh Economic Zone Authority
BIHS	Bangladesh Integrated Household Survey
BLRMR	Bangladesh Land Reform Monitoring Report
CBO	community-based organization
CEDAW	Convention on the Elimination of All Forms of Discriminations Against Women
CHT	Chittagong Hill Tracts
CHTDB	Chittagong Hill Tracts Development Board
CLO	Certificate of Land Ownership
COHRE	Centre on Housing Rights and Evictions

CSO	civil society organization
DLRS	Directorate of Land Records and Survey
EBSATA	East Bengal State Acquisition and Tenancy Act
EPA	Enemy Property Act
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
GDP	Gross Development Product
GED	General Economic Division
GoB	Government of Bangladesh
GR	Green Revolution
HDRC	Human Development Research Centre
HYV	High Yielding Variety
ILC	International Land Coalition
ILO	International Labour Organization
IP	Indigenous Peoples
LT	Land Transfer
LWA	Land Watch Asia
MoA	Ministry of Agriculture
MoL	Ministry of Land
NAC	National Adivashi Commission
NAP	National Agriculture Policy
NCALRW	National Coalition for Advancing Land Rights of Women
NCELR	National Coalition to Ensure Land Right
NCWRF	National Committee for Water Rights of the Fishermen
NGO	Non-Government Organization
NPERW	National Policy of Equal Rights for Women
NWUP	National Water Use Policy
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCLG	People-Centered Land Governance
PPP	Public Private Partnership
SEZ	Special Economic Zone
SR	Sub-Registrar
TIB	Transparency International Bangladesh
UN	United Nations
UNDP	United Nations Development Programme
VPA	Vested Property Act
VPRA	Vested Property Return Act

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# CSO land reform monitoring report in Cambodia 2018

*An initiative of the Land Watch Asia Campaign<sup>1</sup>*

The Kingdom of Cambodia in its current form emerged from the election organized by the United Nations Transitional Authority in Cambodia (UNTAC) in 1993. Its current Constitution aims for a market economy, thus allowing the Cambodian people to own land as property. The Land Law was adopted in 2001. It recognized, through land registration, the ownership of Cambodian citizens to land they had continually occupied since 1979. This law also allowed the government to grant land concessions to companies, and social land concessions to landless poor families (Ke, 2016).

The Land Law and its consequent regulations have been in place for 15 years now. However, customary practice among non-indigenous groups over land and natural resources still exists, and remains widely accepted among the Cambodian people. However, these traditional practices are being eroded by prevailing policies and emerging human needs.

The Land Watch Asia (LWA) campaign began in 2007 with the aim to promote, advocate and lobby for land rights for farmers, indigenous peoples, and fisherfolk in seven countries

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<sup>1</sup> This is an abridged version of the CSO Land Reform Monitoring Report 2018 prepared by the Analyzing Development Issues Centre (ADIC) for STAR Kampuchea as part of the Land Watch Asia (LWA) campaign. This 2018 country monitoring report focuses on land governance, and is supported through the project “Sustainable, Reliable and Transparent Data and Information towards Responsible Land Governance: Putting Commitment 8 into Action.”

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in the region (Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, and the Philippines). To date, the LWA campaign contributed to the process of policy changes by catalyzing the advocacy work of partners and other campaigns by identifying strategic areas for policy advocacy. The main goal is to lobby governments through dialogues. In 2010, ANGO and LWA initiated the CSO Land Reform Initiative to build the capacities of CSOs in undertaking monitoring of land issues through evidence-based advocacy. This framework identifies indicators that will help CSOs critically examine whether the rural poor's land tenure is more secure, and whether their access to land was enhanced. This paper seeks to contribute to this initiative from the Cambodia side.

## **STUDY OBJECTIVES AND DATA SOURCES**

This report is being undertaken:

- to provide an overview of the current policy and legal environment on access to land and tenure security, especially for the rural poor;
- to describe the current status of access to land and tenure security, land governance challenges; and,
- to identify strategic opportunities for advancing land rights for the Cambodian people, especially the rural poor.

This study was based mainly on review of secondary data and existing research studies from various stakeholders in both the public and NGO sectors. Some case studies were conducted for additional insights. The research team were not able to access the most updated data on the current year, as access to public data, especially online data, was limited.

## **LEGAL AND POLICY FRAMEWORK**

The Royal Government of Cambodia (RGC) developed several legal frameworks and policies for land management, and established mechanisms to resolve land conflicts and prevent violence caused by land disputes.

The Land Law 2001 seeks to determine the regime of ownership for immovable properties for the purpose of guaranteeing the rights of ownership, according to the provisions of the 1993 Constitution (RGC, 2001; Dwyer and Young, 2016). Some articles in this law regulate the practice of granting economic land concessions (ELCs). For example, Article 59 limits the size of ELCs to not more than 10,000 hectares. Article 62 requires the concessionaries to commence their economic activities on ELC land within 12 months after its grant, otherwise it would be cancelled (ADIC, 2015). Also, Article 30 states that any person who has enjoyed peaceful, uncontested



possession of immovable property for no less than five years prior to the promulgation of the law, has the right to request a definitive title of ownership (provided that such property can lawfully be privately possessed).

The RGC also established a framework for land titling through a number of land registration mechanisms such as Systematic Land Title Registration (SLRT), Social Land Concession (SLC), Sporadic Land Registration (SLR), Communal Land Titling (CLT) and Directive 01 (ADIC, 2015). The involved agencies were the Ministry of Land Management, Urban Planning, and Construction (MLMUPC), Ministry of Interior (MoI), Ministry of Rural Development (MRD), Ministry of Agriculture, Fishery, and Forestry (MAFF), Ministry of Environment (MoE), and the Ministry of Economy and Finance (MEF).

Other legal instruments include the Sub-decree on Economic Land Concession No. 146 which determines the criteria, procedures, mechanisms, and institutional arrangements for initiating and granting new economic land concessions. It also provides for monitoring the performance of all ELC contracts, and for reviewing concessions entered into prior to the effective date of the sub-decree.

On land disputes related to ELCs, the RGC developed a number of policies and other legal documents to respond. Most importantly, Directive 01 was issued to temporarily suspend the granting of ELCs and to distribute land to the people. There was also the Inter-Ministerial Proclamations/Prakas on Strengthening ELC Management as a mechanism to reduce land disputes (NGO Forum on Cambodia, 2015).

The Law on Social Land Concessions (SLCs) was adopted through government's sub decree No. 19 ANK/BK, 19 March 2003. "Social land concession is a legal mechanism to transfer private State land for social purposes to the poor who lack land for residential and/or family farming purposes." This sub-decree defines the criteria, procedures and mechanism for the granting of social land concessions for residential use and/or family farming (ADIC, 2015a).

Sub-Decree 83 on Communal Land Titling, adopted by RGC in 9 June 2009 focused on "Procedures of Registration of Land of Indigenous Communities." It supports the rights and culture of IPs with the objectives to provide indigenous communities with legal rights over land tenure, to ensure land tenure security, and to protect collective ownership by preserving the identity, culture, good custom, and tradition of each indigenous community (RGC, 2009).

At the international level, Cambodia is a signatory State of many international conventions - the Universal Declaration of Human Rights (UDHR), the Universal Declaration of Rights of Indigenous People (UNDRIP), and the International Covenant on Economic Social and Cultural Rights (ICESCR).



In September 2017, Cambodia endorsed and supported the UN Declaration on the Right of Indigenous Peoples (UNDRIP). The UNDRIP is not legally binding instrument under international law; but it remains a powerful statement of principles reflecting international norms.

## **SUPPORT FOR SMALL-SCALE FARMERS AND RURAL PRODUCERS**

As previously stated, the policy on SLCs was developed specifically for the purpose of distributing State land to the poor for residential and family farming purposes. SLCs were promoted through the Land Allocation for Social and Economic Development (LASED), a five-year project running from 2008 to 2013. The project received fund support from World Bank (11.5 Million USD) and the Government of Germany (1.2 Million USD) with technical assistance from Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). The main purpose of this project was to provide land to landless. The quantitative aim was to allocate 10,000 hectares of land to 3,000 poor households, with accompanying community development, livelihood, and agricultural support services in the provinces of Kratie, Kampong Cham, and Kampong Thom provinces.

The National Strategic Development Plan (NSDP) 2014 to 2018 states that, as of the end of 2013, 31,000 households received land under the SLC program. The World Bank reported in December 2014 that 3,148 households received land through SLCs under the LASED program. A 2015 study by Cambodian League for the Promotion and Defense of Human Rights (LICADHO) on LASED implementation in the four provinces indicated that the program failed to improve the livelihoods and tenure security of the residents on SLCs. The rates of resettlement on SLCs were less than 50 percent and only 41 percent of agricultural land was cultivated due to poor land quality, insufficient capacity, and conflict (LICADHO, 2015).

The MLMUP has issued thousands of land titles including to small landholders and indigenous peoples (IPs). However, land disputes continue to be a problem.

A study on small landholders and agribusiness engagement (The NGO Forum on Cambodia, 2017) clearly indicated that contract farming was beneficial to small landholders when such program was properly designed and adopted. But existing policies on land rights are no longer responsive to the evolving needs of small landholders.

## **SECURE LAND RIGHTS FOR INDIGENOUS PEOPLES**

Sub-decree 83 on Communal Land Titling (CLT) was adopted specifically for the registration of land within the IP areas. However, data from a report on CLT (ADIC, 2018) indicates only 135 IP communities gained recognition from the Ministry of Rural Development (MRD), which is the first step in the process. Of these, only 120 communities applied or obtained the legal entity from the Ministry of Interior (MoI) which is the second step. Only 59 communities took the third



step – applying for CLTs with the MLMUPC – and only 22 CLT applications have been issued thus far. Some communities ended up pursuing formal land titling, which was viewed as being simpler. More than ten communities could not move forward with the process because of internal problems, boundary conflicts and landmine issues. The conclusion, therefore, is that the CLT process under Sub-decree 83 is complicated and very time consuming for IPs (AUSAID, 2016).

In addition, there was duplication and overlap in land granted to both ELCs and communities due to the lack of proper cadastral mapping. In some cases where CLTs had already been granted, communities remained under threat from in-migration and the ELCs. These threats are more severe for IP areas where registration is still on-going and where land titles have not yet been formally issued.

Furthermore, IPs are losing their land due to large-scale logging, resource extraction, and infrastructure development. This is exacerbated by a lack of political will and fragmented coordination among stakeholders and involved actors. Even after obtaining CLTs, communities remain vulnerable to illegal encroachment due to the lack of legal enforcement. There are also very strict but irrelevant conditions imposed by the government in the CLT process. For instance, in order to be recognized by the MRD as an indigenous community, the community must prove their ‘indigeneity’ and traditional way of life. This tends to “box people into certain positions that could actually limit their opportunities to change in ways that might advantage themselves” (CCHR, 2016).

## **LAND ACCESS AND CONFLICTS**

It is important to note that after the Sub-decrees No. 46 and 47 were adopted on 31 May 2002, systematic and sporadic land registration commenced. These programs issued 2.6 million titles under Systematic Land Registration, and 600,000 titles under Sporadic Land Registration respectively by December 2014. Land registration and titling under Directive 01 commenced in June 2012, and by December 2014, the program issued 610,000 titles.

However, land disputes continually occurred due to land grabbing by powerful persons such as public officials and private investors. Poor people are the usual victims – resettled to areas where there is a lack basic infrastructure and essential services. Compensation offered to the victims is usually much lower than the market value of the land (ADHOC, 2016).

The Cambodia Socio-Economic Survey 2016 found that about two percent of households were previously in conflict with others over land ownership. But the numbers have dipped to 0.5 percent in 2016. Land conflicts in Cambodia have passed half a million cases since LICADHO began collecting data (LICADHO, 2014). Similarly, ADHOC cited that more than 770,000 people (six percent of the population) were adversely affected by land grabbing from 2000 to 2013 (ADHOC, 2013).

In 2014, the total number of land disputes was 352, with 68 cases resolved, 14 cases abandoned, and 270 cases (77 percent) unresolved (NGO Forum on Cambodia, 2015, p. 10). By 2016, there were 314 cases of land conflict covering 1,052,935.91 hectares that were not completely solved or awaiting resolution. The most number of conflicts were on residential land which covered 7,076.20 hectares and involved 645 families (The NGO Forum on Cambodia, 2016, p. 35).

### Major causes of land conflicts

The major causes of land conflicts over the past 10 years relate to agriculture, urban development, manufacturing industries, mining rights, and the construction of hydropower dams (Sun, 2017).

According to The NGO Forum's annual statistics of land conflict, the main causes in 2015 were ELCs, infrastructure, military bases, and land grabbing by national and international investment interests. The granting of ELCs was the biggest reason for land disputes, with 97 cases, or 31.49 percent of the total land disputes that occurred that year (See Table 1).

**Table 1: Causes of Land Disputes (2015)**

Reasons for Land Dispute	No. of Land Disputes	No. of Provinces
Concession	1	1
Economic Land Concession	97	18
Military Purpose	16	7
Mineral Exploration or Extraction	2	2
Plantation/Farming	43	19
Private Company	15	7
Residency	28	11
Social Land Concession	9	6
State Development Area	21	9
State Land	58	20
Unknown	18	4
<b>TOTAL</b>	<b>308</b>	

**Source:** The NGO Forum on Cambodia. (2015). *Statistical Analysis of Land Disputes in Cambodia*. Phnom Penh: Research Advocacy and Communication Center (RACC). p. 32.

Residential land was the most common subject of disputes with 791,035.90 hectares followed by multi-purpose land with 123,281 hectares. Among the 97 cases of ELCs, 42 cases involved land grabbing by powerful persons, 30 cases involved threats, and 20 cases resulted in persons being detained. Fifty-one cases were reported to have affected indigenous people in nine provinces (The NGO Forum on Cambodia, 2015, pp. 28-30).

**Table 2: Type of Land Affect by Land Disputes (2015)**

Type of Land	No. of of Land Disputes	Land Size (ha)	Percentage
Agriculture Land	113.00	55,023.40	6.0
State Land (including community forest)	55.00	24,546.30	2.0
Multi-Purpose Land	72.00	123,281.00	12.0
Residential Land	61.00	791,035	79.0
Others	3.00	325.00	0.2
Unknown	4.00	806.00	0.8
<b>TOTAL</b>	<b>308.00</b>	<b>995,017.60</b>	<b>100.0</b>

**Source:** The NGO Forum on Cambodia. (2015). *Statistical Analysis of Land Disputes in Cambodia*. Phnom Penh: Research Advocacy and Communication Center (RACC).

The disputes caused by ELCs were further exacerbated by failure to enforce laws to protect the rights of local communities. For instance, social and environmental impact assessments (SEIAs) were not properly conducted (The NGO Forum on Cambodia, 2015).

As of September 2015, a total of 230 companies were granted ELCs, covering a combined area of 1,934,896 hectares.

### **Mechanisms for conflict management**

Mechanisms to resolve land conflicts were established at almost all levels: Commune Councils (CC), the Cadastral Commissions (CC), Administrative Commissions (AC), the National Authority for Land Dispute Resolution (NALDR), and the courts (The NGO Forum on Cambodia, 2015).

- *Commune Councils (CC)* do not have the authority to render decisions on conflicts. Rather, they mediate between the parties and promote reconciliation. It was observed that most land conflicts were brought to the Commune Councils (The NGO Forum on Cambodia, 2015, p. 15).
- *Administrative Commissions* are temporary mechanisms tasked to conciliate disputes occurring in areas being surveyed under the Systematic Land Registration Process (The NGO Forum on Cambodia, 2015, p. 3).
- *Cadastral Commissions* are responsible for disputes over untitled land at district/khan, provincial/municipal, and national levels.
- *Mobile Working Groups for Land Dispute* are additional dispute resolution mechanisms lodged with the MLMUPC. There are 33 working groups and 30 mobile working groups formed for land dispute resolutions in all provinces and in Phnom Penh.
- The *National Authority for Land Dispute Resolution (NALDR)* is chaired by the Deputy Prime Minister with 26 ministries and authorities as members. This body takes up cases not in the hands of Cadastral Commissions or courts (The NGO Forum on Cambodia, 2015).

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- The *Court System* has three different levels – the Courts of First of Instance, the Appeals Court, and the Supreme Court (The NGO Forum on Cambodia, 2016, p. 24).

*International Mechanisms.* The RGC adopted the UN framework and created a number of legal instruments to meet the demands of international laws and regulations. However, the role of the UN is only to provide recommendations – it has no power to compel the government to comply. Cambodia accepted the recommendation yet deferred actual response to some recommendations from the Universal Period Review (UPR) and UN Special Rapporteur (UNSR) (Ke Bunthoern, 2016). Another international mechanism is the Compliance Advisory Ombudsmen (CAO) of the World Bank (Michael and Young, 2016).

### **Land conflict resolution**

As of the end of 2017, the MLMUPC reported that it successfully resolved 3,655 cases for 19,374 families covering 6,068.20 hectares. The MLMUPC leadership noted a decline in the number of disputes. It said that the Ministry continues to work hard to register land and solve land disputes by all means possible (Khy, 2018).

The Cadastral Survey Commission solved 85 land dispute cases (37 cases wrongly authorized and withdrew another 11 complaints) for 326 families, which covered 44.5 hectares (Khy, 2018).

In 2016, the NALDR received 25 complaints. There were 204 complaints submitted to other ministries and institutions: 67 to the Parliament, 51 to the Cabinet of Prime Minister, 38 to Ministry of Interior, five to the Ministry of Royal Palace, 18 to Councils of Ministers, and 25 to Ministry of National Assembly-Senate Affairs. Another 182 complaints were submitted to the Forest Administration, Fishery Administration, MLUMPC, Ministry of National Defense, Anti-Corruption Unit, NGOs English Court, and European Union (The NGO Forum on Cambodia, 2016). There was no indication about how these cases were resolved.

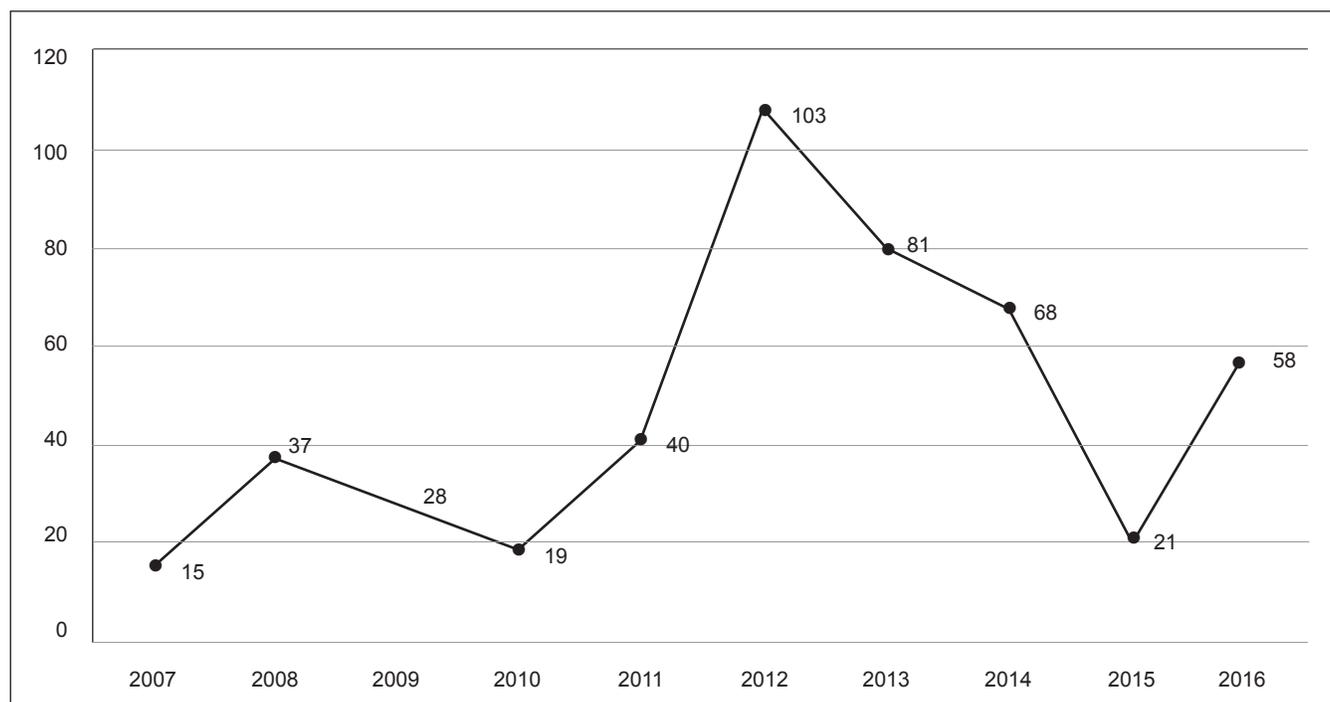
In 2016, the Courts of First of Instance received 98 complaints, the Appeal Court received 32 complaints, and the Supreme Court received 18 complaints (The NGO Forum on Cambodia, 2016, p. 24). There was also no indication on how these cases were dealt with.

Most of the cases of land conflict were resolved in each year up to 2016, based on Figure 1. This includes the peak period in 2012 to 2014. There is yet no data available from 2017 and 2018.

### **Measures for land conflict prevention**

In 2012, the government issued the new policy (Directive 01) to stop granting new ELCs. It limited the duration of future leases to 50 years and promised to redistribute one million hectares of land to poor and dispossessed families. A representative of ADHOC noted that, “the situation

**Figure 1. Land Dispute Solved by Years**



**Source:** The NGO Forum on Cambodia. (2015). *Statistical Analysis of Land Disputes in Cambodia*. Phnom Penh: Research Advocacy and Communication Center (RACC). [Khmer Version].

has generally been improving and no new conflicts have emerged since the government stopped granting ELCs.” The unresolved ELC conflicts are difficult, however, and in the long run, new conflicts are expected to arise (Sun, 2017).

With regards to land titling, there is no problem with the policy. The problem is the capacity of the people to participate in the whole formal process of land titling from the beginning until issuance of the title. There is a lack of resources for the process of measurement and physical demarcation of land boundaries. These measures are necessary, since the rich and powerful can easily acquire official documents which they can show as proof of ownership (ADIC, 2017).

## **TRANSPARENCY IN LAND GOVERNANCE AND ADMINISTRATION**

### **Women’s participation in decision-making**

Chapter 4 of the Land Law states that “any person” can own immovable property, thus there is no discrimination against women with regards to land ownership.

Also, women are usually voted by the community to be leaders in the CLT Committees because they are reliable and are perceived to be more active than men. They are seen as especially good at communicating, providing ideas, and mobilizing people. However, they often decline



top leadership positions because household work limits the amount of time they can devote to community activities. Thus, they prefer to be the deputy leaders or members with less responsibility (Welthungerhilfe, 2016).

### **Transparency in formulating land use regulations, implementation and monitoring**

Cambodia does not offer many opportunities for public involvement in legislative processes. Most laws, policies and development plans are drafted with little or no participation from the citizens. With the prevailing culture of silence, people do not seek information while the RGC does not freely disclose information. Also, the lack of adequate legislation governing freedom of information undermines local civilians who have little or no knowledge of the laws (CCHR, 2014).

At the district level, officials presiding over mechanisms for land dispute solution do not have the necessary documents and information to perform their functions effectively. They only have the boundary map between the community and the concession areas – they have no copy of the agreements between the company concerned and RGC. They also do not document the conflict between the community and ELCs. The same goes for the provincial mechanisms – the authorities do not have detailed knowledge about the investment plans of ELC companies although they may have received the directive letter from the parliament and ministry to review and reconcile the conflict cases (Meas and Keo, 2014).

### **Tenurial status: Public and Private Land**

Article 16 of the Land Law states that people have the right to use public property in temporary, precarious, or revocable domains. Problems occur when people live in these public properties or use them to grow cash crops, but the local authorities do not inform them that they have to vacate the land if the State needs it. Conflict then ensues when the land is later converted to an ELC for instance, and there is no dialogue with the affected people.

Oftentimes, local authorities are unaware of new poor families who come to live within their jurisdiction. The authorities are also unwilling to identify agriculture land for those families (LICADHO, 2015).

A recent study done by STAR Kampuchea found that communities are less aware about district and provincial land dispute mechanisms because of limited access to information (ADIC, 2015a). Most people go to the commune councils to refer their problems, including land issues, because these councils are more familiar, easier to access and more dependable. They may also submit complaints to national mechanisms, the parliament, or other national institution they know. While many NGOs have supported a particular target area a long period, they have not yet fully informed people about land dispute resolution policies and mechanisms at various levels (Meas, and Keo, 2014).



## **Public policies, investments, and projects: Impact on tenure systems**

Most companies obtain ELCs without doing detailed surveys and mapping on the ground. Local people in ELC areas are often unaware of the investment plans of the company concerned. Thus, they are surprised when company personnel arrive to conduct studies in the area. Protests often occur because of the lack of information, consultation, and decision-making among the people (ADIC, 2017).

### **Available public information on land and tenure**

Information related to laws, policies and reports on land registration and dispute resolution is available on the websites of the relevant ministries and NGOs working in the land sector. For example, The NGO Forum on Cambodia updates its information on land dispute cases throughout the country annually (The NGO Forum on Cambodia, 2015). CCHR and LICADHO gather information on land issues using different methods, and report these in their respective websites. There is also a significant amount of data lodged in the Open Development Cambodia (ODC) website.

However, it is hard to find a complete set of information and updated data from these sites. The existence of different information sources has resulted in confusion regarding the data. For instance, the MLMUPC rejected the LICADHO Report 2015 and requested for more detailed information (Phnom Penh Post, 2015). Disagreement on the statistics of land conflicts is linked to the poor mechanisms of monitoring among stakeholders (ADIC, 2015).

In 2004, the RGC started to develop the Law on Freedom of Information (FOI). The National Assembly passed the legislation in December 2010. At the same time, there are provisions for FOI in existing laws such as Article 35 of the Constitution, the International Covenant on Civil and Political Rights of 1992, the 1995 Law on the Press, the 2005 Archive Law, and the 2010 Anti-Corruption Law. However, these are essentially “paper laws” that do not provide for free or easy access to important pieces of government-held information. Most people are only able to access public information regarding matters such as weather, traffic conditions, and public holidays. Although 94 percent of Cambodians felt it was important to be informed about domestic laws, 72 percent knew little or nothing about these laws. Access to information is also related to capacity, as most people are not familiar with printed or online sources of information. A large percentage of Cambodians get their information through radio and television (79 percent and 78 percent, respectively), and 50 percent by word of mouth. However, more than 83 percent agree that everyone has the right to seek, receive, and disseminate information freely (CCHR, 2014).

In May 2018, the MLMUPC collaborated with an NGO (STAR Kampuchea and its 16 partners) to produce a voice message information service that Cambodians could call for information on land issues. The pre-recorded messages covered five main topics: 1) Basic information on land; 2) Land rights; 3) Land concessions; 4) Land dispute solution mechanisms; and, 5) Filing



complaints. There were 53 sub-topics and sub-themes recorded and pre-tested with 108 people and revised before the launching. This initiative is an innovative way to empower and educate people for better access and control over land and natural resources. However, there has been no survey or evaluation conducted regarding how many people access the service and what impact it has had on public awareness and behavior change (STAR Kampuchea, 2018).

## CONCLUSIONS

Land governance in Cambodia has been adaptive in response to constant social and economic changes. The existing laws and policies in Cambodia, along with international instruments, appear to be sufficient, but there is a large ground for improvement on the enforcement and real application of the law and its supporting guidelines. There are existing mechanisms that deal with land titling in the court system, sub-national units of governance, various Commissions (Cadastral, Administrative, and National Authority for Land Dispute Resolution) and various ministries. However, a systematic and sustained commitment to achieving outcomes for land titling needs to be in place.

There are several legal frameworks for land management laid out in policies and other related documents. The Land Law 2001 serves as a basic framework for land titling with its three main land registration schemes: Systematic Land Title Registration (SLRT), Sporadic Land Registration (SLR), and Directive 01. Under these schemes, more than 3.8 million titles have been issued and more than a million hectares of land have been cut from State land and reclassified, according to the MLMUPC. The Cambodian government aims to eventually register all privately held land in Cambodia and needs to accelerate land registration and title issuance, giving priority to land titling in dispute-free areas.

Other legal instruments by the State have been adopted to govern Economic Land Concessions, Social Land Concessions and Communal Land of IPs. ELCs were a major source of land conflicts, until the government stopped granting them. For SLCs, studies indicate that the program has been largely unsuccessful in improving tenure security and livelihood of the rural poor. The application process for indigenous communities for collective land title is lengthy and complicated, and very few IP communities were actually granted CLTs.

Land disputes have remained a basic feature of the land governance landscape. The driving forces are infrastructure development projects, economic land concessions/other land concessions, and individual land grabbing.

There was a continuing rise in the number of land conflicts from 2010 to 2012 but has since gone down from 2013 to 2015, but there is an indication of it going up again recently. The decline in the number of land conflicts coincided with the government's decision to not issue new ELCs in 2012, and to review existing ELCs, especially those with conflicts. Along with reforms within



the MAFF and MoE on the ELCS, new mandates in MLMUPC facilitated actions for resolving conflicts. MLMUPC successfully resolved 3,655 cases for 19,374 families covering 6,068.20 hectares. It also streamlines the number of complaints by transferring cases to the proper authority and withdrawing complaints not properly authorized. Other agencies like the Cadastral Survey Commission and NALDR also successfully acted on land complaints docked with them.

There is no systematic indication on how other complaints provided to the national agencies and the courts were resolved as of 2017 and 2018. The recent land disputes arising since 2016 were seen to be cases against powerful individuals that land grab un-titled lands of poor citizens.

Assessment of citizen participation in policy process showed little participation and a general lack of access to information from government. There was little consultation process in the drafting of laws. The sub-national authorities at Commune and District levels are not provided documents on ELCs. For conflict resolution, Cambodian citizens rely more on Commune authorities. Alternatively, they go directly to the national government to raise their issue, often by-passing district and provincial authorities.

Overall, the trend in land governance indicates a positive shift by the government towards ensuring the provision of land titles to its land-owning population. The growth in the number of households with land titles is an evidence of this. However, the more than three million titles issued represent only three-fifths of the total, and more than two million landowners are yet insecure about their land tenure. The reforms in this current mandate led to successful resolutions of land conflicts. It may offer a good opportunity for NGOs to tap into constructive dialogues for joint planning and responses on land issues.

## **RECOMMENDATIONS**

Land rights, both for individuals and for communities, are critical for achieving sustainable development. With nearly half of Cambodia's total households still insecure about the status of their lands, there is a need to complete the process of enabling people's rights over legally claimed lands. There is also a need to resolve obstacles that deny mostly poor Cambodians these rights, particularly those that involve conflicts with moneyed and powerful people and companies. There is also a need to deal with rising demand for land, especially in the urban areas, which is leading to a rise in land disputes.

The main reason why the land-tenure granting process was slow was that the capacity of institutions involved in the process is weak. This can be seen particularly with the Cadastral Survey Commission which is tasked for land boundary demarcation, public posting and up to processing claims for titling. This slowness has to be fast-tracked through programs like the Sporadic Titling Scheme and Directive 1. The slowness of government bodies tasked with identification and verification is also evident in the tedious process for CLT at even the first step.



Secondly, there is a lack of systematic recording of land claims at the sub-national level. This is often a cause for conflict itself, as there are overlapping records of land against ownership listed, besides errors on names and location of land property. The lack of systematic records also facilitates land grabbing by the rich and powerful. The influence of the elites can also be seen in how the ELCs have ignored the legal requirements for appropriate demarcation including free-and-prior consent of affected communities. Also, ELCs are granted and maintained even without a development plan and actual investments in the area.

Land governance can be further enhanced by the government through effective programs, as follows:

- **Improve the Capacity of the Land-related Commissions.** This refers to ensuring skills training and adequate resources and equipment for land demarcation, mapping, and recording within the Cadastral Survey Commission up to the sub-national level.
- **Integrate land security into the sub-national platforms for governance.** Land ownership is intrinsically linked with the State earning revenues from the hold and use of the land. An important element in local governance is knowing the extent of resources, therefore, requiring assessment of ownership over resources. This will provide a second-basis for ascertaining land ownership.
- **Implement a system of land zoning.** This will define the areas of State resources by use. It could further delineate the areas which are alienable and disposable, areas where transitory possession may be allowed, critical areas where no development is allowed, areas under common usage that can be classified for CLT purposes, etc.
- **Undertake urban zoning, as there is a rapid increase in urban population.** This would enable government to pro-actively plan areas for settlement, industry, environmental niches, as well as determine areas for urban poor settlements.
- **Continue to focus effort on addressing land conflicts between local communities and ELC companies as well as powerful actors, especially engaging with local communities closely through the principle of free, prior and informed consent.**

In relation to NGO networks, the following recommendations are put forward:

- **Strengthen civil society support models.** Land rights reforms and recognition of local property and territories are politically contentious — government elites and private companies often want to access and control the same lands as local people. Locally-rooted civil society organizations should play a critical and more strategic role in this arena as land tenure issues tend to take a long time to resolve. The support models need to be closely linked to the affected communities as the lead and owner of the initiatives, but also innovative so as to be successful against the powerful opponents.
- **Scale up appropriate funding.** There is relatively little private philanthropic investment in land rights work. There is a need to link to institutions and agencies to support strengthening of community land and resource rights. International agencies and donors



should put in long term funding allocation to support NGO-and-government initiatives with clear performance indicators, especially on CLT and conflict resolution.

- **Getting the public support.** Land rights issues involve intangible and subtle details that are context-sensitive. Strategies should aim to gain traction with the public to bring land rights into the mainstream by providing sustainable solutions. ■

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## ACRONYMS USED

AC	Administrative Commissions
ACU	Anti-Corruption Unit
ADHOC	Cambodian Human Rights and Development Association
ADIC	Analyzing Development Issues Centre
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
AUSAID	Australian Aid
CAO	Compliance Advisory Ombudsmen
CC	Commune Council
CCHR	Cambodian Center for Human Rights
CLT	Communal Land Titling
Co-TRAIN	Commitment 8- Transparent and Access to Information
CSC	Cadastral Survey Commission
CSO	civil society organization
ELC	Economic Land Concession
FOI	Freedom of Information
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
HH	Household
ICESCR	International Covenant on Economic Social and Cultural Rights
IPs	Indigenous Peoples
LASED	Land Allocation for Social and Economic Development
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
LWA	Land Watch Asia
LSS2	Lower Se San II

MAFF	Ministry of Agriculture, Fishery, and Forestry
MEF	Ministry of Economy and Finance
MoE	Ministry of Environment
Mol	Ministry of Interior
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MRD	Ministry of Rural Development
NALDR	National Authority for Land Dispute Resolution
NGO	Non-Governmental Organization
NSDP	National Strategic Development Plan
ODC	Open Development Cambodia
RACC	Research Advocacy and Communication Center
RGC	Royal Government of Cambodia
SEIA	Social and Environment Impact Assessment
SLC	Social Land Concession
SLR	Sporadic Land Registration
SLTR	Systematic Land Title Registration
UDHR	Universal Declaration of Human Rights
UNDRIP	United Nations Declaration of Rights of Indigenous Peoples
UNSR	UN Special Rapporteur
UNTAC	United Nations Transitional Authority in Cambodia
UPR	Universal Period Review
USAID	United States Agency for International Development

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# Economic Growth at the Expense of Land Rights?

**CSO Land Reform Monitoring Report in India 2018<sup>1</sup>**

*An initiative of the Land Watch Asia Campaign*

India was the world's 58th most competitive economy in 2018, according to the World Economic Forum's global competitiveness index. This represented a leap of five places from 2017 – one of the biggest year-on-year improvements – thanks in large part to its large domestic market and investments in infrastructure and innovation, particularly in research and development. Despite the consistent robust economic growth of about six to seven percent a year over the past several years, crippling poverty remains widespread in India. According to the latest data from the World Bank, 13.4 percent of the India's population of 1.3 billion is poor or lives on just US\$ 1.90 a day as of 2015. Plus, some 176 million Indians are living in extreme poverty.

Indeed, India is home to both the largest number of rural poor people and the largest number of landless households. Landlessness – more than either caste or illiteracy – is the best indicator of rural poverty in India, says the World Bank report on Agricultural Land Distribution (Binswanger-Mkhize, Bourguignon, and van den Brink, 2009). This then leads to the logical conclusion that improving the poor's access to land and land tenure will certainly help them break the chains of poverty and live a life of greater comfort and dignity.

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<sup>1</sup> Edited and consolidated by the Asian NGO Coalition (ANGOC) as part of the Land Watch Asia (LWA) campaign, this article is based on the papers and presentations prepared by Barna Baibhab Panda of the Foundation of Ecological Security (FES) and the South Asia Rural Reconstruction Association (SARRA).

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In India, the agriculture sector, which includes the land, the seas and forests, is especially vital. It employs as much as 60 percent of the India's labor force, even more so in the rural areas where 65 percent of India's population resides. Also, about 60.5 percent of the total land area is used for agriculture. Of those who work on the land, an estimated 80 percent are either landless or have small and marginal plots, certainly not enough to get themselves out of poverty. In contrast, just 4.9 percent of India's farmers control as much as 32 percent of total farmland, while 56.4 percent of the rural households are landless.

Rural households in India are estimated to own some 92.369 million hectares, with the average landholding pegged at 0.592 hectare. A little over 75 percent of rural households fall in the marginal ownership category, owning just 29.75 percent of the total land area; 7.41 percent are categorized as landless households, either owning no land at all or less than 0.002 hectare.

Unfortunately, there are hardly any encouraging signs that the situation will dramatically improve soon, as public investment in agriculture in such forms as subsidies, inputs, equipment, training, irrigation facilities, farm-to-market roads, has been steadily declining over the past few years, such that the share of the agriculture sector in the country's Gross Domestic Product is down to 22 percent.

Climate change has likewise contributed to the declining productivity of India's land resources, 30 percent of which are considered degraded. Land degradation is expected to only increase due to high intensity storms, extensive dry spells and the denudation of the forest cover.

The Indian government, fortunately, is not entirely blind to the farmers and other agricultural workers as well as indigenous peoples living in dire straits and has recognized the urgent need for massive reforms to bring about social justice, for the poor to have greater and equitable access to the land.

The recognition of their land rights is also expected to help put a stop to further land degradation as the poor, which includes the indigenous peoples, are put in a position to participate more fully in soil conservation and forest protection, thus enhancing food security for the still growing Indian population. The need has become even more urgent as private forces are also exerting their profound influence, as they increase their investments in land as part of their rapid expansion plans, thus leading to increasing cases of land conflict across India.

In this paper, we examine some of the key developments shaping the struggle for land tenure and security in the vast subcontinent marked by diversity and promise.



## LAND REFORM PROGRAMS IN INDIA

Since its independence in 1947, there have been several voluntary and State-initiated land reform programs implemented in several States in India with varying degrees of success.

Reform programs under the promise of “land to the tiller” were implemented in five phases.

The **first phase** from 1950 to 1955 dealt with tenancy reforms and attempts to abolish intermediaries that exploited tenants. It was also during this time when the *Bhoodan* or “land gift” movement began. Under this system, landlords were convinced to donate a portion of their land for redistribution to the landless. However, the latest data as of 2006 showed that only 1.13 million hectares of *Bhoodan* land, out of the estimated 1.94 million hectares pooled together, were actually redistributed. Failure to redistribute the balance can be attributed to such reasons as opposition by the donors’ heirs and inefficiency of distributing agencies.

The **second phase** from 1955 to 1971 saw the imposition of land ceilings. West Bengal was the first to impose a cap on the amount of land that a family can own at most 10 hectares through the West Bengal Land Reforms Act of 1955. West Bengal, for example, accounts for more than half (54.2 percent) of India’s land reform beneficiaries. As many as 3.14 million landless farmers got free land over some 60 years, or since India began a series of land reforms.

Other States were directed to enact their own land ceiling laws during the second phase. By December 1970, about a million hectares of surplus land reverted to the national government for redistribution to the landless.

The land ceiling policy came under attack from 1965 to 1969, however, as a result of various factors including a severe food crisis and widespread agrarian unrest, which eventually paved the way for comprehensive land reform program under the **third phase**. This phase was marked by the lowering of land ceilings: four to seven hectares for government-owned irrigated land and five to seven hectares for privately-owned irrigated land.

A new land ceiling law was also passed, providing that landless agricultural laborers from scheduled castes and scheduled tribes be given priority in the redistribution of surplus land. Unfortunately, despite the passage of the new land ceiling law and the directives for the States to abide by the provisions of the new law favoring the scheduled tribes and castes, little headway was recorded in the years immediately following the landmark reform. The Eleventh Plan (2007 to 2012) document however revealed that 2.1 million hectares of 2.98 million hectares of surplus land had been redistributed.



The **fourth phase** from 1985 to 1995, meanwhile, saw the implementation of several land development programs that focused on soil and water conservation, wasteland development and watershed development to increase the productivity of arable land.

The **fifth or current phase** kicked off at the time when India saw an increase in caste and class violence. To quell further violence and to check extremism, the government introduced further land reforms. These include taking over surplus land that landowners had been illegally holding on to; legal protection for sharecroppers; improvement of the land revenue administration; and, the abolition of the distinction between agricultural and non-agricultural land. The national government, likewise, started computerizing land records for increased transparency and improved governance of land to promote social justice. It is also under this ongoing phase that non-governmental organizations, political parties, and citizen groups exerted extra pressure on government institutions to actually carry out pledged reforms.

One of the most significant developments in recent years is the passage of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006, which granted scheduled tribes and other traditional forest dwellers the right to occupy forestland. The Forest Rights Act led to the single biggest recognition of tribal land rights. Some 1.9 million claims of indigenous peoples were settled. Over 70,000 community forest rights claims have been recognized, granting tenure security to over 6.27 million hectares of land.

Encouraging is the draft National Land Reforms Policy prepared in 2013 that aims to introduce bold reforms including the removal of exemptions to religious, educational, charitable, research, and industrial organizations beyond six hectares; having a “single window” to redistribute surplus land within a specific time; a crackdown on land being registered in someone else’s name; and, having a database of land inventory for public scrutiny.

All these programs pursued since India’s independence are geared toward promoting land tenure and property rights, which refer to the rights of individuals, communities, families, firms, and even corporate and community structures to own or use land, water, forestry, wildlife, and mineral resources.

Property rights and tenure arrangements may range from private ownership to leaseholds. Land tenure also includes the concept of tenure security, which refers to the people’s recognized ability to control and manage land, to use it and earn from its products, and even transfer, sell or lease it.

It should be noted that State legislatures have the power to enact laws that deal with how land is managed and distributed. And because some may be more progressive than others, land laws thus vary greatly across the States. This inevitably leads to land conflicts or disputes as the tenure system that is recognized in one State may not be recognized in the other.

**Table 1. State-wise Statistics of Land Reforms**

State	Area Declared Surplus in Acres (in Hectares)	Area Possessed in Acres (in Hectares)	Area Distributed in Acres (in Hectares)	Number of Beneficiaries
Andhra Pradesh	791,638 (320,364)	643,948 (270,597)	561,717 (227,319)	466,803
Assam	613,405 (248,236)	575,337 (232,820)	545,875 (220,908)	445,862
Bihar	523,504 (211,855)	431,310 (174,545)	353,358 (142,999)	461,136
Chhattisgarh	75,081 (30,384)	72,183 (29,211)	60,681 (24,557)	27,452
Gujarat	237,976 (96,305)	182,447 (73,834)	165,350 (66,915)	38,360
Haryana	105,783 (42,809)	101,932 (41,250)	101,166 (40,940)	29,351
Himachal Pradesh	316,556 (128,106)	304,895 (123,387)	6,167 (2,496)	6,259
Jammu and Kashmir	8,836 (3,576)	0	0	0
Jharkhand	0	0	860 (348)	1,316
Karnataka	174,087 (70,451)	166,793 (67,499)	235,458 (95,286)	57,667
Kerala	133,700 (54,106)	100,186 (40,544)	70,834 (28,666)	168,912
Madhya Pradesh	223,264 (90,352)	190,449 (77,072)	134,202 (54,310)	47,061
Maharashtra	725,078 (293,429)	670,815 (271,469)	634,158 (256,635)	139,755
Manipur	1,830 (741)	1,685 (682)	1,682 (681)	1,258
Odisha	180,935 (73,222)	171,268 (69,310)	157,530 (63,750)	143,485
Punjab	11,086 (4,486)	87,207 (35,291)	82,609 (33,431)	77,570
Rajasthan	595,152 (240,849)	554,693 (224,476)	453,171 (183,392)	77,629
Tamil Nadu	208,452 (84,358)	200,322 (81,067)	190,713 (77,179)	150,905
Tripura	1,995 (807)	1,994 (807)	1,599 (647)	1,424
Uttar Pradesh	371,323 (150,269)	343,047 (138,826)	267,248 (108,151)	305,394
West Bengal	1,408,877 (570,152)	1,318,159 (533,440)	1,052,269 (425,838)	3,137,662
Dadra and Nagar Haveli	0	0	0	0
Delhi	1,132 (458)	394 (159)	394 (159)	654
Pondicherry	2,326 (941)	1,286 (520)	1,070 (433)	1,464
<b>TOTAL</b>	<b>6,712,016</b> <b>(2,716,257)</b>	<b>6,120,350</b> <b>(2,476,818)</b>	<b>5,078,111</b> <b>(2,055,039)</b>	<b>5,787,379</b>

Data provided is up to December 2015; Information for the remaining States and union territories not given.

**Source:** Land Reforms Division, Department of Land Resources, Ministry of Rural Development, Government of India (2016)

## EMERGENCE OF LAND CONFLICTS

India's intent to pursue rapid economic growth has caused even more tension over land, as the government struggles to balance the needs for land for various needs such as economic development, agriculture to feed the growing population and even housing.

In many cases, the government itself comes into direct conflict with the farmers as land is forcibly acquired from farmers to give way to special economic zones (SEZs) or free trade zones. The justification is that big business groups and industries that will set up in these special economic ones will bring in jobs and investments for the people and contribute to economic growth.

But with the loss of access to land, whether through force, intimidation or deception, entire communities lose the means to sustain their livelihoods, thus leaving them landless and powerless, consequently swelling the ranks of India's extreme poor. Government data showed that nearly 500 SEZs have been approved and close to 60,000 hectares of land have been set aside for the development of these SEZs, all in the name of "public purpose" and "development" that meant the widespread transfer of land from the farmers to the private sector.

What is disconcerting is that a good portion of the land being used to develop these SEZs is prime agricultural land, converted through the State's power of eminent domain. For example, the West Bengal Government acquired fertile agriculture land in West Medinapur for the Tata Metaliks Company in 1992, dispossessing small and marginal farmers, even when equally suitable less productive land was easily available. This inevitably led to conflict, with the government bent on acquiring even more land for the SEZs using the Land Acquisition Act.

The table below talks about the key characteristics of land conflict across the different regions in India.

**Table 2. Land Conflicts Across Regions, India**

Region	No. of Conflicts Analyzed	Types of Disputed Land	Primary Causes of Conflict	Major Violations	Parties Often Involved
Northern	93	<ul style="list-style-type: none"> <li>private land (55 percent)</li> <li>non-forest common land (26 percent)</li> </ul>	Infrastructure (71 percent)	<ul style="list-style-type: none"> <li>land encroachment</li> <li>displacement of IPs</li> <li>harassment</li> <li>unfair compensation</li> <li>loss of livelihood</li> </ul>	Community and Government (75 percent)

Eastern	116	<ul style="list-style-type: none"> <li>• forest land (58 percent)</li> <li>• non-forest common land (15 percent)</li> </ul>	<ul style="list-style-type: none"> <li>• Plantation (37 percent)</li> <li>• Power (15 percent)</li> <li>• Infrastructure (13 percent)</li> <li>• Industry (13 percent)</li> </ul>	<ul style="list-style-type: none"> <li>• land grabbing</li> <li>• evacuation of forest dwellers</li> <li>• psychological harm</li> <li>• loss of livelihood</li> <li>• unfair compensation</li> </ul>	Community and Government (81 percent)
Western	90	<ul style="list-style-type: none"> <li>• private land/farm lands</li> </ul>	<ul style="list-style-type: none"> <li>• Industry (44 percent)</li> <li>• Infrastructure (38 percent) – mostly roads</li> </ul>	<ul style="list-style-type: none"> <li>• illegal acquisition of farm lands</li> <li>• loss of livelihood</li> </ul>	Community and Government (91 percent)
Central	No data	<ul style="list-style-type: none"> <li>• forest land</li> </ul>	<ul style="list-style-type: none"> <li>• Infrastructure (35 percent)</li> <li>• Mining (22 percent)</li> <li>• Industry (21 percent)</li> </ul>	<ul style="list-style-type: none"> <li>• forest rights violation</li> <li>• loss of livelihood</li> </ul>	Community and Government
Northeastern	24	<ul style="list-style-type: none"> <li>• forest land (46 percent)</li> <li>• non-forest common land (43 percent)</li> </ul>	<ul style="list-style-type: none"> <li>• Infrastructure</li> <li>• Industry</li> </ul>	<ul style="list-style-type: none"> <li>• displacement of tribes</li> <li>• physical violence</li> </ul>	Community and Government (92 percent)
Southern	74	<ul style="list-style-type: none"> <li>• private land (40 percent)</li> <li>• non-forest common land (39 percent)</li> </ul>	<ul style="list-style-type: none"> <li>• Infrastructure (51 percent)</li> <li>• Power (13 percent)</li> <li>• Industry (11 percent)</li> </ul>	<ul style="list-style-type: none"> <li>• displacement of tribes</li> <li>• poor implementation of Land Reform Act</li> <li>• psychological harm</li> </ul>	<ul style="list-style-type: none"> <li>• Community and Government (64 percent)</li> <li>• Community and Business (24 percent)</li> </ul>

**Source:** Data collected from Land Conflict Watch Website (n.d.)

The paper on land conflict in India that was based on 397 cases of land conflict showed that in four of the six regions, the majority of the land disputes involved forest lands, thus affecting tribal groups or indigenous peoples. In the Western and Southern Regions, many of the disputes covered private lands or farmlands, thus affecting farmers.

The data also showed that many of the conflicts arose due to the setup of infrastructure projects over disputed land. In the Eastern and Southern Regions, the disputes were due to power projects, while in other areas, the land was aimed for use in road construction and industrial projects.

There are laws in place that are meant to protect the rights of indigenous groups and farmers, including the Forest Rights Act of 1927 and the Land Acquisition Act of 2013. Poor implementation and lack of knowledge by the concerned parties over the provisions make it



difficult, however, to use them for the benefit of the marginalized groups with land claims and ownership.

Common violations include encroachment on tribal lands, land grabbing and illegal acquisition of private and community-owned lands, thus leading to the displacement of farmers and forest dwellers and, in some cases, human rights violations such as damage to property and even killings. Indeed, the euphoria over development has come at the expense of indigenous peoples or scheduled tribes, who were forcibly displaced and shabbily resettled to give way to the construction of big dams and other large infrastructure, adding to the conflict over land.

It does not help that India's indigenous peoples are largely unaware of their constitutional rights, that, for example, their land cannot be transferred to non-tribals. Poverty and perpetual indebtedness have also made them hesitant to pursue their cases in court in the face of the strong lobby of land grabbers.

States such as Odisha that have large populations of indigenous peoples are expectedly more advanced when it comes to protecting their land rights. Odisha, for example, has its own Odisha Land Reforms Act of 1960 that provides for the restoration of illegally acquired land to the tribals. If the acquisition is found unlawful, the local revenue officer may order the eviction of the non-tribal and the return of the property to the owner or to his heirs.

Odisha government data show that since 2013, about 46,357 cases involving 80,865.75 acres (32,725 hectares) that were acquired from the tribals were brought to court. Of these, 15,768 cases were decided in favor of the tribals and 14,096 cases involving 13,319.11 acres (5,390 hectares) were restored to the tribals.

These are but some of the roughly 30 percent of the 30 million civil cases pending in courts involving land disputes. Indeed, new ways to get around the rights of the Indian people under the Land Acquisition Act are currently being employed as the government is bent on pursuing economic growth, seemingly at all costs. A 2016 study by Rights and Resources Initiative and the Tata Institute of Social Sciences concluded that approximately \$170 million worth of investment has been tied up in various land conflicts across India.

Further complicating the land issues is the lack of access to useful and updated data on land. There are land-related data at the national and State levels, but these are mostly old and not comprehensive. Data on land transfers are either not available or unreliable, preventing the farmers and small landowners from strengthening their claim or laying their rightful claim over the land that should be legally theirs. And even if they do press their claims, they are faced with cumbersome procedures and old or conflicting rules on land or tenure rights.

There is also the specific case of women fighting for their own rights over land.



Women have the right under laws such as the amended Hindu Succession Act to inherit land under their own name. However, patriarchal customs prevail, especially in the rural areas, thus preventing women from owning or inheriting land or property.

This can also be seen among indigenous peoples, where customs dictate that only sons get to inherit property. Some women do get the right to cultivate land for their survival, but such usufruct rights are limited. For example, in case there are no sons, a daughter can enjoy the land of her father as long as she continues to live in the village of her father, and with her husband and children. If she leaves, then she will have to give up her rights over the land.

Latest data show that only 13 percent of agricultural landowners in India are women. However, thanks to successive movements, more women across India are asserting their political and economic rights.

There is still a significant social risk involved in asserting those rights as stubborn traditional rules remain a strong influence, but it can not be denied that there is increased awareness of the benefits of increasing the legitimacy of women's land rights, among them is the greater economic contribution of women who account for 43 percent of the agricultural labor force.

## **SUMMARY AND RECOMMENDATIONS**

India has already taken great strides toward providing land to the tiller and promoting social justice. However, more needs to be done. For one, progressive land reform laws, including the landmark Forest Rights Act ought to be more judiciously implemented.

It should also be noted that many State governments in India have the power to give communities formal rights and governance over community property. This power should be put to good use. CSOs need to work with communities across numerous States to help improve their rights and effective governance of common property resources.

On the issue of land records, the government should continue to aggressively pursue the digitalization of the records so that the farmers can have easy access to the latest and most reliable land records. After all, an inadequate land record gives rise to land tenure insecurity for the poor. That said, alternate dispute resolution mechanisms need to be put in place to clear the dockets and to more quickly resolve these conflicts.

On women's rights, ensuring women's land rights during marriage may afford those greater claims on the disposition of assets in the case of divorce or death of their husband. In indigenous communities, tribal women should be guaranteed their individual ancestral ownership and inheritance rights according to either or both customary or State law.



Indeed, patriarchal and discriminatory attitudes and practices need to be addressed. States should ensure that women and girls have equal tenure rights and access to land and other natural resources independent of their civil and marital status. States should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights, and harmonize family codes.

The government must also implement the Forest Rights Act more diligently, for failure to do so have made the indigenous peoples of India vulnerable to land grabbing and eviction, as their land is coveted by both the government and private sector firms who want to use it for economic development projects. The government has to respect and restore the rights of indigenous groups to their land, forest, mineral, and oil resources.

Efforts to reduce poverty must include efforts to provide land to the landless. This can be accomplished through allocation of existing unused or under-utilized government-owned land, programs that assist landless persons or groups to purchase private land, and even land acquisition.

Greater efforts should be exerted to make tenants more productive through enhanced tenure security as well as improved access to credit and government services, put more land into productive use, and facilitate needed occupational mobility from agriculture.

Given the high incidence of land disputes in India and the limited access to legal services for the poor, NGOs, law colleges and universities, and legal service agencies could do much to fill the gap. The use of paralegals, in particular, in helping poor people resolve their land problems has enormous potential in India for large-scale impact. ■

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# Navigating the uneven policy terrain:

## CSO Land Reform Monitoring Report in Indonesia 2018<sup>1</sup>

*An initiative of the Land Watch Asia Campaign*

On various occasions, President Joko Widodo declared that agrarian reform was the pathway to prosperity for the entire society, and not simply an act of redistributing lands. Since the end of 2016, the government has been seeking to draw a map for the implementation of agrarian reform with the issuance of Presidential Decree No. 45/2016 of the Working Plans of the Government for 2017. With the decree, 2017 was supposed to be the crucial year for the implementation of the mapping.

It appears that the government does not have a real commitment for the implementation of the reform. Key aspects where the planned reform deviates from the principles outlined in the Agrarian Basic Law or UUPA No.5/1960 can easily be identified. Moreover, the whole bureaucracy from national to regional levels does not seem to be prepared for the implementation.

In recent years, agrarian reform progress tended to slow down despite demands from civil society to rectify and accelerate the reform.

In 2018, the Basic Agrarian Law was translated into its derivative regulation as the Presidential Regulation No. 86/2018 on Agrarian Reform, which comprehensively manages the aspects of agrarian reform implementation such as the institutional tasks,

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<sup>1</sup> This is an abridged version of the Indonesia Land Watch Agrarian Policy Monitoring Report 2018 prepared by the Konsorsium Pembaruan Agraria (KPA) as part of the Land Watch Asia (LWA) campaign. This 2018 country monitoring report focuses on land governance, and is supported through the project “Sustainable, Reliable and Transparent Data and Information towards Responsible Land Governance: Putting Commitment 8 into Action.”

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subject, object, as well as implementation procedures. Institutionally, the National Agrarian Reform Team, whom are assigned to regulate policy and supervise the implementation of Agrarian Reform, was led by the Coordinating Minister of Economic Affairs.

The Consortium for Agrarian Reform (KPA) is one of the civil society organizations engaged in the agrarian reform issue. This study includes KPA's reflections related to the status of agrarian reform from 2017 to 2018, as well as recommendations to improve its implementation in the coming years.

## **RESEARCH OBJECTIVES AND SOURCES OF THE STUDY**

The Land Watch Indonesia Monitoring Report 2018 attempts to achieve the following objectives:

- provide an overview of the policy and legal framework on access to land and tenure security for the rural poor;
- describe the current status and emerging issues on access to land and tenure security of the rural poor;
- assess the transparency in land governance and public access to land-related information; and,
- identify strategic opportunities for advancing land rights for the rural poor in Indonesia.

This study was conducted primarily through literature review. Documents analyzed include reference materials from various government and non-government institutions (including previous research studies conducted by KPA), laws, jurisprudence, and statistical data. Furthermore, data and information inputs provided in this research also originated from the joint consultation meeting with relevant government institutions that was organized by KPA on 9 November 2018 in Jakarta.

## **LAND RIGHTS AND ACCESS TO LAND**

### **Access to Land and Development**

Given the critical condition of the peasant population and the agriculture sector in Indonesia, it is imperative to include agrarian reform in the national development agenda. Agrarian reform is the foundation for balanced development, poverty reduction, and rural job creation. It is in this context that the Indonesian government issued the Presidential Decree No. 45/2016 and Presidential Decree No. 79/2017 of the Government's Working Plan for 2018, which included agrarian reform as a national priority program. However, it was only in 2018 when the necessary Presidential Decree to support agrarian reform implementation was issued.



As a provisional solution, in 2017, the Coordinating Minister of Economy issued Ministerial Regulation No. 73/2017 forming an Agrarian Reform Team. This Team was tasked to accelerate agrarian reform implementation among concerned government agencies and ministries, such as the Ministry of Agrarian Affairs and Spatial Planning (ATR), Ministry of Environment and Forestry (LHK), Ministry of Rural Areas, Underdeveloped Areas Development and Transmigration (PDTT).

After forming the AR Team, the relevant ministries will establish working groups within each ministry, the government along with KPA and other CSOs are expected to formulate a mechanism for accelerating the implementation of agrarian reform, which is referred to as Agrarian Reform Land Objects (TORA).

In both the Ministry of Agrarian Affairs and Spatial Planning and the Ministry of Environment and Forestry, a Joint Secretariat (Sekber) will be formed to discuss the identification mechanism of TORA, its budget and legal basis of the mobile working group.

In addition, the Ministry of PDTT has also formed an agrarian reform task force. Its main function is to ensure that land redistribution is supported by other programs for increasing the beneficiaries' prosperity in rural areas through the use of village funds. Law No. 6/2014 identifies the village as the main entry point to make sure that land distribution beneficiaries will participate in additional programs such as cooperative enhancement, seeds and fertilizer provision. Besides, it is hoped that agrarian reform can be in synergy with village owned business units (*bumdes*) for developing the peasant economy.

## Poverty

Poverty is a persistent problem in Indonesia. Despite many studies, government programs, and people's initiatives to combat it, the poverty rate remains high.

To measure poverty, the Central Statistics Agency uses the basic needs approach. In this approach, poverty is seen as an economic inability to meet basic food and non-food needs. Thus, the "poor" are the people with an average monthly per capita expenditure below the poverty line of USD 371.

Currently, the number of rural poor in 2017 has reached 16.31 million. Although poverty has decreased in recent years, the problem remains significant, since there are still peasants-households with average land size of only 0.10 to 0.19 of a hectare.

The increasing number of smallholders and landless peasants is a warning. Without agrarian reform, then the root cause of both rural and urban poverty will be very difficult to overcome and thus, the prosperity of peasants will remain a dream.

**Table 1. Number of People in Rural Areas**

Year	Population of the Underprivileged in Rural Areas
March 2014	17,770,000,000
September 2014	17,370,000,000
March 2015	17,940,000,000
September 2015	17,890,000,000
March 2016	17,670,000,000
September 2016	17,280,000,000
March 2017	17,100,000,000
September 2017	16,310,000,000

*Source:* Central Bureau of Statistics, 2013 Agriculture Census

**Table 2. Comparison of Agricultural Land Tenure from 2003 to 2013  
(in million households)**

Agricultural Census	Agriculture of less than 0.10 of a hectare	Agriculture of 0.10 to 0.19 of a hectare	Agriculture of 0.20 to 0.49 of a hectare	Agriculture of more than 0.50 of a hectare
2003	9.38	3.60	6.64	11.43
2013	4.34	3.55	6.73	11.51

### Key Issues Affecting Rural Poor's Access to Land

Changes in the development orientation in the New Order and the muddling up of the agrarian policies which accompanied it have had an adverse impact on the agrarian sector.

These are now shaping the structure of agrarian societies. One major impact is the disharmony or incompatibility in the agrarian sector. Four incompatibilities are identified here, namely:

- inequality in the tenure of agrarian resources;
- incompatibility of “allocations” of agrarian resources, especially land;
- the mistaken perception that “the agrarian issue” involves only land issues and its management divided into forest and non-forest; and,
- incompatibility of various legal products and sectoral policies (for instance, the management of land allotment does not consider other social interests).

These four incompatibilities are the main sources of various derivative problems, such as agrarian conflicts, poverty, and unemployment. Moreover, globalization has complicated the agrarian situation (Wiradi, 2009).



## LEGAL AND POLICY FRAMEWORK ON ACCESS TO LAND

### Land Laws and Policies in Indonesia

As explained in the previous section, agrarian reform was included in the Government Work Plan (RKP) of 2016 to 2018. The government's priority work in the 2016 to 2018 RKP is a manifestation of the government's seriousness in implementing the UUPA 1960 and Decree of the People's Consultative Assembly No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management (MPR Decree No. IX/2001).

Substantially, this Government Work Plan is really helpful in accelerating the agenda of land tenure ownership and control as a core part of agrarian reform.

Besides the Agrarian Basic Law (UUPA) 1960 and the MPR's decree, Indonesia has the No. 19/2013 Law on the Protection and Empowerment of Peasants. However, KPA believes that this Law has yet to protect and provide land rights to peasants. KPA together with other CSOs have assessed this law and conveyed their findings to the Constitutional Court.

At the same time, a number of CSOs have criticized this law:

- It does not place agrarian issues (land tenure and ownership) as the central focus;
- It establishes rent rights as mechanism for providing land resources for peasants;
- It does not include the land redistribution agenda in the agenda of peasant empowerment;
- It provides a very limited range of lands for peasants (free land and ex abandoned land); and,
- It does not allow peasants to organize or form unions.

Despite the flaws in the law, it also has some progressive provisions. For instance, Articles 12 and 18 stipulate that the national and regional governments should provide peasants with agricultural land plots sufficient for agricultural livelihood.

The provision is reaffirmed by the Article 19 Number 1 of the No. 41/2009 of Sustainable Food Crop Land Protection, which is part of spatial planning for rural areas in district territory. The policy for realizing the sufficient support for small peasants is included within Article 7 of the No. 19/2013 Law of Peasants Protection and Empowerment. Article 7 Number 1 of the law stipulates that strategies for protecting and empowering peasants are established by the national and regional governments.

Article 7 Number 2 enumerates the specific measures for protecting peasants:

- agricultural production means and equipment;
- business certainty;

- stabilizing effort over commodity prices;
- efforts to purge high cost economy practices;
- compensation of loss due to crop failure caused by force majeure;
- early warning and mitigation systems against climate change effects; and,
- agricultural insurance facilities.

Article 7 Number 3 stipulates that peasant empowerment is done by providing:

- education and training programs;
- counseling and assistance;
- developing agricultural products systems and means; and,
- consolidating and guaranteeing agricultural land area.

The 1960 UUPA (Basic Agrarian Law) also places additional obligations on government, including organizing and planning the universal land use, administering land so that it can improve production, assuring that every citizen is given dignity as a human being, preventing any private monopoly and improving social guarantee, and security for livelihood in the land sector.

The UUPA also provides that every Indonesian citizen, either male or female, has equal rights to owning or benefiting from land.

## **The Development of Agrarian Reform Implementation and Land Policy in Indonesia**

### ***Achievements of the Government in Implementing Agrarian Reform***

Since 63 percent of Indonesian land area was claimed as forest area, the agrarian reform that was implemented by the Jokowi Government is prior to the issuance of Presidential Decree No. 86/2018 on Agrarian Reform, applied the Law No.41/1999 on Forestry (Forestry Law).

However, such claims are not all legal since those areas are not yet established as forest areas. Applying the Forestry Law, only some 4.5 million hectares are under the jurisdiction of the LHK Ministry. Abandoned land, which is under the jurisdiction of the ATR Ministry, covers only 400,000 hectares.

Therefore, determining the beneficiaries and coverage of agrarian reform is a crucial phase, and will determine the success of the program's implementation. Any error in this phase will increase the possibility of the program's failure. The experience in other countries shows that the participation of civil society movement is crucial to the success of agrarian reform implementation.

Applying the Forest Law, the only way to solve the problem is to set aside or include some forest areas into the TORA. The process of extracting an area from its former allocation is determined by: a) the status of the forest areas which can be released; b) the area of the forest at regional



levels; c) the proposal of spatial changes from regional governments; and, d) efforts in preparing beneficiaries.

Unfortunately, the system for the extraction has not yet been established by the Ministry of Environment and Forestry (LHK). Over more than a decade under the previous administration, out of a total of 7.5 million hectares of forest areas extracted, 90 percent was allocated to plantation enterprises. The application of the forestry law tends to make the determination of the TORA a top-down process based on the available criteria.

The establishment of the TORA from forest areas is stipulated through the Decree of the Minister of LHK SK 180/MENLHK/SETJEN/KUM 1/4/2017 of Indicative Map for Forest Area. The map targets 4,853,549 hectares of forest area (per November 2017) to be included within the extractable area for the TORA.

Such an allocation is not available for Java, Bali, and Lampung, since those places have forest areas of less than 30 percent of their total area, according to the one-sided interpretation of the government of the No. 44/1999 of the Forestry Law.

What is more frustrating is that the Ministry of the ATR has not commenced any inventory process for allocation TORA of 400,000 hectares of expired land use rights and abandoned lands. The ministry focuses its work on asset legalization or regular certification of areas where there is no conflict or dispute.

The plan is that the indication process of the TORA (which is fixed by the ATR Ministry) will be updated periodically. This is in accordance with the Minister of LHK's decree that all data related to TORA will be updated every six months, considering also suggestions from civil society. The government indeed has been doing this, but the ATR and LHK ministries tend to avoid lands which are the subject of conflict, preferring instead to target "clean and clear" land, and even fresh land.

Another aspect which is worth noting is that the 2017 agrarian reform progress report reflects a conservative implementation of TORA. Since the day agrarian reform was included among national priorities, the LHK ministry has extracted only 707,346 hectares from forest area (Kementerian LHK, 2017). As with the ATR Ministry, from the release of the LHK forest area of September 2017, no land has been redistributed due to its rejection by the community. The more complete achievements are, among others (Sofyan Djalil, 2018):

- out of 0.6 million hectares of transmigration lands targeted for legalization, only 75,600 hectares have been legalized (12.6 percent of target);
- out of 3.9 million hectares targeted for assets legalization (certification), only 1.832 million hectares have been legalized (47 percent of target);

- 
- out of 0.4 million hectares of land targeted for redistribution (consisting of abandoned and ex-HGU lands), 236,186 hectares have been redistributed (59 percent of target); and,
  - out of 4.1 million hectares targeted for forest estate release, some of 994,761 hectares have been redistributed (24.3 percent of target).

These facts indicate that there is wide gap between political promise and policy realization. Were it not for civil society involvement in setting the scope and targets, agrarian reform under Jokowi will proceed at an even slower pace.

### ***Condition of Indonesian Land Policy***

The following are the findings of KPA's 2017 monitoring work on policies relating to agrarian reform.

#### ***a. Palm Oil Plantation Moratorium***

The moratorium on palm plantations is administered through Presidential Order No. 8/2018. It consists of 12 instructions to be obeyed by five ministries and the Head of the Investment Coordination Agency, including the regional government up to the regent and mayor level. This Presidential Order must also work in parallel with the government commitments to resolve the problem of inequality in the ownership and tenure of agrarian structures.

This Presidential Order consists of three vital points that must be implemented by the government -- suspension or postponement of permits for palm oil plantations, evaluation of the existing permits for palm oil plantations, and increasing the productivity of people-owned palm oil plantations. On the suspension provisions, the order itself works as a moratorium or deferral on the process of issuing the three permit types for palm plantation.

Ideally the moratorium should last for up to 25 years as proposed by WALHI, because environmental recovery requires a long time (*Ibid*).

#### ***b. World Bank Loans in the Name of Agrarian Reform (KPA, 2018)***

The Consortium for Agrarian Reform is against the action taken by the government when it took loans from the World Bank for the Ministry of ATR, supposedly with the aim of accelerating agrarian reform. None of the components of the loan is aligned with the agrarian reform agenda. Rather, the loan is for the "one map policy," combining the Complete Systematic Land Registration (Pendaftaran Tanah Sistematis Lengkap or PTSL) with the electronic land information service. In other words, this loan is for an ordinary land administration program.



Minister Sofyan Djalil admitted this in his press statement, which said the World Bank was committed to support the land certification program through the USD 200-million or IDR 2.7-trillion loan.

KPA believes that the Ministry of ATR and the World Bank deliberately misled the people of Indonesia. This program is clearly not agrarian reform; in fact, it actually runs counter to the spirit of agrarian reform.

Two decades ago, the World Bank provided loans to the New Order for the Land Administration Project (LAP). The program was implemented in Jakarta, Bekasi, Depok, Tangerang, Bogor, and Karawang. KPA criticized the project because it would be an instrument for land liberalization.

The fears raised then concerning the LAP have unfortunately become reality. The areas where the LAP was implemented have fallen into the hands of a few businessmen who have since constructed industrial areas, housing compounds, shopping centers, and apartments. The old owners were not involved in the process, except that they simply sold their lands.

In light of the failure of the LAP, it is imperative that the current World Bank loan be cancelled.

In addition, the KPA also demands that government implement agrarian reform immediately by distributing lands to the appropriate beneficiaries and providing the necessary support services to make the lands productive. Agrarian reform implementation needs to be led directly by the President, in order to ensure effective coordination among the concerned ministries and agencies.

### *c. Land Grabbing in the Name of National Strategic Projects*

The process of land acquisition for the benefit of national strategic projects has actually been adequately regulated by the Law No. 2/2012 on Land Procurement for the Development of Public Interest.

The legal procedure and phases of such acquisition have to be fully understood by the police, so that they are not easily used by regional governments and investors to undertake forced evictions, or arrest local people who are trying to defend their homes and farms. The Indonesian Constitution and this law protect the rights of people affected by development projects.

It has to be noted that people are not always inherently opposed to land acquisition for development projects. Resistance builds up because from the planning until field execution of the acquisition, the process is not transparent, and is often manipulative and corrupt. This results in land prices that are too low for the landowners.



In addition, when land acquisition faces opposition from people, the government usually does not undertake mediation processes. Instead, it often resorts to force through actions by the police and municipal security forces, or even thugs. Such repressive methods worsen the conflicts and often result in casualties during the eviction process.

The 1960 UUPA states that land bears a social function, that exploitative and repressive measures must be avoided, and agricultural laborers are to be prioritized in land distribution. If these principles are followed by all parties involved, and if procedures and phases stipulated in the Land Grabbing Law are obeyed strictly and transparently implemented, then land conflicts in development projects can be avoided.

*d. The Trap of the P3H Law*

The criminalization problem in the forestry sector has been a concern for some time. In 2014, civil society organizations formed an Anti-Forest Mafia Coalition to respond to cases being filed against small peasants.

The No. 18/2013 Law of the Prevention and Eradication of Forest Destruction (UU P3H) is among those laws used to file cases against peasants or villagers. In 2014, the coalition noted that 53 people were prosecuted using this law, and 43 of them were found guilty and sentenced to 18 months in prison.

In 2017, KPA records indicated that at least 26 peasants and villagers became victims of criminalization with the application of the P3H law. This criminalization was related to the agrarian conflict that put locals against the national park, conservation area, and State-Owned Enterprises on the Perhutani forest.

The cases involved charges of destroying conservation areas, working on Perhutani areas, stealing trees in Cilacap (Sudjana, 45), and illegal taking of Sonari worms in Sukabumi (Didin, 48). Such law entangled peasants and indigenous people's members in Lombok Timur, NTB; in Sompeng, South Sulawesi; and in Badung, Bali. In East Lombok, six peasants were criminalized (Nabil, 40 and Parihin, 60) with the charge of working on land within the national park.

While the P3H law was intended to protect forests against destructive acts by individuals and corporations, when applied in agrarian cases, the law has been effective in criminalizing peasants but impotent against corrupt and manipulative corporate investors.

If we refer to the decree of the Constitutional Court No. 35/PUU-X/2012, No. 95/PUU-XII/2014 and No. 45/PUU-IX/2011 related to forest areas and communities living in or around them, the ruling was that the P3H law cannot punish people who have been living in the particular forest area for generations.



Amidst the muddling up of forestry policies and management, the P3H law has further complicated agrarian problems. Civil society advocates that, instead of the P3H law, the decree of the Constitutional Court should instead be implemented, including the ruling that lands which are owned and worked on by local people are under their rights.

The increasing number of the P3H law's victims indicates that the government is incapable of solving structural agrarian problems which weigh on ordinary local people. Sensitivity to social justice and the chronic problems in the forestry sector is demanded of the Jokowi administration. If this situation persists, public trust in Jokowi will be at risk.

e. *Immensely Controversial Policy*

Presidential Decree No. 88/2017 on the Procedures for Solving Land Tenure Problems in Forest Areas was supposed to enhance the common regulation issued by the Ministry of Forestry, the Chief of BPN-RI, Public Works Minister, and Minister of Domestic Affairs.

The implementation of that common regulation of the four ministries faces a dead end, especially when national and regional governments are reluctant or negligent in enacting it. The formation of IP4T team as stipulated in that common ministerial regulation is dependent on the will of regional governments. A number of regional governments which have no commitment to it will not follow up the regulation seriously and automatically. There is also the problem of inter-ministerial political dynamics.

The Presidential Decree is supposed to solve these problems. In terms of its substance, the Presidential Decree is no different from the four ministers' common regulation. In the decree, the lead entity is now the Acceleration Team for Solving Land Tenure Problems in Forest Areas, with the Coordinating Minister of Economy as its head, with the ministers of ATR, of domestic affairs, of KSP and the cabinet secretary as its members.

At the provincial level, it is composed of teams of Inver PTKH, which are chaired directly by forest service chiefs at the local level who receive suggestions from district heads on addressing problems of conflict in forest areas. The Inver Team is directly tasked to conduct field investigation related to those suggestions.

There are four schemes for solving conflicts stipulated in the presidential decree, including the extraction from forest area, forest areas exchanges, social forestry management rights, and resettlement. Beneficiary subjects are those individuals, government services, social or religious organizations, and indigenous peoples. This scheme depends on the 30 percent of the forest area limit in a province.

If a conflict area has been physically occupied by locals for at least 20 years, with no claims from other parties, the area can be included in the extraction scheme. But such a claim



cannot be valid in a forest area which has a canopy area of less than 30 percent. If the forest area is less than or equal to 30 percent of the total area of a province, the exchange scheme can be applied. If the local people have been occupying the land for less than 20 years, then the social forestry scheme is the remedy. If the conflict area is within a conservation forest, the solution is the resettlement scheme.

In terms of the substance, agrarian reform has been reduced to the options provided in the Presidential Decree. Also, the agrarian reform option was previously available within the common ministerial regulation, applicable to local people with less than 20 years of land tenure. Now in the Presidential Decree, those with less than 20 years of tenure can only avail themselves of the social forestry option. Another controversy is that the resettlement option of the presidential decree is a huge setback from this regime.

*f. Social Forestry Cannot Simply Be Called Agrarian Reform*

The social forestry program (PS) has existed since the reign of President Susilo Bambang Yudhoyono (SBY). A decade of experience has proven that this program has not addressed the problem of structural agrarian conflict and inequality in Indonesia. Since the time of President SBY, KPA has strongly advocated against this social forestry program, including the various partnership models that drain the peasants of their livelihood.

Minister Regulation (PerMen) LHK No. P.83/MENLHK/SETJEN/KUM 1/10/2016 on SF regulates the public's access to forests and agrarian resources. SF is the community's access to land in a forest area for a certain period of time, namely for 35 years with an evaluation conducted every five years.

The government targets 12.7 million hectares of forest area for SF coverage. The Indicative Map of the Social Forestry Area (PIAPS) has been prepared by the Ministry of LHK and spread in almost all provinces. SF achievements until September 2018 have reached 2.004 million hectares. There are various forms of SF such as village's forest, community forestry (HKM), community plantations (HTR), and forestry partnerships.

There is still a possibility that social forestry could be one of the agrarian reform models recognized by the government. However, it is vital to remember that there are many models of SF that are precisely against the objectives and basic principles of AR itself.

These include partnership models with forestry enterprises that stipulate that only certain crops (commodities) can be cultivated; implementation of unfair profit-sharing schemes; and, the legitimization of monopoly over land or forest. In addition, SF is certainly not AR if provided to the community only because the government is reluctant to acknowledge their past mistakes, i.e. that the reinstatement of forest areas has plundered community lands.



SF has also not been able to answer the issue of agrarian justice. The problem lies in the lack of consideration for community interests in various forestry policies, such as in setting boundaries. So far, the uncertainty over the boundaries of forest areas has been the cause of prolonged conflict.

Furthermore, not all agrarian issues within forest areas can be solved with SF policies. For some areas, the solution must be agrarian reform.

## **New Legal Opportunities to Resolve Inequality in Land Tenure**

For four years (2014 to 2018), the government of Indonesia has implemented agrarian reform as framed in RPJMN and the Government Work Plan (RKP). With the nine million-hectare target, the government pursued their objectives through legalization and redistribution systems.

On the regulation side, the government is applying various regional regulations, such as plantation and forestry laws, to implement agrarian reform. On the institutional side, the work done by the various ministries had always tended to overlap. Thus, be it on the basis of the laws or institutions, the work done by the government thus far has been sub-optimal.

The issuance of Presidential Regulation No. 86/2018 of Agrarian Reform is expected to overcome current implementation issues.

The major provisions of the regulation are as follows:

- An Agrarian Reform Team is established, led by the Coordinating Ministry of Economic Affairs and with members consisting of various ministries/institutions relevant to the implementation of agrarian reform. To assist in the daily work of the Team, the Agrarian Reform Task Force (GTRA) is also set-up. At the national level, the GTRA is led by Minister of Agrarian and Spatial Planning (ATR), while at the Provincial and Regency/City levels, these are led directly by their Governor/Regent/Mayor cooperating with the people's representative within.
- The budget for implementing Agrarian Reform will be drawn from:
  - a. State Revenue & Expenditure Budget (APBN);
  - b. Regional Revenue & Expenditure Budget (APBD); and/or,
  - c. Other legitimate sources in accordance with statutory provisions.
- There are 11 types of land that will be placed under agrarian reform coverage, including forest estates already owned by the people, and abandoned State lands already being used by the people.
- Agrarian reform beneficiaries may be individuals, groups (with communal rights), or legal entities. Moreover, the Presidential Regulation identifies 19 types of qualified beneficiaries including landless peasants and sharecroppers, but also including private employees and civil servants.



Given these, KPA is fully aware that Presidential Regulation No. 86/2018 cannot be said to be perfect for carrying out genuine agrarian reform. However, KPA sees an opportunity to address the agrarian issues in Indonesia today. Regulations that are aligned with the Presidential Regulation must be a reference for the government in its implementation of the mentioned policy.

## **STATUS OF ACCESS TO LAND BY THE RURAL POOR SECTORS**

### **Peasant's Access to Land**

#### ***Smallholder Peasants***

In addition to the condition of peasants and agrarian problems outlined in the previous section on Land Rights and Land Access, Indonesian peasants from year to year have to face agrarian conflicts. Inequality in land ownership and tenure is the main cause of land disputes, especially in plantation areas where land tenure rights are concentrated. Agrarian structural inequality also brings about a situation where landless peasants or agricultural laborers have no choice but to sell their labor for low prices (KPA, n.d.).

In 2010, Indonesia's population was estimated 237.64 million, with about half living in urban areas and the other half in the rural areas.

In one decade, approximately 5.09 million peasant families fled from the agricultural sector and it can be concluded that they became landless peasants, laborers or urban poor, since the land conversion rate in Indonesia is still very high.

The rate of agricultural land conversion in this decade is 100,000 to 110,000 hectares per year (Ministry of Agriculture, 2016). But in 2018, the Ministry of Agrarian and Spatial Planning has provided data on agricultural land conversion of about 650,000 hectares, from 7.10 million hectares in 2013 to 7.75 million hectares in 2018.

The 2013 agricultural census by Central Bureau of Statistics (BPS) indicates that Indonesia still had a 31.7-million peasant population, and most of them were male (24.36 million people or 76.84 percent of the total peasant population). Their female counterparts numbered only 7.34 million or 23.16 percent of the total (BPS, 2013).

There is also a generation crisis as the number of farmers who are between 35 and 54 years old reached 14.21 million or 54.37 percent of the total.

This phenomenon indicates that agriculture does not yield enough benefits. In addition, the social status of a peasant is still deemed inferior. It can be seen from the fact that farmers' children tend to be reluctant to continue their father's work in the fields.



The desperate condition of Indonesian agriculture is worsened by the issuance of business use rights in the plantation and forestry sectors.

In 2018, the palm oil plantation area in Indonesia reached to 14.309 million hectares (General Directorate of Plantation of the Ministry of Agriculture, 2018). In the forestry sector, the Ministry of Environment and Forestry issued licenses (HPT, HP, HPK, HTI) to 499 enterprises with a total of 68.7 million hectares as of 2017 (General Directorate of Forest Planology and Environment Planning, 2016; Ministry of Environment and Forestry, 2016).

With large portions of land in the hands of private and State-owned enterprises, the condition of the peasant population is very miserable. In 2013, Indonesia had 14.248 million almost landless peasant families (those who had less than 0.5 of a hectare per family).

Agricultural families owning 0.10 to 0.19 of a hectare in 2013 reached 3.55 million. Peasant families with 0.20 to 0.49 of a hectare owned land numbered 6.73 million (BPS, 2013).

### ***Indigenous Peoples***

Large-scale, land-based extractive development is the main cause of indigenous people's marginalization. This foments many prolonged land and natural resources conflicts.

Indigenous people's rights marginalization has two sources. The first is expropriation of indigenous people's lands by the State (eminent domain). Second is the destruction of indigenous people's social units by homogenizing the village model in the New Order era.

The traditional rights and authorities of indigenous social units such as nagari, huta, marga, and others are being undermined due to the application of the New Order village model, thus diminishing the indigenous communities' legal capacity as the holders of indigenous territory.

The Aliansi Masyarakat Adat Nusantara (AMAN or Alliance of Indigenous Peoples of the Archipelago) has mapped indigenous peoples' land which comprises 9.3 million hectares. However, since the beginning of Jokowi administration, recognition and legal establishment for indigenous peoples' forests in Indonesia extends only to 25,110 hectares with only 33 certificates (LHK, 2018).

### ***Rural Women***

Currently, gender equality is truly a global agenda set out in the SDGs with 17 programs that apply to developing countries. During this time, women who fought alongside the men to obtain cultivated land had not yet obtained the rights to the cultivated land. This problem is still closely related to patriarchal culture which makes men more dominant in land ownership. Although there are currently 7.34 million peasants (23.16 percent of farmers) are female peasants (BPS, 2013).



Women as housewives are responsible for household food, good nutrition for families, and food security. This responsibility belongs entirely to women, as family nutrition is in the hands of women. However, the contribution of women in food security is not balanced with economic conditions, especially the gap in income between men and women in the agriculture sector. Based on data from the University of Jember in 2017, the average wage of female farm laborers in Java is only Rp 40,000 or USD 2.8 per day and for men farm laborers is Rp 52.828 or USD 3.8 per day (BPS, 2018). Such conditions do not seem to be very different from other regions in Indonesia, given the style and type of work performed by women farm workers is no different.

This is not because women are unable to cultivate the fields, but the lack of opportunities for women peasants to access information and their low level of education serve as hindrances to improving their capabilities in their respective communities.

Based on data from the Ministry of Agriculture in 2014, there are approximately 50 percent of Indonesian women peasants involved in the development of the agricultural sector. Women carry out heavy work such as preparing land, breeding, planting, and caring for plants until the harvest period. These activities are carried out periodically between their roles as housewives community members.

Most of the female peasants in the rural and village area does not have formal employment but are more involved in informal work such as farming or becoming farm laborers in certain seasons. Based on the facts, one of the focuses of the work of the Indonesian government in the implementation of agrarian reform is to ensure that women farmers receive land redistribution and programs to support agrarian reform.

## **RESOLUTION OF CONFLICTS AND PROTECTION OF LAND RIGHTS DEFENDERS**

### **Agrarian Conflict in Indonesia**

According to KPA's record, 2017 saw at least 659 agrarian conflict cases in Indonesia involving 520,491.87 hectares. These conflicts affected at least 652,738 peasants' families. In 2018, agrarian conflict was recorded 410 cases covering about 807,178 hectares, and involving 87,568 peasants' households in all of the provinces in Indonesia. Therefore, in the last four years (2015 to 2018) of the Jokowi administration, the number of agrarian conflict cases has accumulated to 1,769.

KPA categorized the kinds and causes of agrarian conflicts in Indonesia into seven sectors, i.e. a) plantation; b) infrastructure; c) property; d) forestry; e) mining; f) coastal area and maritime; and, g) agriculture.



In the 2018 period, almost half of which took place in the plantation sector (144 cases). The second most conflict-ridden sector was the property sector, with 137 cases. The agricultural sector ranks third with 53 cases. Next was mining with 29 cases, then forestry with 19 cases, coastal area and maritime with 12 cases, and finally the infrastructure sector with 16 cases.

In terms of commodities, oil palm plantations accounted for the highest number of agrarian conflict cases in 2017 and 2018. While the commodity brings in the most foreign exchange to Indonesia, it has come at a steep price given its long and tragic history of agrarian conflict. The moratorium on the issuance of licenses for oil palm plantations failed to alleviate agrarian conflicts for it was not followed with a thorough review of licenses that had already been issued.

Over the last 10 years, the area planted to oil palm increased by an average of 5.9 percent annually. The highest increase was in 2011, which saw a 7.24 percent increase amounting to 8.99 million hectares. As of 2018, the area of oil palm plantations in Indonesia was 14 million hectares (Ministry of Agriculture, 2018). The pace of this increase was not matched by improvements in location licenses, business license systems, and comprehensive impact studies of such plantations. The review of issued licenses has therefore become more urgent.

### **Agrarian Conflict Affected Areas**

Based on KPA's calculations, 1,327,669.48 hectares were affected by agrarian conflicts throughout the country from 2017 to 2018. The two biggest conflicts are plantation and infrastructure. The plantation sector involves 786,093.59 hectares, of which palm oil plantations account for the largest area with 228,492.93 hectares.

The number of agrarian conflicts in forest areas is not that high. But actually, the conflicts in the plantation and mining sectors began in the forestry sector, for the areas devoted to these operations were carved from forest areas. This is why national agrarian inequality is concentrated in the forestry sector.

In the infrastructure sector, conflicts affected a total of 57,367.22 hectares from 2017 to 2018. Most of them is for national strategic project development. Based on Presidential Regulation No. 58/2017 on Acceleration of the Implementation of National Strategic Projects, there were as many as 245 National Strategic Projects (NSPs) identified. Land requirements for NSP development until 2019 reached 133,657 hectares (Ministry of Public Works and Housing, 2018).

Another conflict area is in mining sector which covered an area of 45,792.80 hectares in 2017 and 22,681.60 hectares from January to August 2018. The coastal and maritime sectors accounted for 42,109.47 hectares of conflict areas in 2017 and 54,052.60 hectares in 2018. In the agriculture sector, conflicts affected 38,986.24 hectares in 2017, plus 22,450.69 hectares in the first eight months of 2018. Finally, the property sector faced conflicts covering 10,337.72 hectares areas in 2017 and 12,567.44 hectares from January to August 2018.

## Violence and Criminalization of Victims

In Indonesia, agrarian conflicts frequently involve brutal violence perpetrated by the State security apparatus or by companies against local people who resist eviction. For purposes of identifying violence victims, KPA uses four categories: killed, persecuted, shot, and criminalized (imprisoned).

**Table 3. Victims of Land Conflicts**

Years	Criminalized	Injured/ persecuted	Killed	Shot
2017	369	224	13	6
2018	216	132	10	6
<b>Total cases</b>	<b>585</b>	<b>356</b>	<b>23</b>	<b>12</b>

Source: KPA, 2017-2018

In 2017, 369 individuals were criminalized (351 male and 18 female), and 224 injured/persecuted (170 male and 54 female). Cumulatively, the last four years of the Jokowi administration (2014 to 2018), at least 41 people were killed in various areas of agrarian conflict, 546 persecuted, 51 people were shot, and 940 farmers and agrarian activist had been criminalized.

**Table 4. Institutions/Party Who Cause Agrarian Conflict**

Years	Private companies	Government	State-owned enterprises	Local apparatuses
2017	289	140	55	21
2018	244	58	31	28
<b>Total cases</b>	<b>533</b>	<b>198</b>	<b>86</b>	<b>49</b>

Source: KPA, 2017-2018

Although there is a small part of the conflict between communities as many as 36 in 2018 and 112 in 2017, what is noteworthy is that horizontal conflicts among communities are actually caused by government policies.

## TRANSPARENCY IN LAND GOVERNANCE AND ADMINISTRATION

### Participation in Land Governance

The value of the people's struggle as input in making decisions regarding land use in Indonesia has actually been accommodated in legislation.

For instance, Article 7 Paragraph 4 of Law No. 2/2012 of Land Procurement for Public Interest states that land grabbing is in the public interest when "organized through planning involving all stakeholders." Article 23 of Government Regulation No. 16/2004 on Land Stewardship states,



“that the adjustment of the control, utilization and cultivation of land by the Regional Spatial Plan, is carried out by involving the public in accordance with the laws and regulations.”

There are even more detailed community rights in Article 2 of Regulation No. 69 of 1996, concerning the Implementation of Rights and Obligations, as well as the Forms and Procedures for Community Participation in Spatial Planning.

In these rules, the public is entitled to:

- participate in the spatial planning process, space utilization, and control of spatial use;
- be informed of spatial plans, regional spatial plans, detailed spatial plan areas;
- enjoy the benefits of space and/or added value of space as a result of spatial planning; and,
- obtain appropriate compensation for the conditions experienced as a result of the implementation of development activities in accordance with the spatial plan.

The rules regarding community participation in land allocation decision-making processes are quite progressive. However, these regulations are rarely implemented. In many cases, peasants do not have any decision-making authority over the lands they till. In 2013, the Gini coefficient ratio of land in Indonesia reached 0.68 (BPS, 2013), meaning that one percent of the population controls 68 percent of the total land of the country through various permits and land rights.

### **CSO Participation in Agrarian Reform Implementation**

KPA knows that the government’s concept of agrarian reform is erroneous and incomplete at both policy and implementation levels. It is therefore necessary that all parties constantly critique the agrarian reform program in the hope of improving it.

Agrarian Reform Priority Locations (LPRAs) constitute a competing concept of agrarian reform. LPRAs are also a strategy through which peasants, indigenous peoples, fishermen, women and other poor people can critique the implementation of agrarian reform, especially the process of settling the TORA which is top-down today.

The LPRAs concept was developed by KPA based on the idea that peasants and other basic sectors have the deepest knowledge of their regions or land. Agrarian reform will not succeed unless the participation of peasants and their organizations in proposing priority locations for agrarian reform to the government is institutionalized (bottom-up approach).

LPRAs are sites where peasants have been organized and have been clamoring for agrarian reform. Complete and accurate data of the beneficiaries, and the site location have already been compiled and filed with the appropriate government agencies.



Currently, from the potential locations covering a total of 1.4 million hectares, KPA has consolidated 444 locations covering 654,392 hectares with 144,808 peasant families. Those locations are proposed by 103 civil society organizations of 20 provinces and 98 districts, and have been officially advanced to the national government on various occasions. All data regarding the LPRAs of the first phase have been mailed to the LHK, ATR, KSP, and to all levels of local governments.

Discussion on the LPRA is ongoing through the agrarian reform common secretariat in two ministries. The process is very slow, despite the fact that the Jokowi administration has little time left for implementing agrarian reform.

## **SUMMARY OF FINDINGS AND RECOMMENDATIONS**

### **Opportunities for Advancing Land Rights**

A sweet surprise during the 58th National Peasants Day on 24 September 2018 was the issuance of Presidential Decree No. 86/2018 of agrarian reform. The decree is important as it translates to reality the government's political commitment announced in 2014.

In his 9-Point Development Agenda, President Joko Widodo promised an agrarian reform in the form of land redistribution to poor people.

This Presidential Decree is supposed to overcome any hindrance to land redistribution, agrarian conflict resolution, peasant economic empowerment, and legal recognition of peasant's agricultural lands. Regulation impediments are the subject of frequent complaints from the government agencies tasked to implement activities mandated in the Rencana Kerja Pemerintah (RKP, Government Work Plan) of 2017, 2018, and 2019. Moreover, this decree is capable of raising the spirit and hopes of people, especially peasants who are struggling to claim their rights.

The challenge for civil society, especially for people's organizations working to eliminate inequality and conflicts, is that they have to effectively maximize opportunities provided by the Presidential Decree.

For KPA, the Presidential Decree is important because it: a) signifies growth in the agrarian reform movement; b) provides a legal opportunity and breakthrough for improving agrarian reform implementation; c) strengthens the proposals of subjects and objects of agrarian reform from civil people; d) binds provincial and district governments to their commitment to quickly implement agrarian reform; e) can be an instrument to make LPRA quickly accepted and followed up by regional governments; and, f) pushes for agrarian conflict resolution. Finally, this decree



can be used as an entry point for peoples' or peasant unions' participation in the implementation of agrarian reform either at national or regional levels of government.

## RECOMMENDATIONS

KPA believes there are various steps that must be taken by the President to solve the problem of institutional stagnation and process delay while straightening AR policies at the same time:

- The President must direct the AR implementation body consisting of ministries and institutions as well as representatives of civil society.
- Return to the main objectives of AR, namely: (a) reducing the imbalance of agrarian tenure and ownership, especially land; (b) just resolution of agrarian conflicts; (c) creating sources of welfare and increasing rural agriculture productivity; (d) linking rural-urban economic and social relations; and, (e) guaranteeing environmental sustainability;
- Undertake a comprehensive and systematic inventory and registration of land use and ownership, by involving companies as well as communities, in the context of implementing agrarian reform.
- Reinstate the agrarian reform subjects (peasant laborers, small peasants, indigenous people, fishermen, youth, women and peasant cooperatives) and coverage based on the Agrarian Reform Priority Locations (LPRA) proposed by the community itself.
- Ensure legal breakthroughs and discretion so that the implementation of AR may run effectively on lands controlled by State-owned enterprises (State assets) and reduce the lands that are monopolized by large business entities.
- Involve peasant unions in the structure of the Agrarian Reform Task Force both at the provincial and district levels.
- Establish the maximum and minimum limits of land redistribution to prevent the emergence of new inequalities between communities, and promote transformation of socio-economic structures of communities.
- Conduct a review of various regulations relating to agrarian issues in order to synchronize the policies between sectors.
- Provide the knowledge, technology, financial capital and market certainty to each beneficiary of agrarian reform.
- Build a single land data system on control and use of forest and non-forest land (plantations, forestry, mining, ponds, and agricultural land to public housing), that is open and accessible to all classes of society.

With these recommendations, it is hoped that the problem of delayed implementation of agrarian reform can be solved. The Agrarian Reform Presidential Decree exists as the legal umbrella for the current government to implement agrarian reform. ■



## ACKNOWLEDGMENTS

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The purpose of this study is to campaign for land rights for peasants, women, indigenous peoples, fisherfolk, youth, urban poor and other poor people, as well as being used as academic considerations for the government in designing and implementing genuine agrarian reform in Indonesia.

KPA would like to thank the entire team of its staff-authors, LWA, and members of ILC in Indonesia (Indonesian Institute for Forests and Environment, Indonesian Community Mapping Network, and Sajogyo Institute), Indonesian civil society organizations (Indigenous Peoples' Alliance of the Archipelago, Women's Solidarity for Human Rights and People's Coalition for Fisheries Justice), the Ministry of Agrarian and Spatial Planning, the Presidential Staff Office, the Ombudsman, and the National Commission on Human Rights who have written, assisted, provided data, information, and opinions on the materials in this study.

In addition, KPA values the role of the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) for coordinating the Land Watch Asia (LWA) campaign. KPA expresses its thanks to the International Land Coalition (ILC) for providing support for this research.

KPA realizes that there are still many things that needed to be considered, hence why the participation of other parties becomes significantly necessary so that a more comprehensive research may capture the problems and provide solutions for agrarian reform issues in the future of Indonesia.

Hopefully the results of this study will be useful as a reference for those who care about agrarian reform in Indonesia.

*Dewi Kartika*  
*Secretary General of Consortium for Agrarian Reform*  
*Jakarta, 21 January 2019*

## ACRONYMS USED

AMAN	Indigenous People's Alliance of the Archipelago
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
ATR	Ministry of Agrarian and Spatial Planning
BORA	Special Authority Board on Agrarian Reform
BPS	Central Bureau of Statistics
BUMDES	village-owned enterprises
DRAK	Agrarian Reform District Council
DRAN	National Agrarian Reform Council
DRAP	Provincial Agrarian Reform Council
GLF	Global Land Forum
GTRA	Agrarian Reform Task Force
HGU	Rights to Exploit/Business Use Rights/Cultivation Rights
HKM	community forest

HTR	Community Forest Plantation
IP4T	Team for Inventorying Land Claims, Ownership, Use and Utilization
JOKOWI-JK	Joko Widodo-Jusuf Kalla
KK	Head of the Family
KPA	Konsorsium Pembaruan Agraria (Consortium for Agrarian Reform)
KSP	Presidential Staff Office
LAP	Land Administration Project
LHK	Ministry of Environment and Forestry
LPRA	Agrarian Reform Priority Locations
P3H	Prevention and Eradication of Forest Destruction
PDTT	Ministry of Village, Disadvantaged Regions and Transmigration
PERBER	Joint Law
PERPRES	Presidential Regulation
PIAPS	Indicative Map of Social Forestry Allocation
PNS	Government Employee/Civil Servant Officer
PP	Government Regulation
PPTKH	Acceleration of Land Tenure Settlement in Forest Areas
PS	Social Forestry
PTSL	Complete Systematic Land Registration
RA	Agrarian Reform
RKP	Government Work Plan
RPJMN	Medium Term Development Plan
SEKBER	Joint Secretariat
SKPD	Regional Government Task Force
Tap MPR	Decree of the People's Representative Assembly
TNI	Indonesian National Army
TORA	Land Objects for Agrarian Reform
UUD	Constitution of Indonesia
UUPA	Basic Agrarian Law
WALHI	Wahana Lingkungan Hidup Indonesia (Indonesian Forum for Environment)

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# Monitoring of land resources and opportunities for improving agrarian reform in Kyrgyzstan:

Land Watch Kyrgyzstan Monitoring Report 2018<sup>1</sup>

*An initiative of the Land Watch Asia Campaign*

The Kyrgyz Republic or Kyrgyzstan is a landlocked country in Central Asia that borders with Kazakhstan in the north, Uzbekistan in the west, Tajikistan in the southwest, and then China in the southeast. Practically all of its territory (93 percent) is occupied by mountains.

Its capital and largest city is Bishkek. The State language is Kyrgyz and official language is Russian. Its population is approximately 6.14 million, split almost evenly between men and women. Two-thirds of the population lives in rural areas.

Widespread poverty is the single most pressing problem of Kyrgyzstan, where the estimated per capita Gross Domestic Product is \$300. Indeed, it is deemed one of the world's poorest countries, with some 25 percent or a fourth of the people living below the poverty threshold.

Of these poor people, the majority or 74 percent live in rural areas and this can be traced back to the utter lack of effective reforms and policies regarding land use and agriculture. The poverty burden is felt more acutely by women, who earn less than men.

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<sup>1</sup> This is an abridged version of the CSO Land Reform Monitoring Report 2018 prepared by Sairagul Tazhibaeva and Elvira Maratova for the National Union of Water Users Association as part of the Land Watch Asia (LWA) campaign. This 2018 country monitoring report focuses on land governance, and is supported through the project “Sustainable, Reliable and Transparent Data and Information towards Responsible Land Governance: Putting Commitment 8 into Action.”

**Citation:**

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An indicator of the widespread poverty in Kyrgyzstan is the lack of access to safe drinking water and free land resources.

This is a severe problem considering that the Kyrgyz economy depends heavily on agriculture. Data show that agriculture, including forestry and hunting, accounted for 13.2 percent of the country's GDP in 2016. Also, close to 27 percent of the labor sector is engaged in agriculture, forestry and fisheries.

**Table 1. Distribution of Land Fund by Land Categories**

Category	2010	2011	2012	2013	2014	2015	2015 +/- to 2010
<i>Thousand hectares, at the beginning of the year</i>							
Total	19,994.9	19,994.9	19,994.9	19,994.9	19,994.9	19,994.9	-
<i>including:</i>							
agricultural land	5,684.5	5,679.7	5,674.8	6,502.3	6,544.1	6,753.9	1,069.4
lands of settlements	263.2	266.4	272.9	273.9	275.3	276.7	13.5
industrial, transportation, defense, communications and other lands	223.6	222.7	224.3	227.1	228.2	230.9	7.3
lands of specially protected natural territories	707.4	707.4	707.3	715.3	742.4	854.4	147.0
forest land	2,613.7	2,617.2	2,617.8	2,609.7	2,600.0	2,596.8	-16.90
water fund lands	767.4	767.3	767.3	767.3	767.3	767.3	-0.1
reserve lands	9,735.1	9,734.2	9,730.5	8,899.3	8,837.6	8,514.9	-1,220.2
<i>As a percentage of the total</i>							
Total	100.0	100.0	100.0	100.0	100.0	100.0	
<i>including:</i>							
agricultural land	28.4	28.4	28.4	31.3	32.8	33.8	5.4
lands of settlements	1.4	1.4	1.4	1.4	1.4	1.4	-
industrial, transportation, defense, communications and other lands	1.1	1.1	1.1	1.1	1.1	1.2	0.1
lands of specially protected natural territories	3.5	3.5	3.5	3.6	3.7	4.3	0.8
forest land	13.1	13.1	13.1	13.1	13.0	13.0	-0.1
water fund lands	3.8	3.8	3.8	3.8	3.8	3.8	-
reserve lands	48.7	48.7	48.7	45.7	44.2	42.6	-6.1

**Source:** NSC, Environment in the Kyrgyz Republic. Statistical Compendium 2011-2015. B., 2016



The table shows that reserve lands that belong to the State account for the biggest area of the country at 42.6 percent, followed by agricultural lands (33.8 percent) and forest lands (13 percent).

Natural mountain pastures form the bulk of agricultural land and are the country's main source of income. Pasture livestock farming has for centuries been a traditional occupation of the Kyrgyz people, particularly those in the rural communities.

There was a time when Kyrgyzstan saw wealthy pastoralists seizing vast territories either for themselves or for subleasing to other people. The unsystematic and uncontrolled use of the pastureland, plus the deterioration of the infrastructure and inefficient management prompted the government to reform the pasture system.

In 2009, the law on pastures was signed, signaling the transfer of all pastures to government hands. Since then, management of these pastures has been delegated to the local communities while regulation is done by pasture communities consisting of representatives of various stakeholders of the community.

Water resources are also of particular importance to the Kyrgyz Republic and these come from the glaciers, lakes and rivers.

Kyrgyzstan uses only 10 to 17 percent of the available reserves, which is still below the annual limit of 25 percent of the water that flows through it. The rest goes to neighboring Kazakhstan, China, Tajikistan, Uzbekistan and is subject to international water sharing.

Of the total water withdrawn by Kyrgyzstan, 93 percent is used by agriculture, four percent by industry. Part of the balance is used to provide drinking water to the population.

As provided by several decrees issued by the Kyrgyz government, on-farm irrigation canals are managed by water users associations (WUAs) and maintained using funds collected from the users. The formation of these WUAs was prompted by the need to enforce the rights of farmers to use water and ensure the most efficient use of water for the irrigated lands.

As of the first half of 2017, the Kyrgyz Republic has 486 registered WUAs. The total area of agricultural land irrigated by these groups account for a combined 73.2 percent of the total irrigated land.



## THE PURSUIT OF LAND REFORM

Kyrgyzstan's land-agrarian reform process, which was based on the transformation of land ownership relations, can be divided into three phases: the initial stage (1991 to 1993), stage of formation (1994 to 2000), and the stage of improvement and development (since 2001).

Land reform began after the adoption of the Law "On Peasant Farms" in February 1991. The law authorized local Soviets of People's Deputies to allocate land for the creation of peasant farms.

The collective and State farms were mandated to allocate land to all those working and living in the countryside and wishing to create peasant farms.

In April 1991, the Law "On Land Reform" was adopted, paving the way for the creation in each district of a National Land Fund (NLF) to organize peasant farms on unused and unproductive lands of collective and State farms.

Subsequent decrees in 1991 and 1992 saw the restructuring of unprofitable collective and State farms. The State Property Committee of the Kyrgyz Republic (later the Center for Agrarian and Land Reform within the Ministry of Agriculture of the Kyrgyz Republic) was tasked with determining their economic viability and the subsequent privatization of unprofitable farms, on the basis of which joint-stock companies, rural cooperatives and farmers' associations were created.

At the end of 1992, a decree was issued to organize the village committees (in 1996 renamed village councils) to supervise the reorganization.

As a result, from 1991 to 1993, 18,000 peasant farms were created. However, they owned only six percent, thus the collective and State farms still dominated the land sector.

The next stage is the formation of land relations in the Kyrgyz Republic, starting with the issuance in 1994 of the decree "On Measures to Strengthen Land and Agrarian Reform."

According to this decree, all collective and State farms had to reorganize and distribute land shares (with the exception of pastures) among all the inhabitants of the farm, and property shares among its employees.

Certificates for the right to use the land share were issued by the *Centers for Land and Agrarian Reform (CLAR)* in the form of a lease for a period of 49 years. Land shares were subject to purchase, sale, lease, mortgage, and transfer to inheritance.

This was an important step towards the introduction of private ownership of land.



Support for land reform became widespread and within a year, it became necessary to extend the land use period to 99 years. In all regions, the vast majority of collective and State farms were reorganized.

By the end of 2000, 180,000 peasant farms were created. Also, more than 2.5 million rural residents, or 500,000 families, received their land shares.

Determination of the land share and issuance of a certificate for the right to use a land share to citizens of the Kyrgyz Republic after the collapse of the USSR were carried out in accordance with the Resolution of the Government of the Kyrgyz Republic of 22 August 1994 No. 632 (see box).

**Resolution of the Government of the Kyrgyz Republic of 22 August 1994 No. 632**

*Lands within the existing legal borders of collective farms, State farms and other agricultural enterprises (only assigned under the State Act on the right to use land), except for land plots of the Agricultural Land Redistribution Fund under the Ministry of Agriculture and Food of the Kyrgyz Republic and pastures, lands of settlements intended for general use of the population (substocking of personal livestock, mowing, collective gardening, and horticulture), forestry enterprises, environmental protection, and recreational purposes, historical and cultural purposes, water fund, were subject to the division into land shares to provide:*

- for persons permanently working in the field of agricultural production and residing in this farm, those who have retired after working and living in the farm, and those who became disabled while working in these farms;
- for persons permanently residing on the farm and working in the field of health care, water management, education, consumer services, trade, culture and agro chemistry service, serving agriculture; and,
- for decision of members of the labor collective, persons (people from this household) who worked outside the household and returned to their permanent place of residence.

The determination of the land share of citizens was carried out by the rural committees on land and agrarian reform, taking into account their family members at the time of the reorganization of the agricultural enterprise, and approved by the district State administration.

If the above-mentioned persons appeal after the reorganization of the economy, then their share was determined in the Agricultural Land Redistribution Fund under the Ministry of Agriculture and Food of the Kyrgyz Republic.

Land share was provided to citizens only once and free of charge.

The logical conclusion of the second stage of land reform was to resolve the issue of private ownership of land.

A referendum was held on this issue in 1998 and the results showed that the Kyrgyz people supported the introduction of private land ownership of land.



Eventually, the basic legal framework for private land ownership was established through the Law “On the Enactment of the Land Code of the Kyrgyz Republic.”

The final stage of land reform began in 2001 and the priority directions during this time were:

- improvement of State regulation of land use by improving the regulatory framework;
- development of the land market by ensuring the availability, openness and transparency of the procedure for all forms of transactions with land plots; and,
- creation of a land information system – an automated land cadaster for obtaining objective data on all categories of land; development of mortgage lending on the security of land and the creation of land valuation.

This period was also marked by the strengthening of cooperatives, through which peasants themselves independently and voluntarily managed their own land. This is contrast to the prior State-run farm collectives.

Providing the legal basis was “On Cooperatives,” which was adopted on 30 April 2004. This has been amended and improved through the years such that today, Kyrgyzstan has one of the most progressive laws on cooperatives.

But even then, the cooperatives have yet to unleash their full potential and thereby implement the final stage of agrarian reform.

The aim is to develop model cooperatives in all regions so that their benefits can be shared with as many people as possible. Another goal is to expand the sphere of the cooperative movement to include the other factors necessary to improve the lives of the rural poor, like credit facilities, technology, inputs, and marketing support.

## **CURRENT LEGISLATION COVERING LAND RESOURCES**

Land relations in the Kyrgyz Republic are determined by the Constitution of the Kyrgyz Republic, the Civil and Land Codes, the Laws of the Kyrgyz Republic, as well as the decrees of the President of the Kyrgyz Republic issued in accordance with them, resolutions of the LCD Parliament, and resolutions of the Government of the Kyrgyz Republic.

*The Constitution of the Kyrgyz Republic*, for example, recognizes the diversity of ownership forms and guarantees equal legal protection of private, State, municipal and other forms of ownership.



The fundamental regulatory act regulating land relations in the Kyrgyz Republic is the Land Code of the Kyrgyz Republic (LC KR) of 2 June 1999 No. 45.

Among others, the LC of KR regulates the establishment, implementation and termination of land rights. It also provides for the rational use of land and its protection.

In accordance with Article 4 of the Land Code of the Kyrgyz Republic, State-owned land, lands of forest and water funds, lands of specially protected natural areas, reserve lands, lands of the border zone, land of SFSU, pastures in rural areas, and pastures in the zone of intensive use are owned by the State.

The management of the lands of the SFSU is carried out by the executive and administrative body of the local self-government of the *aiyl okrug* and the village in agreement with the State body in charge of the specified Fund.<sup>2</sup>

**The transfer (transformation) of lands from one category to another is** provided by the Land Code of the Kyrgyz Republic, the Law of the Kyrgyz Republic “On the Transfer (Transformation) of Land Plots” dated 15 July 2013 No. 145, as well as the provisional regulations on the procedure for transfer (transformation) of land plots.<sup>3</sup>

The land legislation of the Kyrgyz Republic provides two options for obtaining the right to a land plot – the provision by an authorized State body to own or use a land plot in State or municipal ownership (the primary market for granting rights); and also the transfer of the right to a land plot (i.e., alienation by the owner or land user of the right to a land plot or its transfer for temporary use to another person through civil law transactions – a secondary land use market).

The use of the State Agricultural Land Fund (SALF) is regulated by the Model Provision on the conditions and procedure for leasing the lands of the SALF.<sup>4</sup>

The granting of rights to the land plots under this Fund is based on the Prospective Plan, auctions held by the local self-government or by direct sales.

Meanwhile, the **Law of the Kyrgyz Republic “On pastures”** (dated 26 January 2009 No. 30), says that “pastures are the exclusive property of the State.”

<sup>2</sup> Paragraph 2 of Article 13 of the Code of the Kyrgyz Republic

<sup>3</sup> Approved by the RCC resolution of 19 March 2014 No. 169

<sup>4</sup> Approved by the Government Resolution of 22 June 2007 No. 243



## MAIN PROBLEMS PLAGUING THE LAND SECTOR

Despite favorable legislation, there are still barriers that limit the rights of citizens to fair access and use of precious land resources.

These include issues on the lack of procedures for the seizure or expropriation of land for public use, and fair compensation for owners and land users and independent assessment (non-material damage and loss of profits).

Current rules and regulations of the Kyrgyz Republic do not define the procedure for seizure (redemption) of land for State, municipal and public needs, such as development of mineral deposits, the construction of city parks, recreation areas and transport and energy infrastructure like airports and roads. As a result, courts find it difficult to resolve land conflicts that inevitably arise.

There are also no procedures or mechanisms to determine fair compensation for landowners and users, who may lose profit and their home following the loss of their right to own and use land. There are also no rules on how to determine the fair value of a seized plot or compensation for losing the right to use land in favor of the State.

Another gap in the legislation of the Kyrgyz Republic is the lack of a mechanism to pay compensation to pasture users and land tenants in case of withdrawal of a part or all land from them for State and public needs.

Thus, it can be concluded that there is no national policy on expropriation in the Kyrgyz Republic, and the existing regulatory framework does not provide the necessary basis for the implementation of the norms and principles governing expropriation issues due to the absence of regulated mechanisms/procedure for expropriation, in particular, deprivation of the right to own and use citizens' land resources for public needs.

On land market development, there are currently three main problems: the lack of legal documents covering land transactions, inability of owners to use their agricultural land as collateral to access credit, and corruption involving the lease of State and municipal lands.

Data show that from 1995 to 2009, the area devoted to agriculture in Kyrgyzstan was reduced drastically by 51 percent. And the decline continues despite the moratorium on using irrigated land for other purposes.

What is happening is that vast tracts of agricultural land are now being used for the expansion of villages, development of transportation infrastructure, and creation of specially protected areas, among others. There are cases of land transactions being done illegally with the use of forged or fake documents.



This is due to the lack of fixed rules that ensure the indivisibility of agriculture land. This is why many owners of large tracts of land divide the property into small plots and sell them to individuals for housing needs. Some of these transactions can be considered illegal based on the resulting land disputes.

Meanwhile, banks and other credit institutions are wary of accepting land as collateral as restrictions on the rights over the mortgaged property (land) increase their risks. They also find it difficult to determine the actual value of the mortgaged land, thus hampering their ability to make a financial assessment.

There is also the problem with corruption that has led the Prosecutor General's Office of the Kyrgyz Republic to conclude that there is systemic violation of land rules. There are reports of questionable auctions or sale of parcels of land and the conversion of land use from agricultural to commercial use.

**In the pastoral sector**, unresolved issues include the degradation of pastures due to unregulated use, lack of management expertise and inadequate infrastructure.

**In the forest sector**, there are problems related to community forestry. For example, many forest users are using the property without registering their lease with local authorities. At the same time, the State forest management body also lacks an accurate and constantly updated register of forest lease agreements.

The lack of legal protection of forest users, understanding of responsible management of forest areas and non-transparency of relations between forest users and forestry authorities have given rise to numerous conflicts and forest degradation.

As for the water associations, the main causes of conflicts are: "theft" of irrigation water; water losses due to the poor condition of irrigation channels; and violation of irrigation schedules of farm plots.

Despite the abundance of water resources, the Kyrgyz Republic constantly faces a shortage of water for irrigation and drinking needs. The situation worsens during the dry periods and with climate change, the water shortage will only get worse.

## **GENDER ASPECTS OF LAND ADMINISTRATION**

The formal legal framework of the Kyrgyz Republic provides for the equal protection of the rights of men and women, including women's rights to property and land. However, traditional stereotypes still hold, that the man is the breadwinner and the woman is the keeper of the home.



Kyrgyzstan, however, is working to ensure gender equality. It has, for example, ratified international conventions and covenants on gender equality, including the Convention on the Elimination of Discrimination Against Women (CEDAW), which obliges Member-States to take appropriate measures to eliminate all forms of discrimination against women and to ensure the same rights of spouses with regard to property, acquisition, management, use, and disposal of property.

***The Constitution of the KR also prohibits discrimination based on sex, grants equal rights to all and establishes that men and women have equal opportunities and freedoms;***<sup>5</sup> thus, it includes international agreements to which Kyrgyzstan is a party.

***The Family Code of KR (FamC KR or No. 201 of 30 August 2003)*** regulates family relations between spouses and defines the family as the basic unit of society, recognizing only registered marriages and regulating family relations based on the principles of equality of spouses.

The FamC KR also provides that all property acquired during marriage is considered joint property and is managed jointly by the spouses. In the event of divorce, the joint property of the spouses shall be divided in equal parts, unless otherwise specified in the marriage contract. In addition, the legislation of the Kyrgyz Republic also determines equal rights to inheritance for sons and daughters.

***The Law of the Kyrgyz Republic “On the Basics of State Guarantees for Ensuring Gender Equality”*** prohibits direct and indirect gender discrimination, including traditional ways of life and cultures that discriminate against women. It guarantees equal property rights to property, determines equal rights to use land and to protect these rights equally for men and women.

***The Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”*** defines State guarantees for granting equal rights and opportunities to persons of different gender in political, social, economic, cultural and other spheres of human life.

Kyrgyzstan adopted national policy documents aimed at achieving gender equality, including the **NSSD 2013 to 2017**, which special section 4.5. “Enhancing the role of the family and gender development” specifies gender equality issues with an emphasis on strengthening the family institution through creating a basis for increasing the role of the family as the main unit of society, expanding the economic opportunities of the family, and improving the status of women and men.<sup>6</sup>

The **National Strategy for Achieving Gender Equality until 2020**<sup>7</sup> is the first document that spells out the commitment to achieve gender equality in Kyrgyzstan.

<sup>5</sup> Constitution of Kyrgyz Republic (Part 4 of Article 16)

<sup>6</sup> Approved by Presidential Decree of 21 January 2013 No. 11

<sup>7</sup> Approved by the Government Resolution dated 27 June 2012 No. 443



To implement this National Strategy for Gender Equality, the Government of the Kyrgyz Republic approved the **National Action Plan for Achieving Gender Equality in the Kyrgyz Republic**.<sup>8</sup>

These strategic documents are structured around four main priorities: (i) Women's economic empowerment; (ii) Creation of a functional education system; (iii) Eradication of gender discrimination and improvement of women's access to justice; and, (iv) Promotion of gender parity in decision-making and expansion of women's political participation.<sup>9</sup>

The enforcement of these laws is a priority because existing stereotypes, customs and traditions prevent many women from benefiting, for example, from land distribution even if they were allocated land shares.

According to a study conducted in 2012, almost 60 percent of rural women report that they do not own any land. It is noteworthy that more than 40 percent of rural men are also not owners of land, but men are much more likely to be the sole owner of land (22 percent of men surveyed) than women (three percent).<sup>10</sup>

According to the Social Institutions and Gender Index (SIGI), Kyrgyzstan has a score of 0.1598 and is classified as a country with an average level of discrimination against women and social institutions. It has a low category of discrimination in the family, a medium category in the restriction of civil liberties and physical integrity, and a high category in the bias of son preference and access to resources and assets. In fact, gender equality laws have not been fully implemented and there was a high level of imbalance at the regional level. In particular, the contribution of rural women to the country's economy remains unnoticed and ignored, and women themselves are often unable to defend their right to land, access to vital resources (clean water), social services and justice.

Among the main problems that prevent gender equality are illiteracy, the lack of awareness and capacity of women to protect their interests and the stubborn traditions and customs that discriminate against women.

Land shares obtained during the course of land reform, for example, are issued to the head of the family, usually the father or a husband. Then if a woman marries, gets divorced or widowed, she loses the right to land.

Often in rural areas, women usually cede/lose their land rights to their husbands (as head of household), fathers and brothers (in case of marriage), mothers-in-law, in case of divorce. Laws on equitable inheritance and division of land are also lacking.

<sup>8</sup> Approved by the Government Resolution dated 27 June 2012 No. 443

<sup>9</sup> The National Strategy of the Kyrgyz Republic on Achieving Gender Equality until 2020 (approved by the Government Resolution dated 27 June 2012 No. 443)

<sup>10</sup> National Statistical Committee of the Kyrgyz Republic, Ministry of Health and ICF International. 2013. p. 274.



These factors combine to make women poor and economically dependent on their husbands or their male relatives.

Land is almost the main and only family asset in rural areas, so the problem of women's access to land urgently needs to be resolved.

Cultural and religious practices that have an impact on women's rights in relation to land issues are aggravating the situation. These practices often coexist with legislation and often discriminate against women in matters of property, land ownership and sometimes violate national legislation.

Moreover, the interpretation of official law is influenced by customary law or practices, to the detriment of women's rights.

## **LAND RESOURCES AND THE RURAL POPULATION**

According to statistics, about 64.37 percent of the country's population lives in rural areas, where almost 40 percent of the working population are women. About a quarter of the population was classified as poor in 2016. And of these poor, 68 percent are in rural areas.

The rural population has advantages in terms of acquiring rights to agricultural land in the Kyrgyz Republic. The regulation on the procedure for sale and purchase of agricultural land plots (as amended by Resolution of the Government of the Kyrgyz Republic of 9 September 2005 No. 422) stipulates the rights of citizens of the Kyrgyz Republic when purchasing a land plot for agricultural purposes:

- agricultural land in State or private ownership may be sold only to citizens of the Kyrgyz Republic who have been living in rural areas for at least two years; and,
- when granting agricultural land ownership, citizens of the Kyrgyz Republic, who live in the territory of this *aiyl kenesh* (local council), as well as having land (irrigated arable land) less than 0.10 of a hectare per family member and live in highland and remote areas have preferential rights.

After land reform and the legal registration of land rights, the majority of rural residents were forced to unite into peasant or farm enterprises.

A peasant farm is defined as an independent economic entity, having the status of a legal entity or carrying out its activities without forming a legal entity, whose activity is mainly based on the personal work of members of one family, relatives and other persons jointly engaged in the production of agricultural products based on land and other property owned by members by right of ownership or received for use (rent).<sup>11</sup>

<sup>11</sup> Law of the Kyrgyz Republic on Peasant Farm of 3 June 1999



During the years of market transformation, peasant (farmer) farms became an integral part of the agrarian economy of the Kyrgyz Republic. However, complex issues arose associated with productivity and the marketing of their products. They are also constrained by the acute shortage of credit and technical expertise, such that they are unable to purchase high-quality seeds and pedigree livestock that could increase their profit.

The development of agricultural cooperatives in the Kyrgyz Republic began during the period of reforming collective and State farms and conducting land and agrarian reforms. The aim was to form a market economy and pave the way for greater economic and productive independence of rural producers and the introduction of private ownership of land and other means of production.

According to the NSC of the Kyrgyz Republic, as of 1 January 2016, 67.3 percent of all arable land is owned by farms, 26.6 percent is used by collective and State farms and cooperatives, and five percent is with citizens for their personal use.

The main part (more than 66 percent) of pastures and hayfields is owned by the State, one third (33 percent) is in the use of State farms, *ayil okmotu*. Farms own only about one percent.

Agriculture, which went through a severe crisis following the collapse of the old system and the formation of new production relations, has managed to stabilize in recent years.

Farms and personal subsidiary farms (PSFs) produced significantly more main types of agricultural products compared to State and collective farms. However, small-scale production remains an acute problem hampering the development of the agrarian sector.

The small peasant and fragmented economic structure limits their output, thus highlighting the need for the strengthening of agricultural cooperatives to raise productivity.

The government did adopt the Concept of the Development of the Agricultural Cooperative System in the Kyrgyz Republic for 2017 to 2021, the main State project to support farms in the Kyrgyz Republic.

The problem lies in the implementation, as the State has practically no budget to provide real assistance to the villages.

The farmers have the option to increase production through intensification given the limited agricultural land. But this will require additional investments that could come through much-needed State support.

To summarize, peasant farms are characterized by low liquidity and low savings. This dire situation should be a signal for the government's economic planners as well as banking institutions to



develop appropriate lending products and systems for the agricultural support that needs much financial support.

## **TRANSPARENCY IN LAND MANAGEMENT**

According to the Law of the Kyrgyz Republic “On Regulatory Legal Acts”, all amendments to legislation should be based on the results of public hearings, including focus group discussions at the national and subnational levels.

Unfortunately, this process of having prior public discussions to provide valuable input to laws is not always followed, to the detriment of local communities that play a crucial role in the planning and management of the country’s pasture, forest and water resources.

For example, according to the Law of the Kyrgyz Republic “On pastures,”<sup>12</sup> all pastures are now under the management of pasture committees consisting of representatives of pasture users, deputies of the local *kenesh*, a representative of the authorized body on environment and forests and heads of the executive body of the local self-government.

A pasture committee is responsible for managing the activities of the pasture users association. It is also engaged in planning the use of limited pasture resources.

*Joint Forest Management*, meanwhile, involves the planning and implementation of measures to ensure the sustainable management of forests with the participation of local governments, the public and local communities.

Water management, on the other hand, has been transferred to the local communities through the water user associations (WUAs). Water users established these associations in accordance with the Law “On Water User Associations (Associations)” to operate and maintain irrigation systems.

The Water Code of the KR also provides for the gradual increase in the participation of water users, the public and other stakeholders in the planning, adoption and monitoring of the implementation of management decisions.

Given the desire to increase public participation in crucial discussions regarding Kyrgyzstan’s future, there is a need for greater involvement of CSOs, local communities and farmers. For CSOs in particular, they are called on to help fulfill the country’s international obligations.

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<sup>12</sup> dated 26 January 2009 No. 30



These include commitments to the Convention on Biological Diversity, Convention to Combat Desertification, the Aarhus Convention, the Convention on Climate Change, as well as Agenda 21.

However, so far, the involvement of NGOs has been weak, particularly in talks on land degradation. There are only a handful of NGOs focused on combating the degradation of land. This low effectiveness of NGO activities in environmental protection is worsened by underdeveloped partnerships, preventing the spread of widespread information and best practices, among others, to citizens and institutions thus affecting the quality of land resources. Also, there are also questions on the effectiveness of implemented projects and the lack of coordination.

Nevertheless, there is reason to be encouraged, as there is the possibility of public participation in determining proper land use, including through NGOs and community organizations.

NGOs can, for example, be involved through the *jamaat* in informing farmers about the management and proper use of land resources in their territory. They can also help them access financial resources and markets for their products.

Indeed, despite challenges, the government is working toward greater public participation and transparency.

For instance, to improve public access and increase the level of transparency in decision-making regarding the management and use of natural resources, various platforms have been created in the Kyrgyz Republic:

- **The National Council for Sustainable Development under the President of the Kyrgyz Republic** was established on 24 November 2012 to unite the efforts of all branches of government, the private sector and civil society toward the sustainable development of Kyrgyzstan.
- **The Coordination Council on Macroeconomics and Investment Policy** under the Government of the Kyrgyz Republic. Its main objective is to achieve sustainable economic development of the Kyrgyz Republic through coordinated decisions on the development and implementation of macroeconomic and investment policies.
- **The Coordinating Commission on Climate Change (CCoCC), chaired by the Vice Prime Minister of the Kyrgyz Republic**<sup>13</sup> that aims to coordinate and implement programs of ministries, departments, and organizations to fulfill the obligations of the Kyrgyz Republic under the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

<sup>13</sup> Resolution of the government of the Kyrgyz Republic No. 783 dated 21 November 2012

- **The Council for Business Development and Investment under the Government of the Kyrgyz Republic.**<sup>14</sup> The Council is a consultative and advisory body that seeks to improve the business environment and the investment climate and implement the measures necessary to accelerate the country's socio-economic development.
- **The National Water Council**<sup>15</sup> is a consultative and advisory body to the Government that ensures coordination of the activities of ministries, State committees, administrative departments, local State administrations and local governments on the use, management and protection of water resources.

There are also public platforms for full participation in the discussion of the most important decisions in the field of efficient use of natural resources of the Kyrgyz Republic:

- ***Coordinating Council of Stakeholders on Effective Use of Pasture Resources in Kyrgyzstan*** was established to:
  - push for the improved management and use of pastures of the Kyrgyz Republic through the implementation of joint projects;
  - exchange experiences and information on the implementation of measures in the field of sustainable pasture management; and,
  - make suggestions and recommendations to State agencies for the effective management and use of pastures.
- ***Regional Pasture Network (GIZ)*** – an information platform that is designed to share experiences and expertise in pasture management in Central Asia, China and Mongolia. The Regional Pasture Network focuses on pasture management and includes aspects of forest management and wildlife management.
- ***Mountain Partnership “Sustainable Mountain Development”***- a voluntary alliance of partnership efforts to improve the living standards of mountain communities and protect mountain ecosystems around the world. The Mountain Partnership was launched during the World Summit on Sustainable Development in 2002. Today, the global alliance includes 50 countries, 16 intergovernmental organizations and 112 different groups as well as representatives of civil society, NGOs, and the private sector.
- ***Coordinating Council of the National Dialogue on Water Policy in Kyrgyzstan in the area of integrated water resources management*** – which considers:
  - key issues of the national water policy and take decisions on activities within the framework of the NAP;
  - coordinates activities of partners and projects on water issues in Kyrgyzstan; and,
  - institutional, economic, and financial aspects of water resources management and water management systems.
- ***Climate network of Kyrgyzstan*** - voluntary, self-governing, non-profit association of legal organizations established to reduce the negative impact of climate change. Its main

<sup>14</sup> Resolution of the GKR from 5 August 2010 No. 149

<sup>15</sup> Resolution of the GKR from 3 February 2006 No. 64



purpose is to promote the development of national policies, technologies and practices, as well as public interest in mitigation and adaptation to climate change.

According to the current legislation, measures are taken in the Kyrgyz Republic to ensure transparency and all data on the implemented and approved programs of the Government of the Kyrgyz Republic are published on the official websites of the Government of the Kyrgyz Republic, Ministries, Departments, and Agencies.

All laws of the Kyrgyz Republic are published in the Republican newspaper “Erkin Too,” and then go out in open access on the Internet, on the websites of ministries, departments and other interested parties. All laws and changes on them are stored in the information system “Toktom.”

The Kyrgyz Republic collects information on land resources annually, compiles reports on the distribution of land by type, and publishes reports of the NSC KR in the form of annual and quarterly data. A census is conducted once every 10 years according to the presidential decree. Data on land ownership by type and form are also available and stored in State Register Service and the Project Institute for Land Management.

Unfortunately, the majority of the citizens, especially those in the rural areas, are not able to make full use of the official data and legal information that they can use to make informed decisions. This can be attributed to the lack of public discussions and widespread dissemination of the relevant information that may impact the average rural resident.

## **GOVERNMENT PROGRAMS TO IMPROVE ACCESS TO LAND RESOURCES**

The Government of the Kyrgyz Republic regularly monitors existing legislation and State programs to check if there is a need to improve the access of the population, in particular its vulnerable sectors, to available land, forest, and water resources.

Currently, the main State strategies for the improved management and use of natural resources of the Kyrgyz Republic include the following:

- Concept of development of the forest industry of the Kyrgyz Republic for the period up to 2040 (Draft) (Approved by the Decree of the Jogorku Kenesh of the Kyrgyz Republic of 25 August 2017 No. 1836-VI)
- Regulation “On the Procedure for Leasing and Use of Forest Land Plots”
- The procedure for the use and disposal of the State Forest Fund (Approved by the Decree of the Government of the Kyrgyz Republic No. 19482 of 109.0410.201807)
- Regulation on Community Management of Forestry in the Kyrgyz Republic (Approved by the RFPP No. 377 dated 27 July 2001)

- Concept of development of the forest industry of the Kyrgyz Republic of 14 April 2004 No. 256
- Program of the Government of the Kyrgyz Republic on the transition to sustainable development for 2013 to 2017 - i.e. No. 3694-V, 25 August 2017
- The program of the Government of the Kyrgyz Republic “Zhani Doorgo-kyrk Kadam” (40 steps to new era) for 2018 to 2022. dated 25 August 2017 No. 1836-VI

As for the level of corruption in the country, the Kyrgyz Republic ranked 135th out of 180 countries on the Corruption Perception Index in 2017.<sup>16</sup> This indicates “strong corruption” that citizens have to bear with daily.

This is despite the fact that the Kyrgyz Republic has a law “On Combating Corruption,” as well as strategic programs to reduce the level of corruption, which has spread to the transfer of land from one category to another. Corruption can also be observed in the use of land in the mining industry and in the extraction of minerals.

This widespread corruption that has affected land issues gave rise to a large number of conflicts, including conflicts involving human rights defenders who are fighting for better citizen access to land and related areas.

## **RESOLVING LAND CONFLICTS AND PROTECTING HUMAN RIGHTS DEFENDERS**

According to an informal survey of cases involving land laws, the most common subjects of court proceedings are:

- recognition of ownership of land;
- challenge of local self-government bodies’ actions on the provision and withdrawal of a land plot;
- disputes regarding land plots adjacent to the house;
- payment of land tax;
- challenge of actions (inaction) of government officials;
- procedure for granting lands of specially protected natural territories;
- mortgage of land;
- requirements to remove obstacles to the use of the land plot and reclamation of land from illegal possession; and,
- recognition of invalid contracts and the application of the consequences of their invalidity, among others.

<sup>16</sup> According to the international organization Transparency International – [www.transparency.org](http://www.transparency.org) (новости knews.kg)



Causing the most number of conflicts and disputes are:

- changes to the boundaries of land shares;
- unauthorized seizure of land; and,
- conflict between the “obligatory providing every citizen of the Kyrgyz Republic once throughout the territory of the land plot for the construction of a dwelling house” and “preserving agricultural lands for solving the issue of ensuring food security.”

In the Kyrgyz Republic, disputes/conflicts can be resolved through:

- **Appeal to a higher authority** in accordance with the Law of the Kyrgyz Republic “*On the Procedure for Consideration of Citizens’ Appeals,*” the Law of the Kyrgyz Republic “*On the Basis of Administrative Activity of Administrative Procedures.*”
- **Appeal to the administrative commission of local self-government bodies** that deal with cases of administrative offenses under the Administrative Code. These are administrative offenses infringing on the protection of citizens’ health, administrative offenses in agriculture, administrative offenses infringing on the rules of trade, causing harm (damage) to the consumer, administrative offenses infringing on urban planning and architectural activities, administrative offenses in the housing and utilities sector.
- **Appeal to the prosecution authorities** is one of the extrajudicial mechanisms to secure justice in matters relating to the right to own and use land resources, where according to the Law of the Kyrgyz Republic “*On the Prosecutor’s Office of the Kyrgyz Republic.*”<sup>17</sup>

To ensure the rule of law and protection of the rights and freedoms of citizens, the prosecutor’s office oversees compliance with the laws of the local self-government.

- **Appeal to the Ombudsman** is one of the mechanisms for the protection of violated land rights or, as it is also called, the parliamentary ombudsman for human rights. In the Kyrgyz Republic, he is represented as an ombudsman (*akyikatchy*) of the Kyrgyz Republic, whose activities are regulated by the Constitution of the Kyrgyz Republic and the Law of the Kyrgyz Republic “*On the Ombudsman of the Kyrgyz Republic.*”<sup>18</sup>

Among others, the Ombudsman ensures protection of human and civil rights and freedoms proclaimed by the Constitution and laws of the Kyrgyz Republic, as well as international treaties and agreements ratified by the Kyrgyz Republic.

<sup>17</sup> from 17 July 2009 No. 224

<sup>18</sup> from 31 July 2002 No. 136



In this regard, in exercising his powers, the Ombudsman (*akyikatchy*) does not depend on any State body or official. It is prohibited to interfere in his activities or influence him in any form.

Thus, the Kyrgyz Republic has an Ombudsman, as well as independent human rights institutions: various human rights movements, NGOs, the media, trade union movements, etc., but the State does not ensure the security of human rights institutions during court proceedings. After analyzing the current legislation and the current situation with human rights defenders in the Kyrgyz Republic, it can be concluded that there is not one among the national institutions that would demonstrate willingness or ability to take effective actions in this area. The newly-created State institutions also proved incapable of fully complying with their purpose: the Ombudsman is not sufficiently involved in high-level discussions on human rights (such as the EU-Kyrgyzstan Human Rights Dialogues), and national preventive mechanisms are very weak, in particular lack of adequate funding required for inspection control and awareness-raising activities among the population.

**The administrative procedure for the protection of civil rights** provides for the settlement of disputes, the restoration of rights, the suppression of unlawful actions of legal entities through instructions, resolutions, acts of authorized bodies (administrative bodies, local self-government bodies, ministries and departments), adopted in accordance with the current legislation of the Kyrgyz Republic.

**The courts of general jurisdiction** consider civil (including land), criminal cases. Any interested person has the right, in the manner prescribed by law, to apply to the court for the protection of his violated or disputed rights, freedoms or interests protected by law. The final arbiter is the Supreme Court of the Kyrgyz Republic, its decision is final and not subject to appeal.

Alternative dispute resolution in the Kyrgyz Republic is possible through the courts of *Aksakals* (elders) and arbitration courts.

**Courts of Aksakals (elders)** are created in villages, settlements, and cities from among the elders and other citizens who have respect and authority. By mutual agreement between parties in conflict, the courts of elders render decisions on property and even family disputes. Their decisions may be appealed.

**Arbitration court.** Disputes may be referred to arbitral tribunals for resolution first before going to a regular court. Their activities are regulated by the Law of the Kyrgyz Republic “On the Arbitration Court of the Kyrgyz Republic.”<sup>19</sup>

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<sup>19</sup> from 30 July 2002 No 135



There are no national statistics on land violations, but indicating the prevalence of land conflicts is the number of cases being processed by the Ombudsman. Data show that in 2017, the office received 231 complaints concerning land issues, accounting for about seven percent of the total number of citizens' complaints.<sup>20</sup>

Kyrgyzstan protects the rights of all its citizens, including human rights defenders working in the field of land relations, including their right to freedom of opinion and expression,

peaceful assemblies and associations set out in the UN Declaration on Human Rights Defenders and the International Covenant on Civil and Political Rights, which Kyrgyzstan ratified in 1994.

In 2014, the Law of the Kyrgyz Republic "On Public Councils of State Authorities" was adopted. It provides for the creation of supervisory and advisory bodies - formed on a voluntary basis from representatives of civil society - to cooperate and promote community initiatives. Human rights defenders are included.

As for the judicial system in the Kyrgyz Republic, there has been some success in reforming it and it is approaching the standards of modern democracies.

The scope of judicial competence has significantly expanded and the system has become more accessible to citizens. The legal basis for the independence of judges was secured, the financing of courts was improved, and the legal and organizational bases for the functioning of the judiciary were created.

All these indicators indicate the development of the judicial system in the Kyrgyz Republic, but this did not alter the overall negative view of the majority of the population on the judicial system.

Opinion polls continue to state distrust of the courts by a significant proportion of the population. Citizens, public and political figures, and representatives of non-governmental organizations continue to believe that the court in the Kyrgyz Republic is ineffective, unfair, often politically motivated, or in general, corrupt.

### **MEDIATION**

Disputes can be resolved with the help of mediation, which can be carried out before going to court, and during court proceedings, arbitration proceedings and enforcement proceedings. Mediation is aimed at resolving disputes, helping to protect the rights, freedoms and legitimate interests of citizens, developing partnership business relations and forming the ethics of business turnover, harmonizing social relations. Mediation cannot be applied to administrative cases (actions/inactions, invalidation of administrative acts). In most cases, according to experts, access to justice is limited by the presence of such problems as the lack of rules for resolving disputes over land ownership and use through mediation.

<sup>20</sup> Publication "Protection of property rights in the Kyrgyz Republic. Review, analysis, recommendations (International Business Council for GTZ Property Rights Protection), 2017.



It should be noted that the implementation of judicial reform has given rise to many new problems, which in the public consciousness also causes a negative attitude toward the judicial system.

First of all, it concerns contentious issues of property rights of citizens and legal entities. Courts often become an “instrument” for seizure of property of citizens and legal entities. In addition, there are questions over the level of professional competence of judges and law enforcement officials.

These problems can be solved partly by creating an effective mechanism for judicial protection of human rights and freedoms, and the legal interests of entities.

It is vitally important to gain the trust of citizens, legal entities, and international organizations in the courts as an institution of the State that firmly protects the rights, freedoms, and legitimate interests of a person, guaranteeing legality and legal order in society.

Therefore, it is necessary for Kyrgyzstan to continue the implementation of judicial reform.

## **CONCLUSIONS AND RECOMMENDATIONS**

This study on the current environment affecting access to land and the security of land ownership for the rural population of the Kyrgyz Republic points to needed policy actions to ensure and protect the rights of citizens to the equitable distribution and comprehensive use of available natural resources, including land, forests, and water sources.

For example, there is a need to amend and supplement existing NLAs to improve access of vulnerable people to land resources, increase gender balance in the allocation of resources and increase transparency in decision making.

There is also a clear need to continue land and agrarian reforms in the country in order to effectively solve the accumulated problems in the sector, improve public access to relevant information, and reduce corruption in land relations.

Effective measures are needed to improve transparency in land management, including through the development and implementation of modern State programs to improve access to land resources, support rural farming, and resolve land conflicts.

To resolve **conflicts over land resources**, it is necessary to determine at the legislative level a reasonable fee for land management. There should also be an official measurement of plots to provide an effective means for resolving border conflicts.



On the problem of unauthorized seizure of land for individual housing construction, the government needs to adopt an effective and fair regulation that will govern expropriation. The government will also have to strike a balance between the need to provide housing or farmland and the need to preserve agricultural land to ensure national food security.

**On conflicts over water use**, it is necessary to strengthen sanctions for unfair water use and introduce effective and transparent mechanisms for water distribution. It is also important to provide measures to strengthen the work of commissions for dispute resolution in the WUAs.

**On conflicts over the ownership** and use of forest resources, it is necessary to monitor and map conflicts on forest lands; to put into practice the development of integrated management plans and the use of local forest resources; and increase the capacity of forestry staff in law enforcement and conflict management.

A particularly disheartening problem involves land grabbing, which is acute in Kyrgyzstan.

In our opinion, it is necessary to develop and implement a national policy and regulatory framework for the expropriation of land. In addition, it is necessary to build the capacity of policy makers, legislators, land administration agencies, and land users for all to clearly understand the gaps and discrepancies in land expropriation legislation.

In planning and conducting expropriation, transparency and full participation of stakeholders should be ensured, and the views of all potentially affected persons should be sufficiently informed and sought.

Public interest has to be considered carefully, especially when territories proposed for expropriation are of particular cultural, religious or ecological importance, or where the land, fish and forest resources considered are especially important as means of subsistence for the poor or vulnerable populations.

Land users should be paid equivalent and fair compensation, at least enough to compensate for potential losses that will result from the redemption or takeover of their land.

In addition, the issue of **fair trial in resolving land conflicts and disputes** remains very important. There should be reasonable restrictions on the government's power to forcibly seize (buy) land, thereby increasing people's confidence in the justice system, increasing people's ability to protect their rights to land and increasing the perception of security of tenure.

All this is possible with prior consultation, participatory planning, and accessible mechanisms for appeals.



Separately, in support of **gender-equal inheritance rights**, it is proposed to provide a policy and legal framework that clearly recognizes the inheritance rights of widows and to develop effective enforcement and monitoring mechanisms.

It is also necessary that the experts who know how land law intersects with family law organize public sessions to raise the awareness of relevant laws so that the people, particularly women, know the laws that can protect them.

There is also a need to train authorities on inheritance laws, promote community discussion on marriage and inheritance, and seek solutions to the tensions between traditional practices and State laws.

There is also a need to develop the capacity of organizations that support women's rights and to recognize their role in raising awareness and strategic interventions to support widows.

All these measures will enhance rights and opportunities through better access to justice, dispute resolution mechanisms, and legal support to enable widows to claim their rights.

An important factor is the need to inform young people about the importance of legal marriage and to ensure that all children are born in marriage; encourage the writing of wills and indicate both spouses as co-tenants in land lease agreements.

Also, in the legislative level, it is necessary to introduce the compulsory participation of women through quotas in management bodies (municipalities, local councils, pasture committees, WUAs, Councils of Joint Forest Management, and the Commission on the Allocation of Land, Forest Grazing Areas) and to strengthen the capacity of decision-makers in the field of gender equality in the possession, use and disposal of land, forest and water resources.

To address shortcomings and national legislation in the field of **land use administration and registration of rights to real estate**, there is a need to pass legislation on elimination of discrimination against women in divorce and inheritance of land share, as well as the mechanism for registration of life rent for inherited land share with relevant amendments to the law of the Kyrgyz Republic on the management of agricultural land.

**For the development of the land market**, there is a need for a regulatory framework that will govern the right of the land user to dispose of his/her own land without restrictions: freely sell and buy, give and bequeath, take loans with the land as collateral, and create favorable conditions for investment in the agro-industrial complex.

In parallel, there should be increased transparency and access to information on land markets, requirements for tenders, auctions, and dissemination of information about them, as well as informal land transactions.



To help mitigate corruption, it is necessary to develop a clear mechanism for the economic valuation of land (especially for agricultural purposes); establish a means to prevent the reduction of agricultural land, especially arable land; and put in place guidelines to govern the withdrawal of unused agricultural land.

Also important is the need to develop mechanisms for the purchase and sale of agricultural land through competitive bidding, organized by a licensed trading platform, under State and public control. At the national level, the development and implementation of a program document on the development and State support of the land market will help, taking into account the responsible institutions for management, forecasting, monitoring, and reporting on the land market.

On the **use of irrigation water and land of the water fund**, it is recommended that the regulatory framework be amended for improved protection of rights and proper registration of land of the water fund and infrastructure at the WUA level.

To improve the **situation with the lease rights of forest areas of the SFF**, it is necessary to regularly raise the awareness of forest users, local communities, local self-government bodies, and other interested parties about the correct format of drawing up contracts, about forest use possibilities, and ongoing tenders for leasable land.

An important point is the introduction of appropriate amendments to the national forest policy and legal framework for regulating forest management in order to move from individual and group forms of contract forest management to a State-community (municipal) partnership to promote genuine community forest management.

**To improve the management and use of pastures**, it is necessary to have a formal inventory of pastureland to determine the extent and quality of pasture capacity. There should also be proper mapping to extract the right technical information for balanced pasture use at the community level. The right kind of information will also enable the communities and authorities implement ownership and rights to use pasture resources more effectively.

This, in turn, will help determine the potential of livestock farming more accurately to ensure food security of the Kyrgyz Republic.

All this urgently requires the development of a new State program for the development of pasture livestock in the country to support the development of sustainable pasture management as the basis for the livelihoods of local communities. ■



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Elvira Maratova  
National Pasture users’ Association of Kyrgyzstan KYRGYZ JAYITY (AKJ)  
and  
Sairagul Tazhibaeva  
Kyrgyz Association of Forest and Land Users (KAFLU)

## ACRONYMS USED

ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
CCKR	Civil Code of the Kyrgyz Republic
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CIS	Commonwealth of Independent States (former Soviet Union countries)
CLAR	Center for Land and Agrarian Reform
CPC	Civil Procedure Code
CSO	civil society organization
DWM	District Water Management
Fam C KR	Family Code of the Kyrgyz Republic
FLR	Fund on Land Distribution
GDP	Gross Domestic Product
GKR	Government of the Kyrgyz Republic
ILC	International Land Coalition
JK KR	Jogorku Kenesh (Main Parliament) of the Kyrgyz Republic
KR	Kyrgyz Republic
LC KR	Land Code of the Kyrgyz Republic
LGB	local government bodies
MAFI & LR	Ministry of Agriculture, Food Industry and Land Reclamation of the Kyrgyz Republic
NLA	Normative Legal Acts

NSC KR	National Strategy for Gender Equality
NSO	National Statistical Offices
NPO	non-for-profit organization
NSSD	National Strategy for Sustainable Development
PACE	Parliamentary Assembly of the Council of Europe
SAEPF	State Agency for Environmental Protection and Forestry
SALF	State Agricultural Land Fund
SDGs	Sustainable Development Goals
SFF	State Forest Fund
SIGI	Social Institution and Gender Index
SLF	Special Land Fund
SPNA	Specially Protected Natural Areas
SRS	State Registration Service
TC KR	Tax Code of the Kyrgyz Republic
UN	United Nations

## GLOSSARY OF TERMS

Aiyl Aymaks	Rural District
Aiyl Kenesh	Local Council/Parliament
Aiyl Okmotu	Executive Local Self-Government Body
Akyikatchy	Ombudsmen
Ayil Okrug	Rural District
Court of Aksakals	Court of elders
Jamaat	Communities
Jogorku Kenesh	The Supreme Council is the unicameral Parliament of the Kyrgyz Republic
Kyrgyzgiprozem	State Design Institute for Land Management
Oblast	Region
Som (KGS)	Kyrgyzstan national currency

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# Protecting the poor as modernity marches on:

## CSO Land Reform Monitoring Report in Nepal 2018<sup>1</sup>

*An initiative of the Land Watch Asia Campaign*

Land is a vital natural and national resource. In Nepal, various attempts have been made to regulate the uses of land through laws and policies according to changing needs and circumstances. Today, the citizen's right to control and access land in Nepal is constitutionally recognized. According to the Department of Land Management and Archive, there are around 29,000,000 registered landowners in Nepal in Fiscal Year 2016/2017. The Nepalese land administration system does not recognize informal, non-formal, customary, and communal tenure. In addition, one of the unfortunate realities in agriculture is that those who control the land legally and gain the most from agriculture are not the real farmers working in the fields. The landless, smallholders or poor farmers are the ones who put in the hard labor on the land, but are deprived of land ownership (Basnet, 2013).

Land distribution in Nepal remained skewed and unjust since the unification process of the country in 1846. This created various kinds of conflicts and discriminations between and among people and communities. Land was utilized as a means to gain political and military support by the State. As a result, larger parts of the productive and higher quality land were distributed among more powerful people in the form of grants (Adhikari, 2008: 6). Further, Adhikari argues that current landlords also do not want to improve the situation

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<sup>1</sup> This is an abridged version of the CSO Land Reform Monitoring Report in Nepal: 2018 prepared by the Community Self Reliance Centre (CSRC) as part of the Land Watch Asia (LWA) campaign. This 2018 LWA country monitoring report focuses on land governance, and is supported through the project "Sustainable, Reliable and Transparent Data and Information towards Responsible Land Governance: Putting Commitment 8 into Action."

**Citation:**

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of land governance in Nepal, as they want to continue to secure their power and control over the landless and tenant peasants. During the land distribution process in Nepal, the land types and quality were a form of reward only to henchmen, supporters, relatives, army personnel, bureaucrats, and to a few Hindu priests, who did not remain and work as farmers. Land was not made available to the general public who were tilling the land for generations and had no other livelihood opportunities. The legacy of the past feudal land governance structure is still reflected in the land ownership pattern prevailing in the country today.

Over the last 65 years, political parties have chanted slogans like “land to the tillers” and “pro-poor land reform,” but they fail to keep their promises after gaining power. Furthermore, many donor agencies have been supporting commercialization of agriculture and promoting neo-liberal policies in agriculture rather than strengthening the rights of poor farmers. Though large amounts of foreign resources are being invested in Nepal for poverty alleviation, one-fourth of the population still remains below the poverty line and a significant number of people are marginalized from access to and ownership of land.

In this context, this CSO Land Reform Monitoring initiative is being undertaken collectively by CSO members in collaboration with government officials and academic scholars. This report covers the data of fiscal years of 2015/16 and 2016/17 (Nepali fiscal years 2072/73 and 2073/74).

## **OBJECTIVES, METHODOLOGY, ORGANIZATION, AND SCOPE AND LIMITATIONS OF THE STUDY**

The overarching objective of this study is to put a spotlight on the land governance situation in Nepal. Other objectives of this CSO land reform monitoring initiative are to:

- present the current status of land holding system in Nepal;
- collate and analyze the data on access to land and tenure security for the rural poor;
- assess the quality of and access to data on land tenure and land administration in the country;
- identify gaps in policy and practice in relation to land and propose corresponding reform actions; and,
- point out strategic opportunities for advancing land rights for key stakeholders in Nepal.

The “Land Watch Nepal Monitoring Report 2018” includes both primary and secondary data. Primary data was generated through a series of field visits, community consultations, rounds of consultations, and discussions with key informants. Secondary information was collected through desk reviews and internet research, covering books, reports of government and non-governmental institutions, scholarly articles, national dailies, year books, and publications by different institutions.



The study is limited to the Fiscal Years 2015/16 and 2016/17 (Nepali fiscal years 2072/73 and 2073/74). The primary focus of this study is on reviewing land related programs and policies from the Ministry of Land Management, Cooperatives and Poverty Alleviation (MoLMCP). Secondly, field research was conducted on the issues of rights violations and access to land with regards to landless people, tenants, sharecroppers, smallholders, and other marginalized people.

## **CONCEPTUAL FRAMEWORK ON LAND RIGHTS AND LAND ACCESS IN NEPAL**

### **Overview**

Nepal is a multi-ethnic, multi-lingual, multi-religious, and a multi-cultural country and the legal system and practices in the country are largely influenced by this diversity. Today, only individual land rights are protected under property rights provision in Article 25 of the Constitution.

Land management, and governance in Nepal is a multi-faceted problem. With the breakthrough of the Land Reform Act in 1964, all tenant-farmers were entitled to claim half of the land that they have been cultivating. But even after the 54 years of such policy provision, according to the MoLMCP, more than 300,000 farmers are yet to receive tenancy land rights in its true form. The MoLMCP has issued a public notice in 6 May 2018 and re-opened applications to claim tenancy land rights for the period 6 May to 20 August 2018. The motive of the notice was to inform both landowners and tenants that government will end dual ownership over land. Despite of the government's effort to encourage tenants to claim their tenancy land rights, within one year there are cases reported wherein landowners have threatened tenants and prevented them from filing tenancy land right claim applications in the District Land Reform Offices (Kamat, 2018).

In addition, more cases of eviction are also surfacing as the government at all levels has been increasingly involved in infrastructure development after the series of elections in 2017.

### **Federal structure of government**

With the enactment of the new Constitution, Nepal adopted a federal structure of government in 2015. The country now has three tiers of government: Federal, Provincial, and Local. The Constitution provides the solid ground to formulate policies to improve the lives of the Nepalese populace. Major indicators for Nepal are presented in Table 1.

### **Poverty in Nepal**

The poverty index in Nepal is derived on the basis of per capita food intake vis-à-vis the calorie requirement for healthy growth and work, instituted through the 1995 to 1996 Nepal Living

**Table 1. Provincial Statistical Information**

Indicators	Nepal	Prov. 1	Prov. 2	Prov. 3	Prov.4	Prov. 5	Prov. 6	Prov. 7
Population	100.0%	17.1%	n/a	20.9%	9.1%	17%	5.9%	9.6%
Cultivated land (as percentage of the total land)	79.3%	82.9%	n/a	73.0%	76.8%	74.8%	75.5%	78.6%
Irrigated land	45.2%	45.2%	n/a	43.0%	38.5%	40.3%	22.9%	35.7%
Registered Industries	7,334	673	n/a	4,961	556	508	38	107
Energy Generation (MW)	990.5	113.7	n/a	338.8	477.9	21.6	0	38.5
Road Network (km)	58,398	11,899	n/a	14,900	10,970	8,603	2,607	3,724
Human Development Index	0.49	0.50	n/a	0.54	0.51	0.47	0.43	0.43
Multi-dimensional poverty rate	28.6%	19.7%	n/a	12.2%	14.2%	29.9%	51.2%	33.6%
Literacy rate	59.6%	65.3%	n/a	69.3%	55.6%	59.4%	53.0%	54.9%
Average life expectancy (years)	68.8	68.5	n/a	69.7	69.5	67.6	66.8	66.9
Number of Schools	35,601	6,721	n/a	7,388	4,607	5,764	3,199	4,069

**Source:** Economic Survey, 2018, National Living Survey III, 2011, & National Population Survey 2011

Standards Survey (NLSS-I). In the same period, 42 percent of the population was classified as poor. The second round of the survey (NLSS-II) was conducted in 2003 to 2004 and revealed that 31 percent of population was poor. The third round of the survey (NLSS-III) indicated a poverty incidence of 25 percent (Khatiwada, et. al., 2016).

### **KEY ISSUES AFFECTING THE RURAL POOR'S ACCESS TO LAND**

The annual reports published by Supreme Court of Nepal suggests that the cases regarding property and land in particular, constitutes a significant chunk of cases in the courts around the nation. These case along with monetary conflicts, also involves violence and oppression. Land conflicts are often the results of complicated legal procedure, lack of awareness, loopholes, and duplications in land laws. As of today, the real estate market is one the most expensive and fastest growing markets in Nepal. As businesses pursue the development of their enterprises,

cases abound where profits are realized at the expense of the human rights and land rights of the rural poor.

Despite the government aspiration to provide secure land tenure for each and every citizen, there is no separate national government budget allocated for tenure rights, making it difficult to implement.

There are 115,538 households working on 3,119.3 hectares of land which is not their own. However, 3,715,555 households operating over 2,522,519.9 hectares of land.

**Table 2. Land holding by size and number of households in Nepal**

SN.	Land holding by size	Number of Households
	Without land	115,538
1	Under 0.1 hectare	355,549
2	0.1 of a hectare and under 0.5 of a hectare	1,631,460
3	0.5 of a hectare and under 1 hectare	984,022
4	1 hectare and under 3 hectares	678,338
5	3 hectares and under 5 hectares	54,388
6	5 hectares and under 10 hectares	10,744
7	10 hectares and above	1,054

Source: CBS, 2013

Other initiatives that are focused on ensuring the land and housing rights of the vulnerable communities are: Janata Awas Karyakram (People's Housing Program) which is implemented by the government of Nepal from 2009 in three districts (Siraha, Kapilvastu and Saptari). This aims to provide housing by constructing low cost modern housing for marginalized poor families, mainly Dalit and deprived Muslim families. Altogether a total of 2,274 houses in the settlements of 17 villages of Siraha, Saptari and Kapilvasu districts are planned, for which the budget of Rs 300 million (USD 2.7 million) is allocated to Department of Urban Development and Building Construction under its annual program of FY 2009 to 2010 (Ministry of Urban Development, 2014).

### Legal and policy environment on access to land

The 2015 Constitution of Nepal contains key provisions related to access and utilization of land resources, to wit:



## **Land Ownership**

Property right is granted under Article 25, which provides every citizen the right to acquire, enjoy, own, sell, have professional gains, and otherwise utilize, or dispose their property. The law also protects persons from encumbrances on their property, and in cases when the State acquires a land under the principle of eminent domain, proper procedure for acquisition and just compensation of landowners is to be observed.

## **Agricultural Land**

With regards to agricultural land, Article 25 of the Constitution stipulates that the State can carry out land reforms, management, and regulation in order to increase land productivity, modernize agriculture, and ensure the protection of the environment. Part 4 of the Constitution specifically includes clauses related to, among others, (1) ending dual land ownership,<sup>2</sup> (2) pursuing land use policies that will enhance agricultural products and increase land productivity, and (3) providing farmers access to agricultural inputs and products at fair market prices.

However, there is no explicit commitment in the Constitution to provide land to genuine peasant or landless farmers, especially to those who have been tilling the land for generations but do not have legal ownership of the land. Although, the law mentions providing security to farmers in order to enhance land productivity, this does not necessarily refer to land distribution for poor or landless farmers.

In reality, the law seems to favor those who have land or resources for investment. The main challenge is to make this provision beneficial for marginalized farmers especially tenants, sharecroppers, and smallholders.

## **Land for the Homeless**

Land and housing rights for the landless and homeless *Dalits*<sup>3</sup> are also guaranteed under Article 40 of the Constitution. Clauses 5 and 6 specify providing land to the landless *Dalit*, and housing settlements for those who do not have homes.

However, the definition of terms in the Constitution such as “homeless,” “landless,” and “size of land,” are ambiguous. The types of land and houses, as well as modalities of ownership, are also not clearly specified.

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<sup>2</sup> The Land Reform Act 1964 was meant to resolve the matter of dual land ownership in Nepal, but the issue remains to be a concern among farmers at present. To address this, the government established the Tenancy Problem Solution Unit within the MoLMCPA. The unit re-opened the filing of application to claim tenancy land rights, which will give farmers 50 percent ownership of the tenanted land. Approximately 50,000 tenant farmers responded to the call from 6 May to 20 August 2018.

<sup>3</sup> *Dalit* refers to the people placed at the lowest rung of the Hindu caste system. *Dalits* have been facing historical marginalization and landlessness.



## **Land for Women**

Provisions on gender equality are also stipulated in Part 3 of the Constitution, particularly in Article 18 (equal rights of children to ancestral properties) and Article 38 (equal rights of spouses to property and family affairs).

Article 38 of the Constitution is exclusively dedicated to rights of women. Under which, Sub- article 1 provides that every woman shall have equal lineage right without gender-based discrimination. Sub-article 6 states that the spouse shall have the equal right to property and family affairs. Article 18 provides that all offspring shall have equal right to ancestral property without discrimination on the grounds of gender. However, there is no specific provision for women under the Directive Principles and Policies in the present Constitution regarding land and property. However, the woman's right to property has been elaborated in the country's Civil Code Act of 2017.

### **Major land-related legal instruments**

Apart from the Constitution, there are more than 64 Acts and policies that are directly or indirectly related to land governance, measurement, administration and management. Some of the major land laws and policies are presented in Table 3 and briefly explained.

While other Ministries from the Government of Nepal have been receiving large budgets and long-term foreign support, the MoLMCPA has not received any long-term foreign financial support for land reform and promotion of access to land. However, MoLMCPA has been launching a number of land related projects which are not included within the government budget such as *Haliya*, *Kamaiya* rehabilitation, land use, digitization of maps, among others. The Ministry is generating more than NPR 10 billion yearly, while its budget allocation is only NPR 4 to 6 billion.

## **STATUS OF ACCESS TO LAND BY THE RURAL POOR SECTORS**

### **Smallholder farmers**

Various plans, policies, and programs have been enacted and implemented from time to time, for the empowerment and protection of landless and small farmers.<sup>4</sup> The recent national budget of 2018 to 2019 has waived off loans borrowed by small farmers from pre-existing Sajha Sahakari Sanstha. It ensures that institutional reform will be carried out to make the Agriculture Loan Program of Small Farmers Development Bank effective. Similarly, the Ex-*Kamaiyas*,<sup>5</sup> have

<sup>4</sup> "Small farmers" are farmers entirely depending on agriculture for their livelihood and operating on less than 0.5 hectare of land. Out of all farmers, 53 percent are small farmers who operate 18 percent of the total agricultural land. Meanwhile, "big farmers" comprise only four percent of the total farmers but they control 22 percent of agricultural land.

<sup>5</sup> Individuals from Tharu community once worked as a bonded labor in the home of land owners or rich people.

been rehabilitated to some extent. Some 3,090 hectares of land were distributed among 26,440 households of *Kamaiyas* (MoLMCPA, 2016).

**Table 3. Recent development in the land related laws and policies in Nepal**

SN.	Act/Law	Year of formulation	Year of latest Amendment	Remarks
1	Right to Housing Act	2018		This Act deals with the fundamental right provided in Article 37 but there remain many loopholes which might provide bottlenecks during the implementation. CSOs and rights advocates are pressuring the government for amendments.
2	Right to Food and Food Sovereignty Act	2018		This Act aims to ensure and maintain food security by providing farmers adequate access to land.
3	Land Act	1964	2018	7 <sup>th</sup> amendment to the Land Reform Act, 1964 seeks to provide land to landless Dalit communities within a 3- year period.
4	Land Use Policy	2013	2015	This Policy was amended to incorporate diverse needs that emerged after the earthquake in 2015 in terms of safe settlement and land use. The objective is to protect agricultural land by promoting land pooling and cooperative farming. It seeks to promote integrated settlements.
5	Land Measurement and Survey Act	1977		This law aspires to provide land tenure security to all the landowners by registering their land and providing land certificates. However, informal and non-formal land tenures along with customary tenure are neither recognized nor recorded by the legal tool.

In 2002, the *Kamaiya* Labor Prohibition Act was adopted. It declared all loans taken as null and void, and declared all persons working as *Kamaiya* laborers free. The Act established *Kamaiya* Rehabilitation and Monitoring Committees. It also established fines for anyone in violation of the



law, ranging from NPR 15,000 (USD 198) to NPR 25,000 (USD 330), alongside fines for any failure to return mortgaged property.

The Bill on the Right to Food, the Bill on the Right to Housing, and the Land Bill (seventh amendment) were also endorsed and passed on 17 September 2018. The House of Representatives had passed all the bills to the National Assembly (Pradhan, 2018).

Given that the country has shifted to a federal form of government, there are new possibilities for more responsive governance. Policy-making power is now vested with representatives who are elected by the people at federal, provincial, and local levels. The draft Land Use Act 2018 and Land Policy are expected to support sustainable land ownership and solve problems of small-scale farms, if finalized and implemented properly.

## Women

The population of women in Nepal exceeds the population of males according to national census of 2011. In actual numbers, there are 796,422 more females than males in the country. The same census indicates that the overall percentage of households with female ownership over fixed assets in Nepal is 19.71 percent. This includes ownership of land or a house or both in the name of female members of the household. However, the percentage of female asset ownership is 26.77 percent in urban areas but only 18.02 percent in rural areas. During the FY 2016 to 2017, there were 223,359 land ownership certificates in the name of females issued nationwide (CBS, 2011).

Article 18 of the Constitution guarantees the right to equality, stating that all citizens shall be equal before law and no person shall be denied the equal protection of law. Government has also enacted various measures to promote the fair and equitable exercise of the fundamental right to property. Today, depending on the geographical location, a 25 to 50 percent tax exemption is granted on registration of land when it is owned by a woman, and a 35 percent tax exemption for single women. In addition, joint land ownership (JLO) – joint registration of land in the names of the husband and wife – is becoming more popular than ever. JLO is being widely practiced because of numerous intangible benefits, including elevation of the status of the wife in a patriarchal society, a better relationship between the spouses, and financial security for the wife.

The Financial Bill 2015 BS also has provisions to promote women's ownership of land and property. This includes, among others:

- Promotion of joint registration of land in the names of both spouses. This co-ownership certificate can be obtained with a minimum registration fee of NPR 100 (almost USD 1). Properties previously registered either in the name of the wife or husband can also be changed into joint ownership for a minimum registration fee of NPR 100.

- Senior citizens (men and women above 70 years old) can register land in their name and receive 25 percent tax exemption during land registration.
- Widows are given 35 percent tax exemption during land registration.
- 50 percent tax exemption is given during land registration when transferring land to female descendants within/up to three generations.
- Depending on the geographical region, women can receive 25 to 50 percent tax exemption in land registration, with the provision that the land will not be sold within a period of three years.

Despite these progressive provisions to promote women's entitlement to land and property, there is a lack of systematic and comprehensive effort by the government to inform the beneficiaries of these provisions in the Financial Bill.

### **Indigenous Peoples**

Indigenous peoples (IPs) of Nepal are officially referred to as Indigenous Nationalities (*Adivasi Janajati*). They comprise 35.81 percent of the country's total population (approximately 8.5 million out of the 26 million Nepalese). However, IP organizations claim that the indigenous population could comprise as many as half of the country's population (Indigenous Voice, n.d.). As per the 2011 census, Nepal has 125 castes and ethnic groups speaking as many as 123 languages. Many of these languages are spoken by IPs.

Article 261 of the Constitution provides for an Indigenous Nationalities Commission to deal with IP issues. However, there are no national legislations, policies or programs recognizing IP rights to lands, resources and sacred ceremony sites. The Nepal Federation of Indigenous Nationalities (NEFIN), is an autonomous and representative umbrella organization of the 59 indigenous nationalities or peoples, recognized by the government of Nepal. Also, the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), is an organization working and advocating for IP rights to lands, territories and resources.

Theoretically, the Government of Nepal does not recognize indigenous land tenure systems. However, IPs continue to manage their land under communal or customary practices like the *Kipat* system. Under this system, land is owned by the community, and only members of the particular community can use it through their traditional rules. The lack of recognition and codification from the government creates further difficulties in securing IP rights. Many governmental, non-governmental, and business projects impinge on the socio-economic rights of IPs, including land and property rights.

### **Protected Areas**

Nepal is rich in natural resources, such as water, forest products, medicinal herbs, etc., which are found in abundance. In order to regulate the use of these resources, proper laws and



policies are required to be in place. The protected areas including that of national parks, wildlife reserve, conservation areas, and buffer zones constitute 28,959.67 square kilometers or 19.67 percent of the total area of Nepal. Laws such as the Land Use Policy Act (2015), Land Reform Act (1964), Agricultural Development Strategy (2015 to 2035), National Urban Development Strategy (2017), Nepal Biodiversity Implementation Plan (2006), Nepal Biodiversity Strategy (2002), etc., are few of the policies and resources that are available for communities in preparing a comprehensive and sustainable land, forest, and water use plan. These are mostly available with the community rather than the government, and are mostly in fragmented form. There are various locally-established forest-user groups, water-user groups, and irrigation groups actively working for the use and sharing of these resources. Public lands are also being collectively governed by the local communities, making sure of inclusive decision-making and participation especially the case of forest management.

## **RESOLUTION OF LAND CONFLICTS AND PROTECTION OF LAND RIGHTS WORKERS**

Land is repeatedly described as a highly contentious issue. Land conflicts are frequently referred to the courts for resolution. Article 127 of the Constitution provides for three tiers of courts in the country, i.e. District Court, High Court, and Supreme Court. Also, various Land Reform Offices are established across the country to regulate land related issues.

According to the Supreme Court Annual Report 2016 to 2017, there are a total of 23,761 land cases filed in the court system. The District Courts handle 64 percent of the cases (4,656), the High Court takes care of the 25 percent (5,454), and the Supreme Court deals with 11 percent of the total cases (13,651). Figure 1 (next page) provides an illustration of the number of cases registered in the courts.

The Land Revenue Office, established in different districts, has the jurisdiction to hear the cases related to land. According to data from 2016 and 2017, the number of cases received by this office is 146,938 where 8,793 of which have been adjudicated.

With the adoption of the federal system, various Judicial Committees were established at each local government unit. The committees have the authority to hear cases related to land. Similarly, the Land Reform Office has the authority to register the application on separation of the tenure system, and deals with other tenancy issues. Though the Judicial Committee was formed, land separation rights still remained in land reform offices.

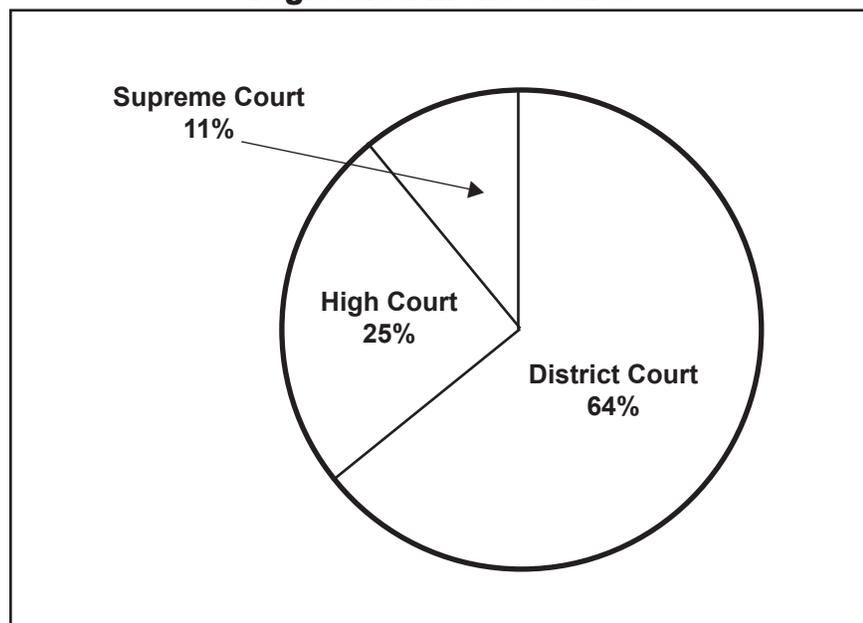
While legislation has become more progressive in recent times, there are still legal gaps which need to be addressed. Individuals and institutions working to defend people's right to land are being harassed and threatened on a daily basis. The front-line land right activists are getting threats from landowners, forest departments, and other government offices, but there is no

official data that can be taken as evidence. However, there are no reported cases of anyone being murdered or assaulted for defending someone's land rights. While the country has a general human rights law, there is no specific law to protect land rights defenders.

## TRANSPARENCY IN LAND GOVERNANCE AND ADMINISTRATION

Nepal is one of the first countries in South Asia to incorporate the right to information as a fundamental right in its Constitution. Nepal passed the Right to Information Act in 2007 and the Good Governance (Management and Operation) Act in 2008. Despite the presence of these laws, there is a dearth of reliable/quality data on land and land-related issues. Although there are

**Figure 1. Number of land related cases registered in the Courts**



readily-available data or data that may be obtained for a fee, some information is centralized and difficult to access at the local level. For instance, there are no available data on the number of landless and homeless people, how much fallow land remains, the extent of agricultural land, and so on.

Aside from the absence of data, the quality of available data is also questionable. In many cases, data produced by different agencies of the government contradict each other.

Moreover, many of the smallholders are not able to access the information they need due to lack of education, logistical capacity, and the lack of information service provision by the government.

For example, it will be very difficult for farmer from Bajhang to come to Kathmandu and ask about improved seeds.

Not just rural people, but even newly-elected local government bodies are unaware of the available resources within their municipalities. Local governments need comprehensive information related to land, water, forest, infrastructure, and demography so that they can formulate appropriate development plans.



## SUMMARY OF FINDINGS AND RECOMMENDATIONS

Although the MoLMCP has amended some of its land related policies and acts in line with social justice, large numbers of land conflicts are still reported, and marginalized people continue to be evicted, harassed, detained, or even killed. Furthermore, even though the government of Nepal has endorsed the UN Convention on Economic, Social, and Cultural Rights, feudal land governance systems are still being followed and land rights are still not considered as a part of human rights. Similarly, the ICESCR Committee had made a number of recommendations in 2014 to the Ministry of Land Reform and Management, but the Ministry has failed to address these.

Due to land fragmentation, parcels of land plots, and land plotting (land plotting for housing), land prices are increasing yearly. Commercial banks are also investing more than 15 percent of their portfolio on land. On the other hand, land violation cases at various land revenue offices are also on the rise. Land has become a commodity and financial resource rather than a means of production. Land prices are too high for the general public to afford.

Although the new Constitution has addressed some of the land related issues, it still does not explicitly address and commit to a land reform process in favor of poor people. The Land Use Policy has recently been amended but a Land Use Act still has not been formulated and endorsed by the Parliament. Similarly, although the sixth amendment of 1964 Land Reform Act has been approved, there are still more than 500,000 tenants and sharecroppers that are deprived of their land rights.

Based on critical analysis of primary and secondary data generated from this review, the following recommendations are presented for various key stakeholders:

### ***For Government***

- Ensure the realization land rights as human rights of marginalized peasants and landless people.
- The MoLMCP should form an independent land monitoring committee with active participation from CSOs and poor peasants to assess land reform progress, review land rights violations, and prepare independent reports.
- The MoLMCP should ensure implementation of recommendations made by independent committees.
- The MoLMCP and the Government of Nepal should have wider consultations and partnerships with various stakeholders in formulating policies and programs.
- The MoLMCP should invest all the revenue generated from various land revenue and land reform offices.
- The MoLMCP should support bottom-up processes of comprehensive land reform from local level (such as VDC or DDC) and should develop comprehensive policy mechanisms for this.



## For CSOs

- Form a common platform for all CSOs working on land and agrarian reform issues, and develop CSO land monitoring mechanisms.
- Generate evidence-based cases and support the government in policy formulation and implementation processes.
- Coordinate with and support local and national level stakeholders in the formation and implementation of policies on land reform from below. ■

## ACKNOWLEDGMENTS

This CSO Land Reform Monitoring Report 2018, prepared by Community Self Reliance Centre (CSRC), is the fourth monitoring report reflecting and carefully examining the aspects of land in Nepal from many facets. This document will assist in understanding the status and dimension of land in Nepal and also, act as a basis in formulating policies for the protection, promotion, and preservation of the national and natural resources.

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## ACRONYMS USED

ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
ARPA	Advocacy, Research and Policy Analyst
CBS	Central Bureau of Statistics
CSO	civil society organization
CSRC	Community Self Reliance Centre
DDC	District Development Committee
DLRF	District Land Rights Forum
FAO	Food and Agriculture Organization of the United Nations
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Land Coalition
LWA	Land Watch Asia
MoLMCP	Ministry of Land Management, Cooperatives and Poverty Alleviation
NES	National Engagement Strategies
NGO	non-governmental organization
NLRF	National Land Rights Forum
NLSS	Nepal Living Standard Survey
NPC	National Planning Commission
NPR	Nepali Rupees

USD United States Dollar  
VDC Village Development Committee

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# Breaking up the hold of the few to provide land for the many:

## Land Watch Pakistan Monitoring Report 2018<sup>1</sup>

*An initiative of the Land Watch Asia Campaign*

Agriculture plays a vital role in Pakistan's economy, employing 45 percent of its labor force, accounting for 21 percent of its Gross Domestic Product (GDP) and supporting 64 percent of its population in the rural areas (FAO, n.d.).

After going through three half-hearted and failed land reform attempts, i.e. the West Pakistan Land Reforms Regulation 1959, the Land Reform Regulation 1972, and the Land Reforms Act 1977 (SDPI, 2001), Pakistan is still waiting for a comprehensive and broad-based land and agrarian reform.

Under the UN's sustainable development goals (SDGs), land plays a central and vital role in the alleviation and eradication of poverty in rural areas. Monitoring the land rights of poor masses is therefore a major step toward achieving SDG Goal No. 1, which is poverty eradication.

Land is a critical asset in rural Pakistan and a symbol of social status. However, the weaker and poorer strata of society could not access land due to factors such as the absence of a proper land market, government policies about "land to tillers," cumbersome procedures for registration and transfer of land, and poor enforcement of contracts and agreements.

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<sup>1</sup> This is an abridged version of the CSO Land Reform Monitoring Report in Pakistan: 2018 prepared by the Society for Conservation and Protection of Environment (SCOPE) as part of the Land Watch Asia (LWA) campaign. This 2018 country monitoring report focuses on land governance, and is supported through the project "Sustainable, Reliable and Transparent Data and Information towards Responsible Land Governance: Putting Commitment 8 into Action."

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It is getting even harder to access land because of pressures such as increasing population, intensive agriculture, overgrazing, high demand for housing, food production, and other land uses such as public infrastructure.

## Land Rights and Land Access in Pakistan

Land rights refer to the right to possess, hold, use, transfer, or inherit land according to a country's legal or customary system.

The concept of land rights is also related to the concept of land tenure, which can be defined as “the relationship, whether legally or customarily defined, among individuals, groups of individuals or peoples with respect to land” (OHCHR, 2015).

In a broader sense, land tenure systems determine who can use what resources for how long and under what conditions. But all types of land tenure do not ensure land rights for people who live at the margins.<sup>2</sup>

## RURAL POOR IN PAKISTAN

The Islamic Republic of Pakistan was founded in August 1947 as a result of the separation from British India. The civil war in 1971 ultimately led to the secession of East Pakistan and the birth of the independent State of Bangladesh.

According to the Pakistan Economic Survey (PES), Pakistan's poverty level has been consistently declining, from 50.4 percent in 2005 to 2006 to 24.3 percent in 2015 to 2016, although the drop is more pronounced in the urban areas than in rural areas (Government of Pakistan, 2018).

State-run social safety net programs such as the Benazir Income Support Programme (BISP), relative political stability, peace and tranquility, strong recovery from low GDP growth rate of 1.7 percent (in 2008 to 2009) to 4.5 percent (in 2015 to 2016), increased remittances especially from the Middle East that go to relatively poor families, and above all, a more inclusive economic growth, are some of the reasons behind the significant decline in the poverty level (*Ibid*).

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<sup>2</sup> In fact, some form of land tenure restricts their land rights, some even rejects it totally. Following a genealogical method, tracing some of the forms' origin back in the Roman imperial period, the forms of land tenure can be categorized as follows: a) Owner cultivation of small, private lands, b) Squatting on public or private lands, c) Large estates or *latifundia*, d) Feudal tenures with bound and unbound labor, e) Communal tenures and f) Smallholders leasing from private landowners (Croix, 2002). These categories can also be compartmentalized into three sub-sections:

- i) Forms that totally (forms c and d) or partially (form f) oppose land rights of the people;
- ii) Forms that recognize it illegally or pre-legally (forms b and d); and,
- iii) Form that totally and legally accepts people's land rights (form a).

But while the overall poverty level has declined, it remains a significant problem for Pakistan. And one reason behind the persistent poverty is the concentration of land ownership in the hands of a few.

**Table 1. Land Tenure Indicators**

INDICATORS	SCORE
<b>Score Millennium Challenge Corporation Scorebook, 2017</b>	
• Land Rights and Access (Range 0–1; 1=best)	0.66
<b>International Property Rights Index, 2017</b>	
• Physical Property Rights Score (Range: 0–10; 0=worst)	4.2
<b>World Economic Forum’s Global Competitiveness Index, 2016 to 2017</b>	
• Property Rights (Range: 1–7; 1=poorly defined/not protected by law)	3.5
• Ease of Access to Loans (Range: 1–7; 1=impossible)	3.6
• Legal Rights Index (Range: 0-10; 10=best)	3.0
<b>International Fund for Agricultural Development, Rural Poverty Report, 2001</b>	
• Gini Concentration of Holdings, 1981 to 1990 (Range: 0–1; 0=equal distribution)	0.58
<b>International Fund for Agricultural Development, Rural Sector Performance Assessment, 2015</b>	
• Access to Land, 2015 (Range: 1-6; 1=unsatisfactory access)	3.5
<b>Food and Agricultural Organization: Holdings by Tenure of Holdings</b>	
• Farm Area, Privately-owned farms (in acres), 2010	39,431,999
• Farm Area, Owner with Tenant (in acres), 2010,	584,079
• Farm Area, Tenant only (in acres), 2010	5,894,340
• Owner-operated area (in acres), 2010	42,530,879
• enant-operated area (in acres), 2010	10,379,52
<b>World Bank Group, Doing Business Survey, 2017</b>	
• Registering Property-Overall World Ranking (Range: 1–181; 1=Best)	169.0
• Quality of Land Administration (Range: 0-30; 0=lowest quality)	6.8
• Registering Property-Number of Procedures	8.0
• Registering Property-Days Required	154.8
• Enforcing Contracts-Overall World Ranking (Range: 1-190)	157.0
<b>World Bank Group, World Development Indicators, 1998</b>	
• Percentage of Population with Secure Tenure	–
<b>Heritage Foundation and Wall Street Journal, 2017</b>	
• Index of Economic Freedom-Property Rights (Range 0-100; 0=no private property)	36.4
<b>Economic Freedom of the World Index, 2016 (2014 data)</b>	
• Legal System and Property Rights (Range 0- 10; 0=lowest degree of economic freedom)	3.96
• Protection of Property Rights (Range 0-10; 0=lowest degree of protection)	4.12
• Legal Enforcement of Contracts (Range: 0-10; 0=lowest degree of protection)	5.00
• Regulatory Costs of the Sale of Real Property (Range: 0-10; 0=highest amount of restrictions)	6.59

Source: Pakistan Country Profile (USAID, 2018)



## **ACCESS TO LAND, POVERTY, AND DEVELOPMENT**

Ownership and control of land is concentrated in the hands of a few landlords and intermediaries who extract maximum rent, either in cash or kind, from the tenants or sharecroppers.

Under this arrangement, the sharecropper or tenant farmer has little economic motivation to develop the farmland for increased production. On the other hand, the landlord is not concerned about improving the economic condition of the tillers, resulting in loss of land productivity and deprivation of the tenants' economic, social and human rights.

It is not surprising therefore that the landless in the rural areas count among the poorest of the poor in Pakistan. It is indeed in the rural areas where the worst poverty and hunger are found.

Worldwide, land reform has been used as a powerful strategy to promote both economic development and environmental quality. Land reform here is defined as the reallocation of rights to establish a more equitable distribution of farmland (DAWN, 2006).

Data from the Agricultural Census Organization show that as much as 81 percent of country's farmers own farms less than five hectares in size. On the other hand, large farmers with landholdings of more than 10 hectares account for only 6.8 percent of country's farmers but hold 39.8 percent of the country's total farm area.

According to the final declaration of World Forum on Food Sovereignty held in Havana, Cuba on 7 September 2001 (civil society preparatory meeting for World Food Summit +5), agrarian reform, above all, should be recognized as an obligation of national governments, as this process is necessary within the framework of human rights and as an efficient public policy to combat poverty.

Several attempts have been made to reduce the concentration of land in a few hands.

In 1959, the government imposed ceilings on the private ownership of land. Individuals were limited to owning 500 acres (202 hectares) of irrigated and 1,000 acres (404 hectares) of non-irrigated land.

In 1972, the ceilings were further lowered to 150 acres (61 hectares) of irrigated and 300 acres (122 hectares) of non-irrigated land. Owners of expropriated excess land received no compensation, and beneficiaries were not charged for the distributed land.

Then in 1977, the government further reduced the ceiling to 100 acres (40 hectares) in irrigated areas and 200 acres (80 hectares) in non-irrigated areas.



Unfortunately, the powerful landlords successfully foiled attempts to break up large estates or lessen the power or privileges of the landed elite. For example, landlords were able to circumvent rules on maximum individual land ownership by acquiring land in the name of their wards and kin.

As a result, large landowners managed to keep their holdings within an extended joint family framework and have given up only some marginal, not very productive, swampy lands.

## **KEY ISSUES AFFECTING RURAL POOR'S ACCESS TO LAND**

### **Legal Issues**

Pakistan has numerous laws that deal with land rights, covering ownership, transfer, acquisition and tenancy. However, these are for the most part obsolete, fragmented, and deficient. Also, land laws that apply to rural and urban areas are often different (UN-Habitat, 2012).

Revenue legislation at the provincial level spells out the categories of landholdings, recordkeeping regulations, land transactions, surveys, official partitions, and the powers of revenue department officials.

Property rights of the indigenous peoples or tribal populations of Federally Administered Tribal Area (FATA) and Provincially Administered Tribal Area (PATA) are covered by a different set of rules, majority of which are based on customary law (GOP Constitution 1973; Khan 1981; USAID 2008, UN Habitat 2012b; United Kingdom 2017).

### **Customary law**

Customary or traditional law is widely accepted in Pakistan. Specifically for land rights, there is a well-developed and comprehensive set of customary laws. Established tribunals known as *jirgas* enforce customary law that may differ across provinces, tribes, classes and residential status.

Land-related customary laws cover a wide range of issues including marital property rights to property boundaries. In tribal areas, the people are free to settle disputes according to their own laws and the national government works in these areas through tribal leaders. Tribes recognize individual land ownership, ownership by a joint or extended family and collective landownership by a tribe (Shirkat Gah 1996; GOP 2006a).

### **Sharecropping**

*Battai* or sharecropping arrangements are commonly found in agricultural land spanning less than 30 hectares. It is estimated that a little over 70 percent of Pakistan's tenanted land was put



under this kind of an arrangement as of 2010. The prevalence of the sharecropping arrangement, which largely favors the landowners, is a cause for concern because as much as 84 percent of sharecropper households are deemed vulnerable to poverty (GOP 2010; Jamal 2017).

The difficulty in reforming sharecropping arrangements can be attributed to the fact that these arrangements span generations, thus making it onerous for sharecroppers to break the chains that bind them to the landowners.

Under this arrangement – almost always unwritten or unbound by actual contracts – sharecroppers provide the landowner with half of the agricultural production. Middlemen may broker sharecropping agreements.

### **Alternative land redistribution schemes**

Redistributing large tracts of land for redistribution to the rural poor who want to own and work on their own piece of land is not the only option available to the government. There are innovative options available for increasing rural land access for the poor.

One of these is the use of micro-plots, which could immediately provide poor farming households with the economic, social, and psychological benefits of landownership.

It will also benefit Pakistan to develop effective means for women to acquire land and water ways consistent with Islamic law and Pakistan's Constitution, as it will unleash women's potential to be even more productive than they already are.

### **Secure property rights**

Similar to the situation in other nations in Asia, land in Pakistan tends to be kept within families with ownership passed on from one generation to another through inheritance. Ownership is almost never registered, however, making these families' hold over their land tenuous, especially in the face of more powerful interests wanting to take over their property.

Registration has been hampered by complicated and lengthy procedures. These discourage landowners from going through the process of registration despite formal laws mandating it.

For land that is under formal titles, it is usually under the name of the head of the household or the eldest male family member. Joint titling is uncommon, although community property rights are recognized.

Islamic law contrasts with State statutes in this aspect as Islamic law allows unrecorded declarations of land donations. Statutory laws, meanwhile, require a write with the *Benami* Act



legalizing documented albeit unrecorded transactions. Land in the Tribal Areas, meanwhile, is not recorded.

There is no official record at this time of the extent of land registration in Pakistan, but will likely be known once digitization across all provinces and territories is completed (Dowall and Ellis 2007; GOP 2006a; SDPI 2008a).

Landowners who cannot or do not want to cultivate land usually have it placed under leasehold or sharecropper arrangements. And because there are quite a number of landowners who no longer want to work the land, the land-lease market is active in Pakistan.

There are two main types of tenancy, one where tenants have statutory rights to occupy the land and another where simple tenants occupy the land according to a contract with a landlord (Bisht 2011).

In rural areas, tenants on smallholdings have seasonal or annual contracts that, as a matter of practice, are generally renewed for a number of years. Nevertheless, the rights of these tenants to access and use the land is not secure.

This has resulted in an uneven power relationship between landed families and the tenants with a weak hold on land, creating dependency and keeps tenants in a lower social and political position.

So far, reforms to the tenant-landowner relationship have been ineffective in increasing security. Thus, tenants have little legal recourse in case of eviction (Jacoby and Mansuri 2006).

### **Land registration system**

There is no central land register that conclusively records all rights pertaining to land from where a prospective buyer can investigate title to land and check it for any encumbrances. In Pakistan the State is not the guarantor of title. A buyer must carry out due diligence by investigating the seller's title and bear responsibility for the eventuality where the title is proved to be defective. In other words, the State does not even guarantee the accuracy of the land record it maintains. Thus, where a buyer has acted in reliance upon governmental records to purchase a piece of land and it is subsequently found that the seller's title was defective, the State will not compensate the buyer. Instead, the matter would be settled by litigation.

There are two overlapping and parallel legal systems that affect the land, the first is the **Land Revenue Act (1967)**. Under this said act, each local *patwari* (land demarcation officer of land department) is mandated to maintain a 'record-of-rights' for land and separately record changes in ownership. This is to help the State collect land taxes.



Over time, due to the lack of an alternative record keeping, the record originally maintained by the revenue officials for fiscal purposes assumed greater significance and gradually became recognized as evidence of title.

## **LEGAL POLICY AND ENVIRONMENT ON ACCESS TO LAND**

There are numerous laws that regulate the ownership, transfer, acquisition, taxation, registration, tenancy, etc. of land. The more prominent pieces of legislation are:

- The Transfer of Property Act, 1882;
- The Punjab Tenancy Act, 1887;
- The Government Tenants Act, 1893;
- The Land Acquisition Act, 1894;
- The Registration Act, 1908;
- The Colonization of Government Lands Act, 1912;
- The Sindh Tenancy Act, 1950;
- The Khyber Pakhtunkhwa Tenancy Act, 1950;
- The Provincial Land Revenue Acts of 1967;
- The Baluchistan Tenancy Ordinance, 1978;
- The Land Record Manual;
- The Land Administration Manual; and,
- The Settlement Manual.

Some of these laws relate to land or property in rural areas, whereas some relate to urban areas, but some have overlapping applications to both types of the property.

Land is one of the primary engines of economic growth and the State often seeks to control and regulate its output. It is no accident, therefore, that in Pakistan, the administration of agricultural land falls under the “Revenue” Department.

### **Land records**

Organized land records are necessary for private ownership and tax-paying purposes. This requires a survey of the lands to know the exact details of land belonging to each owner in the village like size and location. Such also needs a proper system for the measurement, identification, partition, and the delineation of land holdings.

A comprehensive Record of Rights (*Misal-e-Haqiat*) is prepared after carrying out a proper settlement operation of the land after every 25 years and later, *Jamabandi* (prepared after every four years), and the Register of Mutations (*Intaqalaat*) are prepared.



## STATUS OF ACCESS TO LAND BY THE RURAL POOR

Land ownership is the important natural source of security against poverty in rural Pakistan, where agriculture accounts for 42 percent of full time employment and 23 percent of GDP. About 60 percent of Pakistan's population lives in rural areas and 67.5 percent of the rural population depends on agriculture for sustenance. However, landownership is highly skewed in Pakistan. Based on Household Integrated Economic Survey (HIES) 2001 to 2002 data:

- approximately 10.36 percent of the rural population is landless;
- 32.67 percent owns land under 1 hectare;
- 0.046 percent owns between 1 and 2 hectares of land;
- 0.0309 percent owns 2 to 3 hectares of land; and
- only 0.0293 percent owns 5 or more hectares of land.

This means that a large majority of rural households do not own land at all or do not own enough for subsistence. This implies that rural poverty is extremely high. In fact, almost 57 percent of households are involved in non-agricultural work in order to survive. Given this situation, looking at women's ownership, access and control over land is a critical area for investigation if any progress is to be achieved to ensure social protection.

Unequal command over property, arguably, is the most severe form of inequality between men and women today.

It needs to be mentioned that the application of the Tenancy Acts remains negligible in the neo-liberal era. In some parts of the country, *begari* (forced and unpaid labor) continues. The poor peasants or the *hari* do not receive their legal share of the produce.

### Small farmers

Agriculture is the mainstay of the economy of Pakistan. About 45 percent of the population generate their income from the agriculture sector and 85 percent of them are small farmers. According to the standard definition, a *small farmer* is someone operating less than 12.5 acres (five hectares) of irrigated land or less than 25 acres (10 hectares) of non-irrigated land.

In contrast, big landlords are defined as those holding more than 50 acres (20 hectares) of land in Punjab and Khyber Pakhtunkhwa (KP), and over 64 acres (26 hectares) of land in Sindh and Balochistan.

The average farm size in Pakistan is 5.6 acres (two hectares), less than half of what it was back in 1972. This makes it difficult for banks to reach out to the underserved segments of agricultural borrowers. Small farmers are those who hold up to 12.5 acres (five hectares) in Punjab and KP, up to 16 acres (six hectares) in Sindh and up to 32 acres (12 hectares) in Balochistan.



## **Family owner-cultivators**

This group of landowners includes all those possessing 7.5 to 25 acres (three to 10 hectares) of irrigated land or a corresponding area of non-irrigated land. They number around 300,000. They personally cultivate their land with one or two pairs of bullocks, and in the upper size range, may hire a farmhand. Farming is considered a family enterprise.

Some owner-cultivators have increased their farm acreage by renting some land in addition to that owned. This group forms the upper class of the village society, especially if no landlord resides there. They enjoy relative economic security, reasonable income, and the prestige resulting from being a landowner.

Usually, they belong to a respected caste (*zaat*) which improves their position even more. They control village politics, occupy posts at union council level, in cooperatives, etc. and are very often, excellent farmers with all the positive attributes of family farms, i.e. they achieve high cropping intensity and non-monetary capital formation to improve the farm.

## **Rural women**

Women's ownership and control of land have positive linkages with sustainable development, reduction of poverty, food security, and environmental concerns. The control and ownership of land are also integral to the independence and security of women. But despite the wide recognition of the links between a gender-balanced land policy and development, the topic of women's land rights is hardly discussed in Pakistan.

### **Legal context of women's land rights**

Civil laws in Pakistan do not discriminate against women. But matters related to succession and inheritance are dealt with under West Pakistan Muslim Personal Law, which stipulates that women get half the share of a male sharer.

There have been three State-led land reforms in Pakistan under different governments but none of these recognized women as a separate group or stakeholders in property rights. However, as an unintended outcome of the 1959 land reforms, some women did receive land when landowners transferred land to women within their families in order to escape redistribution of land to the landless. The part of Islamic law that accorded women some rights, albeit unequal, was not enforced and the ownership and transfer of land continued to be governed by customary laws that exclude women altogether.

Even if women wanted to claim their rights, they could not receive land because they were not enrolled on revenue records as tenants; and no legal mechanisms were developed to



acknowledge women's economic contribution inside and outside the home and the agricultural labor that they provide.

Men and women have different views on women's rights to own and control land. While the idea of women having the right to own and control land on their own, based on the concept of religious and human rights is generally accepted by men, very little has been done by men to help women in their families have secure rights to property. This also despite the fact that men in Pakistan have expressed faith in women's ability to manage and control land, even on their own. In short, words have not translated into deeds.

The usual arguments against upholding women's right to land include supposed inability of women to manage land; the threat that it will destroy traditional social structures and gender roles and possible compensation for women for the lack of land rights with a dower and other occasional gifts from their natal family and security from male relatives. But there are also men who see the lack of women's land rights as part of the general plight of the poor and vulnerable landless peasants.

On the other hand, women know full well the importance of having rights to own and control land. Most women also believe that having an increased dower or gifts from family and relatives does not fully compensate for the absence of these rights that are increasingly being considered as fundamental human rights. Unfortunately, even if they do know about the importance of having rights over land, women rarely seek government help in enforcing their rights, such as to inherit land. And they cannot be faulted for this as State institutions and social protection systems are not strong enough to help them. At this time, women are almost entirely dependent on their family and the security that they get from their male relatives. Hardly anyone is brave enough to jeopardize that relationship by fighting for land rights. Also, most women feel that the legal system is too complex for them to engage in and understand. And lastly, they do not have enough faith in the ability or even willingness of State institutions to dispense justice and uphold their legitimate rights to land.

## **LAND GOVERNANCE**

Land governance involves the procedure, policies, processes, and institutions by which land, property, and other natural resources are managed. This includes decisions on access to land, land rights, land use, and land development.

Land administration is a part of land governance. In Pakistan, land administration is complex due to issues ranging from policy, economic, social, technical, legal and political to institutional.



The key policy issues include existence of non-conducive policies and the policy implementation environment. It is therefore recommended that various departments engaged with LA in the country should be aligned and synchronized to facilitate implementation efforts.

Pakistan is less developed economically, and is therefore unable to allocate enough funds for LA-related technologies and human resources.

The complex legal framework that delays the implementation of land administration, unnecessary restrictive laws and regulations, and weak land rights legislation have worsened the situation. Thus, people go to the courts to resolve land disputes.

### **Digitization of land records**

In 2012, the government of Punjab started the digitalization of land records. Supported by the World Bank, the government replaced the error and corruption-prone manual land recordkeeping with a digital “Land Records Management and Information System (LRMIS)” handled by professional staff in 144 modern land record centers across the province’s 36 districts.

Within just five years, the project scanned 10 million pages of old records, digitized all land records for over 55 million landowners across the province of Punjab, and made digital land title information easily accessible online. As a result, the time needed to complete a transaction dramatically decreased from two months to just 50 minutes.

The project not only helped to increase land value for landowners, but also empowered women and poor farmers, whose land rights were not adequately protected in the old system. This system helped reduce the chances of fraud and corruption.

A similar project was replicated in Sindh Province. The Sindh Board of Revenue has digitized the revenue record of 29 districts, while properties in 2,300 villages out of 2,500 in Punjab have been brought online under the LRMIS. The computerization of land records in Punjab and Sindh promises an end to infamous *patwari* (field official of land revenue department) culture.

## **LAND CONFLICTS**

According to the Human Rights Commission of Pakistan (HRCP), various forms of land grabbing continue across the country. The USAID also noted in its report on land rights that “land disputes are prevalent in rural and urban areas throughout Pakistan.”

In July 2016, a Supreme Court judgment cited by The Express Tribune stated: *“In our society, the acts of illegal dispossession are largely committed at the behest of persons who are rich, powerful feudal lords, politicians, builders, government functionaries or persons who head*



*large communities, and on account of their influence and power that place them in domineering positions either over their fellow community members or over less powerful communities living in an area of their influence.”*

According to an Amnesty International researcher, speaking to Al Jazeera in 2014, Pakistan’s blasphemy laws were reportedly used ‘to make unfounded malicious accusations to settle personal scores in land and business disputes. The International Crisis Group (ICG) stated in its 2014 report on policing urban violence that “unresolved land disputes are often settled by force, turning civil cases into criminal ones.”

Pakistan’s formal court system also has jurisdiction to hear land cases, creating a parallel structure of courts. Land disputes are the most common form of dispute filed with the formal court system, perhaps in part because filing a case may stay a pending revenue court proceeding. Pakistan’s judiciary is hampered by low pay, poor training, and a large volume of cases. Between 50 and 75 percent of cases brought before lower-level civil courts and the high courts are land-related disputes. By one estimate, over a million land cases are pending countrywide.

Major causes of land disputes are inaccurate or fraudulent land records, erroneous boundary descriptions that create overlapping claims, and multiple registrations to the same land by different parties. Credible evidence of land rights is often nearly impossible to obtain. Land cases can take between four and 10 years to resolve.

According to The News International, reporting in October 2016 on plans to overhaul Pakistan’s justice system, up to 80 percent of Pakistan’s civil case load has to do with land acquisition and titling disputes, with a large percentage of those disputes arising out of land grabbing and misappropriation of property.

### **Mechanisms for resolving land conflicts**

In the formal litigation process or adjudication in Pakistan, the decision-maker is a judge at a regular court, a specialized land court or a tribunal. In this respect, the process of conflict resolution is formal. Both parties appoint a lawyer to present their case at the court and the judge makes an evidence-based decision.

In Pakistan, being a Muslim-majority State country, land conflict resolution is often based on *Shariah* (Muslim personal law) which can be roughly translated as the *Islamic Civil Code*; this is a popular practice among the rural population. However, with modernization reaching even the distant villages of Pakistan, the popularity of this practice is on a decline.

For tribal people, conflicts are resolved by *Jirga* (a traditional tribal committee of justice, headed by tribal elders and chieftains). They resort to customary conflict resolution, which is a form of



arbitration with a strong conciliatory character, whose words are law. However, this system is not legally recognized in Pakistan.

### **Effectiveness of legal and institutional frameworks**

The legal and institutional frameworks have a very limited capacity in respecting, protecting, and resolving land conflicts, and preventing violence.

One reason is that land related laws are often unclear and unnecessarily complicated. Another reason is the institutional bias towards the rich and the powerful.

## **TRANSPARENCY IN LAND GOVERNANCE**

Transparency in land governance plays an important role in making the system efficient as well as improving land markets and reducing land-related conflicts.

There is space for forming Land Management Committees which include CSOs along with water-users' associations, *Kisan* (farmer) committees, and district and sub-district (*tehsil*) committees for lease settlement.

It is also possible to include representatives of farmers' associations, water-users' associations, women's groups, and NGOs in the National Land Settlement Committee to ensure transparent land governance and administration in the country.

### **Mechanisms for participation in land governance**

There are some mechanisms – community monitoring, community scoring, community advocacy, social auditing, public hearing, policy advocacy, mass campaign – whereby land rights CSOs or NGOs, and through them, the marginalized and poor rural women and indigenous people, are able to participate in land governance.

Pakistan's government provides a range of support measures including promotion and establishment of "invited space" (civil society representation in different government committees, such as National, District, and *tehsil* Land Management and Distribution Committee) and dialogues on policy matters.

### **CSO Participation in Land Governance**

There is space for CSOs, though limited, to participate in land governance. CSOs have been advocating and campaigning for pro-poor, pro-marginalized issues in the vested property rights movement.



CSOs are trying to broaden their space to participate in land governance through strengthening the proven strategies and exploring innovative actions. On the other hand, the vested interest and anti-reform groups, including a portion of the politicians and the bureaucracy, are agile in shrinking the space through power and party politics.

There are CSOs networks such as National Peasants Coalition of Pakistan (NPCP), Pakistan Kissan Ittehad (PKI), which could play important roles in participation in land governance through their vast networks.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Land rights and land access in Pakistan**

- The majority of the Pakistani rural poor are powerless and marginalized; they include the unemployed, victims of ecological disaster, religious, and ethnic minorities.
- In rural Pakistan, there still exists a strong causal relationship between land ownership and poverty; the same goes for land ownership and human development. The more land one owns, the more chances he has to escape from the jaws of poverty.
- Commercial pressure on land, due to housing and industrial needs, has been increasing. The key issues that adversely affect the access to land of the rural poor are commercial use of land and land grabbing. Setting up commercial plantations, contract farming, fixed rent leasing, problems associated with land registration systems, development projects like the exclusive economic zones (EEZs) and national parks, among others, have further restricted land access of the poor and marginalized rural people.

### **Legal and policy environment on access to land**

- The Land Reform Act of 1977 and provincial tenancy acts, among other laws and policies, make up the legal framework that defines ownership, control, and access to land. Some sections of these laws and policies acknowledge the rights of some marginalized groups over land, though there is serious lack of implementation to ensure and safeguard those rights.
- Existing land laws do not recognize and protect customary rights, informal rights, and equal land rights for women, as required. Legal recognition and protection becomes more vulnerable when questions arise regarding implementation.
- There have been limited efforts at land redistribution and tenure reform mostly through the implementation of a ceiling for land ownership. Among many other policies, laws, rules and orders, Land Reform Act (1977) and provincial tenancy acts are major legal instruments for improving the poor's access to land and tenurial security.



## Status of access to land by the rural poor sectors

- More than 65 percent of the country's farmers are *small* farmers.
- Rural Pakistan abounds with family farming households. It safeguards food security for marginalized peasants and poor households. It also creates jobs for women, men and young people, both within their family farms and in related enterprises along food and agricultural value chains.
- Agriculture policies are supportive of family farms and small-scale producers. However, support services, capacity building, rural infrastructure, financing for small farmers, and producers are not adequate.
- Land distribution is very unequal in Pakistan. Large farmers with land holdings of more than 10 hectares comprise only 6.8 per cent of country's farmers, but account for 39.8 percent of the total farm area.
- Contract farming, land grabbing, and out-migration of the rural youth seem to be major threats to family farming and small-scale production.
- Different articles of the Constitution of Pakistan make no discrimination between the sexes over land rights and access. Moreover, Pakistan ratified the Convention on Elimination of All Discriminations Against Women (CEDAW), though with reservations about articles that have to do with women's inheritance rights. Despite these developments, the existing legal framework does little to protect women's land rights.
- The land rights of women are stalled by religious and customary laws that overly discriminate against them. Apart from religious traditions and cultural beliefs, the patriarchal mindset of society impedes women's equal rights to land. The government land registration system, being complex, expensive, and time consuming, is not women-friendly at all.

## Resolution of land conflicts and protection of land rights workers

- The major causes of land conflicts over the past 10 years are political, economic, socio-economic, sociocultural, demographic, legal and judicial, administrative, and technical in nature.
- To address grievances and resolve conflicts, besides the formal judicial system, there are consensual (facilitation, moderation, consultation, mediation, and conciliation) and non-consensual (arbitration) mechanisms in place, but they are not sufficient.
- The country's legal and institutional framework is not that effective in respecting, protecting, and resolving land conflicts.
- Due to pressure from land rights CSOs, among others, measures have been taken to prevent land conflict and to protect land rights defenders, but they prove to be largely insufficient.



## Transparency in land governance and administration

- There are some mechanisms like community monitoring, community scoring, community advocacy, social auditing, public hearing, policy advocacy, mass campaign, whereby land rights CSOs, and through them, rural women and indigenous people, are able to participate in land governance. However, the effectiveness of these mechanisms has been limited.
- Information and data on land and tenure-related issues are available to some extent, for which the Right to Information Act 2009 deserves credit. Some of these information and data are accessible to general public, are free of cost, and are relevant as well as reliable. However, there is much to do to make them timely and more user-friendly by completing the ongoing digitalization process, along with other reform initiatives.
- There is limited space for CSOs for participation in land governance. However, in the face of vested interest groups, CSOs are trying to widen their scope for participation.

## OPPORTUNITIES FOR ADVANCING LAND RIGHTS

The land rights situation in Pakistan is not satisfactory for the poor and powerless sections of the society. There are both legal and administrative encumbrances to ensure their rights over land. Some of those date back to the colonial period while others emerged in relatively recent times. Moreover, there are deep social prejudices, especially against the poor and powerless, that make their life more vulnerable than others. Hence, to advance land rights in Pakistan, taking only legal-administrative steps will not be enough. Efforts should be made by both the government and CSOs to change the predominant hierarchical social psychology and attitudes.

## RECOMMENDATIONS

### For Government

#### 1. *Secure Tenure Rights*

- a) A National Land Use Policy should be formulated and implemented as soon as possible so that the land rights of women and men living in poverty can be respected, protected, and strengthened, ensuring that no one is deprived of the use and control of the land on which their well-being and human dignity depend.
- b) Effective mechanisms need to be devised to ensure successful retention of land by the rural poor.
- c) In order to ensure empowerment of their tenancy right, all sharecroppers must be provided with legal deeds and agreements signed by them and landowners.



## **2. Strong Small-scale Farming Systems**

- a) Distribute all agricultural State land to the poor and landless immediately.
- b) A support system needs to be instituted to provide relevant productive assets (cattle, plough, irrigation machineries, and equipment), recurrent inputs (seed, fertilizer, water, pesticide, etc.) to the landless, small-scale rural producers. A system must also be put in place to protect them from the “free market.”
- c) Organize cooperative farming in all possible situations; organize cooperatives for input, credit, marketing, and other productive purposes.

## **3. Diverse Tenure Systems**

- a) Formalize the tenure-related customary laws and practices of forest dwelling people, pastoralists, thus formulating a new and vibrant policy framework.

## **4. Equal Land Rights for Women**

- a) Inheritance laws should be enforced with adequate provisioning for women’s inheritance. If the male heirs of the property are absent and the female(s) are permanently residing in Pakistan, the property should be leased-out to them until final settlement is made.
- b) A national policy framework should be formed to formalize equal land rights of women, abolishing the existing discriminatory traditional laws.

## **5. Locally-managed Ecosystems**

- a) The Land Use policy should be formulated with a directive to enable the role of local land users in territorial and ecosystem management, recognizing the need for sustainable development and the stewardship of ecosystems through participatory decision-making and management at the territorial level, empowering local land users and their communities with the authority, means, and incentives to carry out this responsibility.

## **6. Inclusive Decision-making**

- a) The committee for the identification of vacant State land should be reorganized to include civil society representatives.
- b) A “watchdog” mechanism (e.g., citizens committee) needs to be developed to monitor land identification, distribution, and post-distribution situation.
- c) A committee for resolution of land related disputes at the local level should be formed under the leadership of local elected representatives, along with representatives from judicial department, local administration, law enforcing agencies, land revenue offices, landless groups, CBOs/NGOs, and local people. There must be attempts to resolve land-related disputes at the Union Parishad before filing suits at the district-level court.



## **7. Transparent and Accessible Information**

- a) The government should establish a “Land Data Bank.” This Bank shall have a computerized database containing detailed information about the following:
  - records on land and water bodies by types, locations, distribution status, disputes and conflicts;
  - account of all vested land by types, location, lease status, and other variables;
  - data on illegal takeover of indigenous people’s land by force, fraud and manipulation, as well as subsequent disputes and conflicts.
- b) Information should be suitably classified and organized, so that it can be retrieved quickly, in forms suitable for specific purposes.

## **8. Effective Actions against Land Grabbing**

- a) All land illegally occupied by the land grabbers should be recovered as soon as possible.
- b) Measures should be taken to minimize the influence of the Members of the Parliament, powerful individuals and officials in the committee who exercise monopoly power and/or engage in corrupt practices.
- c) Individuals and government officials engaged in preparing fake land documents should be penalized accordingly. The government should strictly penalize those who adopt fraudulent measures and terrorism to grab land.

## **9. Protection for Land Rights Defenders**

- a) The proposed National Land Policy should include the policy directive to protect land rights defenders.
- b) Land rights defenders should be provided with training facilities, online courses, and other relevant resources to build their capacity.
- c) The government should provide land rights defenders with urgent medical support in cases of injuries as a result of conflicts, legal assistance during land litigations, and financial support for their families in case of their death.

## **For CSOs**

- Many land-water-forest related laws have been analyzed from rights-based approach, and accordingly, new laws/amendments have been devised through participatory research. CSOs must lobby with Parliament to enact these relevant laws, and be engaged in monitoring their proper implementation.
- The local and sub-district level civil society organizations should raise their voice for a free and fair distribution of relevant land and water-bodies to the landless rural producers.
- All the peasants’ organizations should be united in the struggle for poor people’s rights over land, and launch a movement against corrupt practices and inefficiencies of the government in ensuring poor people’s legal and justiciable rights over land and water bodies.

- Land rights related CSOs should lobby that the government institute Alternative Dispute Resolution (ADR) mechanisms.
- CSOs may conduct research studies on new land-rights issues (like individual tenurial security, gender sensitive land governance mechanisms, etc.) as well as on old ones (ex. land litigation) to monitor the rural poor's land rights and access status. ■

### ACRONYMS USED

ADR	Alternative Dispute Resolution
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
CBO	community-based organization
CEDAW	Convention on Elimination of All Discriminations Against Women
CSO	civil society organization
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
FATA	Federally Administered Tribal Area
GDP	Gross Domestic Product
HIES	Household Integrated Economic Survey
HRC	Human Rights Commission of Pakistan
ICG	International Crisis Group
KP	Khyber Pakhtunkhwa
LWA	Land Watch Asia
LRMIS	Land Records Management and Information System
OHCHR	Office of the High Commissioner for Human Rights
NPCP	National Peasants Coalition of Pakistan
NGO	non-governmental organization
PATA	Provincially Administered Tribal Area
PES	Pakistan Economic Survey
SDGs	Sustainable Development Goals
SDPI	Sustainable Development Policy Institute
SCOPE	Society for Conservation and Protection of Environment
USAID	United States Agency for International Development
UN	United Nations

### GLOSSARY OF LOCAL TERMS

<i>Benami</i>	Property without title or name
<i>Barani</i>	Land with no irrigation infrastructure; rainfed land
<i>Hari</i>	Share cropper, tenant
<i>Jirga</i>	Council of tribal elders who hears disputes and makes judgment, alternative judicial system
<i>Munshi</i>	Manager of landowner
<i>Patwari</i>	Field officer of land and revenue department who holds records and is responsible for farm land measurements
Shariah	Islamic law; Muslim personal law
<i>Tehsil</i>	Sub-district; administrative division
<i>Tehsildar</i>	The officer responsible for the collection of land revenue tax and land administration



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# Governance of agricultural lands, ancestral domains, and aquatic resources in the Philippines:

CSO Land Reform Monitoring Report in the Philippines 2018<sup>1</sup>

*An initiative of the Land Watch Asia Campaign*

This study is part of the Land Watch Asia (LWA) campaign coordinated by ANGOC. Over the years, the LWA campaign has contributed to efforts of policy reform or safeguard by supporting the advocacy work of partners and other campaigns, through: (a) the development of evidence-based information, (b) the identification of strategic areas for policy advocacy with governments, and (c) the support for country dialogues and mobilizations. The preparation of LWA Country Land Monitoring Report is part of LWA's efforts to affect these strategies.

For 2017 to 2018, the LWA Philippines Land Watch Monitoring Report aims to:

- provide an overview of the current policy and legal environment on access to land and tenurial security of the rural poor specifically the farmers, indigenous communities and fisherfolks;
- describe their land access status and the emerging issues; and,
- identify opportunities for advancing land rights in the country.

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<sup>1</sup> This is an abridged version of the CSO Land Reform Monitoring Report in the Philippines: 2018 prepared by the Xavier Science Foundation (XSF) with inputs from Dave de Vera, Marita Rodriguez, Anthonoy Marzan, Maricel Tolentino, and Timothy Salomon, as part of the Land Watch Asia (LWA) campaign. This 2018 LWA country monitoring report focuses on land governance, and is supported through the project "Sustainable, Reliable and Transparent Data and Information towards Responsible Land Governance: Putting Commitment 8 into Action."

**Citation:**

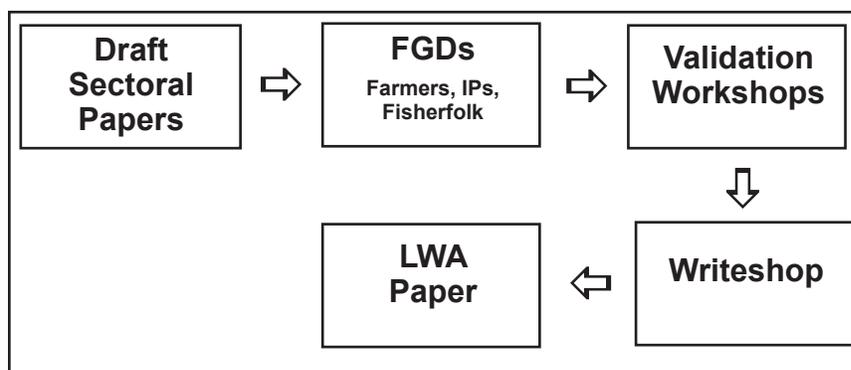
Ravanera, R. (2018). Governance of Agricultural Lands, Ancestral Domains, and Aquatic Resources in the Philippines: CSO Land Monitoring Report in the Philippines 2018. In ANGOC (Ed.). *State of Land Rights and Land Governance in Eight Asian Countries: Forty Years after the World Conference on Agrarian Reform and Rural Development* (pp. 222 to 253). Quezon City: ANGOC.



The paper is also directed towards contributing to the articulation of 2019 National Engagement Strategy (NES) of the International Land Coalition (ILC) - Philippines specifically on networking, mobilization, and influencing policies.

The LWA – Philippine paper is anchored on three sectoral papers on resource reforms in agricultural lands, ancestral domain, and aquatic resources. Such papers were presented in focus group discussions (FGDs) among selected leader-representatives from farmers, indigenous communities, and fisherfolks organizations together with their partner CSOs. Outputs of the FGDs were then presented in round table discussions with representatives from government agencies, specifically the Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR), Bureau of Fisheries and Aquatic Resources (BFAR) of the Department of Agriculture (DA), National Commission on Indigenous Peoples (NCIP), and Commission of Human Rights (CHR).

**Figure 1. Process undertaken in drafting and finalizing the Philippines Land Watch Monitoring Report**



Using the outline of LWA, the author consolidated the inputs and incorporated additional information from secondary literature, including the salient points of the 2017 to 2018 Land Conflict Monitoring Report in the Philippines prepared by Timothy Salomon of ANGOC. The draft LWA Land Monitoring Report was then presented during a multi-stakeholder consultation in September 2018, discussed, and subsequently finalized.

The paper covers current laws, policies and programs on agricultural lands, ancestral domains, and aquatic resources, particularly on the access to these resources by the farmers, indigenous communities and fisherfolks, respectively. It does not cover, however, public lands and those settling on these resources.

## **OVERVIEW OF ISSUES ON LAND RIGHTS AND LAND ACCESS IN THE PHILIPPINES**

Governance of agricultural lands, forests and aquatic resources in the Philippines, as in many other Asian countries, has significant impact on the country’s development. Land tenure, in particular, is identified as a major constraint in overcoming rural poverty as it is closely linked to



the challenges faced by agricultural households such as hunger, limited access to basic services, low productivity, and underemployment.

While resource governance has gone a long way in the Philippines, much still needs to be covered and accomplished as indicated by the level of poverty. More than one-fifth (22 million) of the country's total population still live below the national poverty line (PSA, 2015). The World Bank in its 2018 Poverty Assessment Report stated that three quarters of the poor reside in rural areas. About two-thirds of these poor households still highly depend on agricultural activities, even while agricultural employment decreased from 36 to 28 percent between 2006 to 2015.

Among the subsectors of agriculture, those living in the uplands and engaged in forestry activities have the highest incidence of poverty at 68 percent. Majority of these upland dwellers are indigenous peoples (IPs) estimated to be between 10 to 20 percent of the national population (PIDS, 2012). The Family Income and Expenditure Survey done by the PSA in 2015 also found that farmers and fishermen consistently registered as the two sectors with the highest poverty incidence since 2006.

This high level of poverty incidence persisted despite the high gross domestic product (GDP) growth. According to the World Bank 2018 report, the Philippines' annual GDP grew on the average by 5.4 percent from 2006 to 2015, up from 4.1 percent in 1996 to 2005 and 3.4 percent in 1986 to 1995. Unfortunately, agriculture experienced minimal growth, contributing to GDP growth by an average of 0.2 percentage points (compared to 1.9 percentage points for industry and 3.4 percentage points for services) over the period of 2006 to 2015 (World Bank, 2018).

### **Access to land and resources**

Addressing this unbalanced development comes with urgency given increasing pressures on resources. With over 105 million Filipinos in a land area of around 30 million hectares, land is not mainly intended for food production but also to provide for the growing demand for settlements, infrastructures and other commercial needs such as tourism, mining, and industrialization. These competing demands for land are also incongruous as the country strives to contribute to the attainment of the global Sustainable Development Goals (SDGs) of eradicating poverty and reducing food insecurity.

### ***Agricultural lands***<sup>2</sup>

Of the country's 30 million hectares total land area, around nine million hectares are used for agriculture with around 3.9 million planted to rice (PhilRICE, 2010). Some 14.19 million hectares are classified as alienable and disposable lands (A&D lands) with 9.63 million hectares already titled (DENR, n.d.).

<sup>2</sup> Data and information for this section were taken from the paper of Anthony Marzan of Kaisahan and AR Now! on the State of Agrarian Reform in Agricultural Lands.



But given the growing demand of market forces for land, the debate rages on whether it is necessary to protect agricultural lands to ensure the country's food self-sufficiency or allocate lands based on optimal economic use.

DAR data on approved land conversions show that 168,041 hectares of agricultural lands were converted and/or exempted from CARP coverage. However, this does not show the real picture, as there are thousands of undocumented and illegally converted irrigated and irrigable agricultural lands, and the DAR has not been prosecuting violators of conversion regulations.

As an agricultural country, two-thirds of the Philippine population are directly and indirectly exposed to the impacts of climate change events. Agrarian reform beneficiaries (ARBs) are most likely to be affected by climate change mainly because higher productivity depends on weather, water supply, and remaining biological resources, but more critically, because they rely on their produce for food and livelihood. The damages to the ARBs' crops are in billions of pesos annually and most of them have no access to crop insurance and other programs to mitigate the effects of climate change to their farms.

### ***Ancestral Domains***<sup>3</sup>

Indigenous peoples (IPs) lay claim to their ancestral lands and integrated ecosystems that are considered part of their domain. The current IP population in the country is estimated at 12 to 15 million, but the figure is being contested as different sources are citing different figures.<sup>4</sup> Notably, poverty incidence in the uplands where majority of the IPs reside is still very high.<sup>5</sup>

Ancestral lands and ancestral domain cover more than 20 percent of the total land area of the country and have significant contributions to biodiversity, resource conservation and environmental protection.

The definition of ancestral domains covers forests, pastures, residential and agricultural lands, hunting grounds, worship and burial areas, and includes lands no longer occupied exclusively by indigenous cultural communities, but to which they had traditional access, particularly the home ranges of indigenous cultural communities who are still nomadic or shifting cultivators. (IPRA, Chapter 3, Section 3-a)

For IPs, land rights are associated with territory and de facto rights to traditional self-governance, that go beyond private property and legal titles. The ultimate measure of land rights is self-governance.

<sup>3</sup> Data and information for this section were taken from the paper of Dave de Vera, PAFID, on the Indigenous Peoples' Rights under IPRA.

<sup>4</sup> Preliminary data presented by the Philippine Statistics Authority (PSA) show an indigenous population of 8 million, which constitutes a drastic and unrealistic reduction of 6 million from the population estimate of 14 million by the National Commission on Indigenous Peoples (NCIP) (Source: TEBTEBBA). The Episcopal Commission on Tribal Filipinos (ECTF) in 1995 identified at least 40 ethno-linguistic groups with a population of about 6.5 to 7.5 million (10 to 11 percent of the country's population in 1995).

<sup>5</sup> PIDS



There has been a high 18 percent accomplishment rate for issuance of Certificates of Ancestral Domain Titles (CADTs) to IPs. Yet, IPs remain in absolute poverty. The long-term benefits of the issued tenure instruments or titles on indigenous communities is uncertain. Farmers, through CARP, can access support services and facilities but not IP groups. Actual access and control of IP communities over their ancestral domains are also heavily threatened by foreign or local land investments; extractive industries, such as mining, quarrying, logging; other land ownership programs; private land claims; and local government expropriation, among others.

### ***Aquatic Resources***<sup>6</sup>

As an archipelago, the Philippines is endowed with abundant fishing and aquatic resources. It has 2,200,000 square kilometers of territorial waters and a coastline length of 36,289 kilometers. Inland waters where small-scale fishers are also located, include swamplands, lakes, rivers, and reservoirs that cover a combined area of 546,000 hectares (BFAR, 2016).<sup>7</sup>

The fishing industry contributes some 1.3 percent of the country's GDP. In 2015, the country ranked 9th among the top fish producing countries in the world, and 11th in aquaculture production (*Ibid*).

The fishery sector may be subdivided into three sub-sectors: a) municipal fisheries, b) aquaculture, and c) commercial fisheries. Municipal fisheries<sup>8</sup> account for 26 percent of total fish production while aquaculture accounts for 51 percent and commercial fisheries contribute 23 percent. In terms of population, municipal fisheries sector comprises 85 percent of all fishing operators nationwide. The latest figures from the Fisheries Registration System of BFAR shows that there are some 1.93 million registered municipal fishers (*Ibid*).

The municipal fisherfolk rank among the poorest of the poor where 34.3 percent live below the poverty line (PSA, 2017).

## **OVERVIEW OF THE LEGAL AND POLICY ENVIRONMENT ON ACCESS TO LAND**

Poverty in the Philippines remains a major challenge. It is important to emphasize that the Philippines has signed on the international convention to achieve the Sustainable Development Goals (SDGs) with Goal Number 1 aiming to eradicate poverty. One of the indicators included now for Goal 1 is on land tenure or access to resources to help address poverty. There are many laws responding to this issue and yet, so many remain poor in the Philippines.

<sup>6</sup> Data and information for this section were taken from the sectoral paper of Marita Rodriguez of the NGOs for Fisheries Reform (NFR) on the State of Fishery Reform.

<sup>7</sup> BFAR Fisheries Profile 2016.

<sup>8</sup> Municipal fisheries refer to fishing activities in municipal waters (inland waters or within 15 km from the coasts) that use fishing vessels of three gross tons or less, or fishing not requiring the use of fishing vessels (Sections 57 and 58 of the Fisheries Code).



Philippine lands are either *inalienable* (owned by the State) or *alienable and disposable* (may be privately owned). Various laws govern the nature and utilization of these lands.

The current legal framework for access to land is rooted in the 1987 Constitution. Article II, Declaration of Principles and State Policies, lays down the general principles of access to land: (i) Protection of property [Section 5]; (ii) Promotion of social justice and human rights [Sections 10 and 11]; (iii) Promotion of rural development and agrarian reform [Section 21]; (iv) Promotion of the rights of indigenous communities [Section 22]; (v) Promotion of a self-reliant and independent national economy [Section 19]; and, (vi) Protection of the right of the people to a balanced and healthful ecology [Section 12].

Other provisions in the Constitution further underscore these principles:

- **Protection of property.** Property can be taken away, but only with due process, and in certain cases, with just compensation (Article III, Sections 1 and 9).
- **Promotion of social justice and human rights.** The use of property must be regulated in the interest of social justice (Article XIII, Section 1 and Article XII).
- **Promotion of rural development and agrarian reform.** The State must undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of its fruits (Article XIII).
- **Promotion of the rights of indigenous communities** establishes the rights of indigenous communities to their ancestral lands. Section 5 of the Article on National Economy and Patrimony requires the State to protect the rights of indigenous cultural communities to their ancestral lands (Article XIII, Section 6).
- **Promotion of a self-reliant and independent national economy.** The national economy must create a more equitable distribution of opportunities, income, and wealth and refers to agricultural development and agrarian reform as the basis for industrialization and full employment. The State must also protect Filipino enterprises against unfair foreign competition and trade practices (Article XII, Section 1).
- **Protection of the right to a balanced and healthful ecology.** Ecological considerations were made as bases for the State's prioritization and setting of retention limits in undertaking agrarian reform. Congress must determine the boundaries of forest lands and national parks. Such forest lands and national parks are to be conserved. Congress shall provide measures to prohibit logging in endangered forests and watershed areas (Article XIII, Section 4). Requirements for conservation, ecology, and development, shall be considered by Congress in the determination of the size of lands of the public domain which may be acquired, developed, held, or leased (Article XIII, Section 3).

In sum, the 1987 Constitution shows a consistent policy that links land ownership and use to equitable distribution of wealth and to a balanced ecology. Corollary to this main policy are the restrictive policies on the alienation of lands and on the use of alienated and private lands, the



policies on the conservation and protection of resources, and the recognition of the rights of farmers, indigenous communities and other marginalized groups. These policies should serve as the yardstick for legislation pertaining to access to land.

Resource governance in the Philippines took on a sectoral approach in enacting laws, establishing administrative agencies and resolving disputes. A national comprehensive land use plan, though long been filed in Congress, is still to be enacted. Thus, the discussion below on resource rights and access to resources is segmented and focused on the three major resources in the country: agricultural lands, ancestral domain and aquatic resources.

### **Agricultural Lands<sup>9</sup>**

Governance in agricultural lands has a long history in the Philippines. The current governing law came after the ouster of President Ferdinand Marcos and the installation of Corazon Aquino as president in 1987. One of her campaign promises during the 1986 presidential elections was to make agrarian reform a centerpiece program of her administration.

*Legal Basis.* The Comprehensive Agrarian Reform Law (RA 6657) was enacted by the Philippine Congress in 1988 to acquire and distribute public and private agricultural lands to all qualified agrarian reform beneficiaries. It also provides support services to beneficiaries and just compensation to landowners. It prohibits transfer, conveyance of awarded lands except through hereditary succession.

The Comprehensive Agrarian Reform Program (CARP) was originally set for 10 years. Unfortunately, the Department of Agrarian Reform (DAR), the administering government agency, failed to complete the CARP's target of land acquisition and distribution (LAD). Farmers and their support groups lobbied the Philippine Congress for extension. In response, Congress enacted RA 8532 extending CARP for another 10 years and allocating funds to complete CARP's LAD phase.

But then again, in 2008, DAR still failed to complete the LAD. Agrarian reform stakeholders launched a massive campaign for the passage of the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER) and, in August 2009, the CARPER law or RA 9700 was passed. CARPER continued the provisions contained in CARP with noteworthy reforms, among which are:

- *Budget.* It mandates the continuing appropriation of at least Php 150 billion to the agrarian reform program.
- *Mode of acquisition.* It removes the Voluntary Land Transfer (VLT) and explicitly prohibits Stock Distribution Option (SDO).

<sup>9</sup> Data and information for this section were taken from the paper of Anthony Marzan of Kaisahan and AR Now! on the State of Agrarian Reform in Agricultural Lands.

- *Repayment.* The law institutionalized the affordability clause to prevent farmers from paying an excessive amount for their land.
- *Penalty for delaying program implementation.* It increases the penalty for derailing and delaying the implementation of the agrarian reform program.
- *Support services.* Forty percent (40%) of the DAR budget is allocated to support services and provides initial capital to new ARBs and socialized credit to existing ARBs.
- *Gender equity.* It mandates equal support services for men and women ARBs.
- *Dispute resolution.* It gives DAR exclusive jurisdiction in all agrarian related disputes and prohibits lower courts to issue temporary restraining orders or injunction to CARP implementation.

### ***Updated Policies***

Major changes to R.A. 6657 as amended by R.A. 9700 were later made, some of which have implications on the swiftness or delay of the land distribution and acquisition process.

#### *Administrative Order No. 7, series of 2011*

Former DAR Secretary Virgilio delos Reyes issued a revised rules and procedures governing the acquisition and distribution of private agricultural lands acquired through Compulsory Acquisition (CA) and Voluntary Offer to Sell (VOS). AO 7 of 2011 restrained DAR to proceed with CARP coverage beyond the issuance of the Memorandum of Valuation (MOV) if a protest questioning CARP coverage is pending. Further amendments to this order are:

- Administrative Order No. 10 series of 2014 provides guidelines governing the identification, screening and selection of Farmworker beneficiaries for Haciendas, Commercial Farms or Plantations.
- Amended by AO No. 5, series of 2017 addressed this major loophole by allowing the land acquisition and distribution process for landholdings with pending cases to proceed up to installation of agrarian reform beneficiaries upon getting a favorable decision from the DAR Regional Director despite a protest filed against coverage, petition for exemption or exclusion or other agrarian law implementation (ALI) cases. This was ordered by then DAR Secretary Rafael Mariano, a staunch farmer leader appointed to the post in 2016.
- AO No. 6, series of 2017 in turn suspended the implementation of AO No.5 as ordered by Officer-in-Charge Secretary Rosalina Bistoyong due to pressure by landowners.
- AO No. 3, series of 2018 was issued by current Secretary John Castriciones which amended AO No. 5 of 2016. AO No. 3 allows the LAD process to continue up to the cancellation of the land title of the landowner in favor of the Philippine government even if the case is still on appeal at the Office of the President. It also reiterates the usufructuary right of farmer beneficiaries once the land title of the former landowner is cancelled in favor of the government. Although AO No. 3 is more acceptable than AO No.7, series of 2011, it is still



contrary to the intent of RA 9700 (CARPER) to fast-track land distribution by prohibiting other agencies except the Supreme Court, to stop or delay CARP implementation.

Other key changes introduced are:

- *Administrative Order No. 3, series of 2012 and Administrative Order No. 4, series of 2014* (Amendments to the Revised Rules and Procedure Governing the Acquisition and Distribution of Private Agricultural Lands under RA 9700)
- *Administrative Order No. 5, series of 2014* (Rules and Procedure for Preliminary Processing of Land Acquisition and Distribution of Private Agricultural Lands Upon Revocation by the DAR of Exemption/Exclusion Conversion Order)
- *Administrative Order No. 3 of 2017* (Rules for Agrarian Law Implementation Cases, amending AO3 of 2003)

### **Ancestral Domain<sup>10</sup>**

*Legal Basis.* For a long time, claims of indigenous peoples were not legally recognized. There were isolated department administrative orders, letters of instruction, and memoranda of agreement with particular groups. The emphasis of these policies and instruments was more on resource management and not on ownership rights.

In 1997, a landmark legislation was enacted titled *Indigenous Peoples Rights Act* (RA 8371 or IPRA). IPRA recognizes the rights of indigenous peoples over their ancestral domains and provided for a process of titling of lands through the issuance of Certificates of Ancestral Domain Titles (CADT).

*Coverage.* As defined in the law, the claims for ancestral domains cover:

- *“All areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their ancestors, communally or individually”* (IPRA, Chapter II, Sec. 3.b.).
- *“It shall include ancestral land, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators”* (*Ibid*).

*Process of Acquiring Claims.* The application of new claims starts with the submission of a valid perimeter map, evidences and proofs, and the accomplishment of an Ancestral Domain

<sup>10</sup> Data and information for this section were taken from the paper of Dave de Vera, PAFID, on the Indigenous Peoples' Rights under IPRA.



Sustainable Protection Plan (ADSPP). All existing ancestral domain claims previously recognized through the issuance of CADCs are required to pass through a process of affirmation for titling.

*Tenurial Instruments and Access Rights.* Certificate of Ancestral Domain Titles (CADTs) and Certificate of Ancestral Land Titles (CALTs) are ownership tenurial instruments issued and awarded to an applicant community or clan. These tenurial instruments have no term limits. Representatives chosen by the community act as holders of the CADT in trust in behalf of the concerned indigenous community. Aside from securing an ownership title, the IPRA respects the community's right to traditionally manage, control, use, protect, and develop their ancestral domain.

Only certified members of the indigenous community listed in the official survey are given access, which is part of the documentation of the claim. Migrants or non-IPs may be included if they are recognized and given limited rights as community members through the land tenure and allocation policies as defined in their ADSPP.

*Limitations.* Governance of the CADT is subject to its "consistency" and the "legal framework" of national laws. On the other hand, utilization of natural resources by non-members within the coverage of the CADT will require Free, Prior, and Informed Consent (FPIC) from the concerned indigenous community.

*Other proposed tenure schemes.* Perhaps a better basis for the recognition and respect of ancestral domain tenurial security is by declaring the indigenous territory as part of conservation areas based on their traditional practices. A new conservation scheme tagged as the "*Indigenous Community Conserved Areas*" or "*ICCAs*" refer to natural and/or modified ecosystems containing significant biodiversity values, ecological services, and cultural values, voluntarily conserved by indigenous cultural communities/indigenous peoples through customary laws or other effective means.

Identified under the ICCAs are the protected areas and sustainable indigenous forest resources management systems and practices. Recognized also are the rights of the IPs for the sustainable use, management, protection and conservation of the land, water, air, minerals, plants, animals and organisms; and areas of economic, ceremonial and aesthetic value based on their traditional knowledge, beliefs and practices. ICCA practice has been gaining ground in the Philippines and worldwide as well as efforts at institutionalizing them at national level.

In 2016, the ICCA bill was filed in the 17th Philippine Congress. Once passed, the legal system will likewise fully recognize the ICCAs and ICC/IP rights to their ancestral domains as well as their right to maintain, protect, and regulate access, and prohibit unauthorized intrusion.



## Aquatic Resources<sup>11</sup>

*Legal Basis.* The Philippine Fisheries Code (RA 8550) enacted in 1998 provides the legal framework in the utilization, management, conservation, and protection of the fishery resources where food security is the overriding consideration. Among the Code's multiple objectives are: (1) conservation, protection and sustained management of fishery and aquatic resources; (2) poverty alleviation and the provision of supplementary livelihood among municipal fisherfolk; and, (3) improved productivity in the industry through aquaculture, optimal utilization of offshore and deep-sea resources, and upgrading of post-harvest technology.

Some of the notable features of the Fisheries Code that provide a more equitable access and participatory governance of resources include:

- *Preferential access.* The Code limits access to fishery and aquatic resources to Filipino citizens and provides small fisherfolk and their organizations with preferential use of municipal waters. Commercial-scale fishing is not allowed in municipal waters, except in special cases where they are given municipal permits, and only in waters over 10 kilometers from the shore with a depth of at least seven fathoms (12.8 meters).
- *Fisherfolk organizations/cooperatives* whose members are listed in the registry of municipal fisherfolk, may be granted use of demarcated fishery areas to engage in fish capture, mariculture and/or fish farming. Such registry will be updated annually and shall be available for public inspection.
- *Fisherfolk settlements.* Section 108 of the Code mandates the creation of fisherfolk settlement areas, to be located in certain areas of the public domain, near fishery areas.
- *Support services to municipal fisherfolk.* BFAR and the LGUs shall provide support to municipal fisherfolk through appropriate technology and research, credit, production, and marketing assistance and other services such as training supplementary livelihood.
- *Complementary Policies.* There are existing executive and administrative orders that supports RA 8550 such as *Executive Order 263 of 1995 on Community-Based Forest Management* and *BFAR Fisheries Administrative Order 197-1 of 2000*. *EO 263* establishes community-based forest management as the national strategy in recognition of indispensable role of local communities in forest protection, rehabilitation, development and management including those of mangroves. *BFAR FAO 197-1* gives preference to fisherfolk organizations as well as micro, small, and medium enterprises (MSMEs) in the lease of public lands for fishponds and mangrove-friendly aquaculture through the issuance of Fishpond Lease Agreements (FLAs) and Mangrove Aqua-silviculture Contracts (MASCs).

<sup>11</sup> Data and information for this section were taken from the sectoral paper of Marita Rodriguez of the NGOs for Fisheries Reform (NFR) on the State of Fishery Reform.



## Administrative Constraints

While the principles of decentralized local governance, community-based resource management, and preference for small fisherfolks in granting access rights are enshrined and articulated in the Fisheries Code, the absence of clear Implementing Rules and Regulations have restricted the execution of the law. Major constraints highlighted in the consultations and FGDs include the slow delineation of municipal waters, no guidelines in implementing the provision on fisherfolk settlements and biased issuance of public lease agreements.

- *Delineation of municipal waters.* The delineation of municipal waters is a major requirement to implement the Fisheries Code. To provide preferential rights, and to establish violations of commercial fishing vessels, municipal waters have to be surveyed and designated. Unfortunately, the process of delineation has been slow and remained incomplete primarily because LGUs cannot agree on the reckoning points.

As of August 2018, BFAR reported that of the country's 928 coastal municipalities, only 305 have delineated their municipal waters with certified maps. And of these, LGUs with delineated certified waters, only 67 have issued the required local ordinances that is needed to complete the delineation process. This is only 7.2 percent of all municipal waters after a period of 20 years. What is more alarming is that some 263 LGUs have not even applied for municipal water delineation as reported by the National Mapping and Resource Information Authority (NAMRIA).<sup>12</sup>

- *Fisherfolk settlements.* Many fisherfolk settlements are located in foreshores and public lands with no security of tenure, facing the constant risk of eviction. Thus, Section 108 of the Fisheries Code specifically mandates the setting up of fisherfolk settlement areas. Unfortunately, there are still no clear implementing rules and regulations on how this is to be achieved, in spite of lobbying efforts from fisherfolk organizations.
- *Issuance of public lease agreements.* While the fisherfolks are given preference in fishpond lease agreements (FLAs), only two FLAs were issued to fisherfolk organizations out of the 403 listed aquaculture farms in the country as of June 2018.

## STATUS OF ACCESS TO LAND BY THE RURAL POOR SECTORS

In the last 30 years, a number of milestone legislations have been passed in Congress on distributive agrarian reforms, recognition of tenure of indigenous communities over ancestral lands and co-management of aquatic resources.

<sup>12</sup> NAMRIA is the mandated agency under the Fisheries Code to lead in the delimitation and delineation of municipal waters.



For agricultural lands under CARP/CARPER, 4,790,234 hectares or 90 percent of the targeted 5,351,365 hectares had been distributed to 2,835,743 agrarian reform beneficiaries (ARBs).

Similarly, the enactment of IPRA provided ancestral domain titles to indigenous peoples covering over five million hectares or around 18 percent of the total land area. For aquatic resources, specifically municipal waters, the Philippine Fisheries Code instituted decentralized local governance, community-based resource management and gave preference to small fisherfolks in granting access rights to resources.

But why is it that after 30 years of distributive reforms, the country still has more than one-fifth of the country's total population living below the national poverty line where majority are engaged in agriculture and fisheries? And this persisted despite the country's high Gross Domestic Product (GDP) growth in the last three decades.

### **Ancestral Domains**

After 20 years, 18 percent of the total land area of the Philippines are now covered by CADTs and are considered legally owned and governed by IPs. This comprises 221 CADTs covering a total area of 5,413,772.7066 hectares and benefiting 1,206,026 individuals. This is highly commendable and, as reported, there is no other country in the world that can lay claim to a similar accomplishment. A closer look, however, reveals current and emerging issues that need to be addressed and resolved.

- *Administration of IPRA.* The National Commission on Indigenous Peoples (NCIP), the government agency entrusted to implement IPRA, had been found wanting not only of appropriate budget but also of trained personnel. Given its scope of work and responsibility, NCIP requires trained personnel to administer technical aspects of land title issuance and experienced personnel to handle land conflicts and issues of resource access affecting indigenous communities.

In the last seven years (2011 to 2018), issuance of CADTs has slowed down, with only 65 titles approved. This is partly due to the revision of the Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands that was intended to: i) increase the efficiency of the survey and delineation process, ii) increase safeguards against fraudulent claims, and iii) ensure the legality and acceptability of NCIP surveys. This is understandable, but a bigger concern is on the non-compliance of NCIP personnel to the regular processes and to the approved Work and Financial Plans (WFP) of the CADT applications. In the Commission on Audit (COA) Review of NCIP performance for 2011, it stated, "the process of CADT application was not in consonance with the approved WFP, this resulted in the delayed processing of CADT application which deprived the IPs of their rights provided for in Sec. 7, of the IPRA" (COA, 2011).

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- *Policy and Jurisdictional Overlaps.* With the sectoral approach in resource governance, policy and jurisdictional overlaps among agencies mandated to implement the laws have now become a major concern. Boundaries delineation overlaps of titles and resolution of disputes, among others, have become a major concern with NCIP, DAR, and DENR. To address these concerns, these agencies together with Land Registration Authority (LRA) issued a Joint Administrative Order (JAO) #01 of 2012.

JAO 01-2012 was intended to coordinate the process of registration of the ancestral domain titles issued by prescribing a process for the preparation of the map projection to identify titled lands, which might overlap with CADT/CALTs. However, the implementation has not gone smoothly as planned. This has been marred by the lack of synergy among agencies, ambiguity of who takes the lead and the limited capacity of frontline implementors of the JAO to perform their expected duties. Rather than facilitate the preparation of map projections, the JAO has resulted into a bureaucratic deadlock that has impeded ancestral domain registration and blocking the registration process with the Land Registration Authority (LRA). Of the 221 Approved CADTs, only 50 have been registered with LRA.

- *Commercial Pressures.* Given the country's continuing economic growth and the limited availability of land in the downstream, ancestral domains have become attractive in the establishment of special economic zones, agricultural investments, mining and even tourism. The Philippine Export Zone Authority (PEZA), for example, has declared that it will pursue the establishment of at least 300 new Eco-Zones in the Philippines with an area that will range from a low of 1,000 hectares to a high of 4,000 hectares.

While CADTs are legally recognized, they will have to contend with these initiatives that have their own legal mandates such as the Economic Zones and the Mining Act.

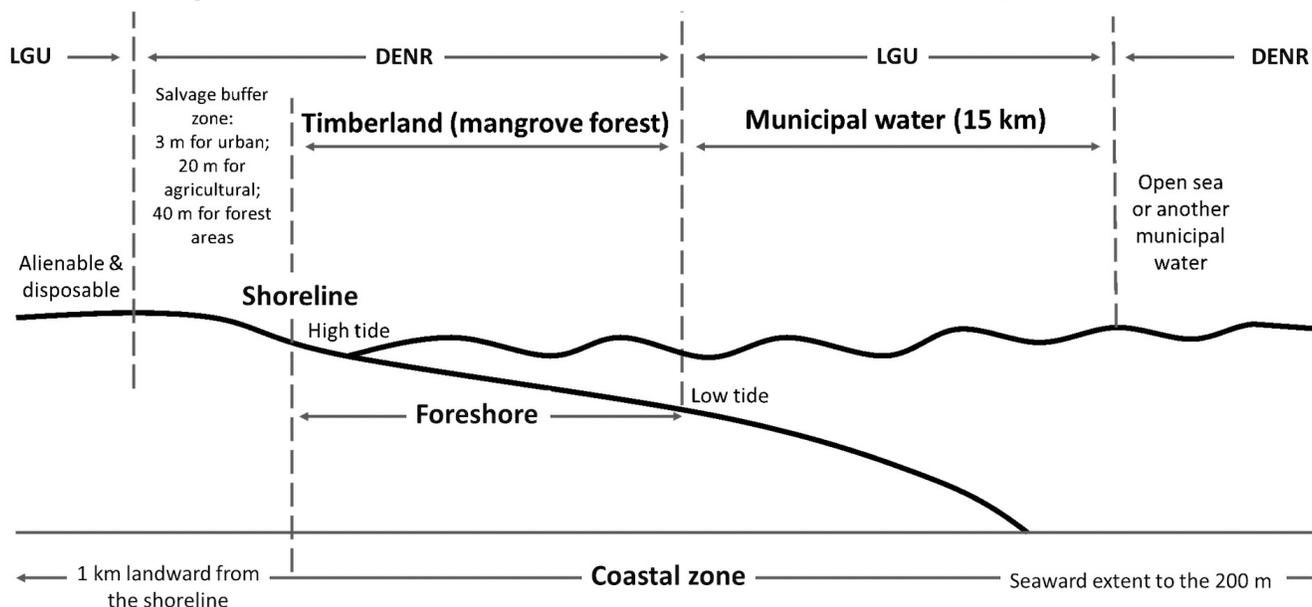
## **Aquatic Resources**

Similarly, the Fisheries Code has been encountering a number of challenges in its implementation.

- *Multiple and overlapping agency jurisdictions.* There are several government agencies with jurisdiction over the coastal areas, particularly on foreshore and easement areas (LMB-DENR, 2018). LGUs take on primary responsibility in the management of fishing and aquatic resources while DENR is responsible for the survey and management of alienable and disposable public land, issuance of leases and permits and environmental concerns. Figure 2 illustrates their general mandates over coastal zones and municipal waters.

Other than the difficulty of determining the boundaries between and among LGUs, they also have to determine the boundaries of shoreline, foreshore and municipal water that may differ depending on the tide (low and high).

**Figure 2. Jurisdiction over Coastal Zones and Municipal Waters**



Source: Adapted from Land Management Bureau, DENR.

Moreover, in areas where there are ancestral domain claims, IPRA comes in conflict with the Fisheries Code and also that of the Local Government Code on the coverage of municipal waters. Those waters may be included as “ancestral waters” as provided for in IPRA. This has been contested in Coron, Palawan where the NCIP decided with finality in favor of the IP community and used as a precedent for the recognition of two other CADT claims in Northern Palawan.

**Table 1. Roles and Legal Mandates of Various Government Agencies in the Development of Coastal Zones**

Agency	Role	Legal Provision
Department of Public Works and Highways (DPWH)	Responsible over cases involving construction and developments along foreshore areas	CA 141, Section 66
Philippine Ports Authority (PPA)	Issues permit regarding construction of pier/port.	Presidential Decree (PD) 857
Bureau of Fisheries and Aquatic Resources - Department of Agriculture (BFAR-DA)	Issues or cancels Fishpond Lease Agreements.	Philippine Fisheries Code of 1998
Philippine Reclamation Authority (PRA)	Responsible over activities pertaining to reclamation.	EOs 525 and 654
Housing and Land Use Regulatory Board (HLURB)	Promulgates zoning and land use standards & guidelines governing land use plans and zoning ordinances of LGUs.	EOs 648 and 72; and RA 7279



On top of these overlapping claims, more challenges are encountered in the development and utilization of these resources. Different agencies are involved in the managing and utilization of these resources for livelihood, infrastructure, tourism and housing.

- *Commercial Pressures.* Coastal areas have become vulnerable to the establishment of industries and tourism. Partly this is encouraged by local government units (LGUs) as they bring in investments and livelihood to the community. Moreover, they pay taxes and fees that are much needed in augmenting the LGU budget. On the other hand, these establishments can lead to the displacement of small fisherfolk, demolition of their temporary houses and obstruct their right-of-way to coastlines. These investments, if not monitored properly, can also be a threat to the environment. Moreover, industrial wastes can be hazardous not only to the environment but also to the communities. Waste disposal, as experienced in a number of tourist spots, has become a major predicament.
- *Climate change.* Fisherfolk are heavily affected by the changing climate as they reside in coastal areas and their livelihoods dependent on territorial waters. Rising water level, strong winds and typhoons, can easily damage their properties, destroy their fishing gears. With the country being in the top five of the most disaster-risky country, the fisherfolks would have a lot of extreme weather to expect in the coming years.

### **Common emerging issues**

On top of these administrative concerns, there are emerging issues that the people's organizations and CSOs have to contend with that are inherent in the approach adopted. Others are external interventions that added pressures to current situation.

### ***Overlapping Jurisdictions***

The Philippines has taken on a sectoral approach in the governance of its resources, enacting laws and implementing programs per sector – agricultural lands, ancestral domains, and aquatic resources. This has its advantages especially when resources are well delineated. Unfortunately, this is not the case. With the increasing competition for resources, overlapping claims and jurisdictions have become a major challenge among implementing agencies. In their effort to address these concerns especially those concerning ancestral domain, the NCIP, DAR, DENR, and LRA issued a Joint Administrative Order to coordinate the process of registration of CADTs. Unfortunately, this has resulted to a bureaucratic deadlock and blocked the registration process. These overlaps are also experienced by the different agencies operating in the municipal waters. Other than the difficulty of determining the boundaries between and among LGUs, they also have to overcome the overlaps of other agencies having authority over the development of these resources.



### **Commercial Pressure**

With the increasing population and the sustained economic growth, land and other resources have become vulnerable to commercial pressures particularly extractive industries, agricultural investments and tourism. The government promotes these investments as they increase revenue, provide employment and, in general, contribute to the growing economy. The downside to these investments, especially if not properly monitored, is that they can displace communities and degrade the environment. In the past few years, conflicts related to resource utilization and investments have continued to increase.

### **Changing Climate and Natural Disasters**

The impacts of climate change have become more evident in recent years, especially for coastal communities.

Coastal communities are the first to bear the brunt of super typhoons brought about by climate change as experienced with the super typhoon Haiyan in 2014. Coastal areas affected by the typhoon were practically wiped out, their settlements declared no dwelling zones, but there were no clear/secured resettlement areas. Tens of thousands of small boats, fishing equipment and supporting facilities were destroyed. Some 146,748 fisherfolk families and 21 of the country's 72 fishing provinces were directly affected by the storm (BFAR) and total damage to the fishing sector was about PhP 6 billion (NDRRMC, 2013).

## **INCREASING LAND AND RESOURCE CONFLICTS<sup>13</sup>**

Many of these administrative constraints and external pressures have resulted to conflicts and violence. Data gathered indicate that these incidences are increasing and intensifying.

### **Agrarian Reform Conflicts**

Many of the conflicts involved landowners resisting the DAR process of implementing CARP in their subject landholdings. From January 2017 to May 2018, 44 cases of agrarian reform conflicts were documented covering 45,080 hectares. Most of these conflicts are at the latter stage of installation as landowners pursue desperate means to resist the redistribution of their land. A total of 38 human rights defenders were killed, nine injured, five detained, five gravely threatened, and 104 filed with SLAPP (strategic lawsuit against public participation) charges. These conflicts and violence have resulted to displacement of 3,143 households depriving them of their land to till.

<sup>13</sup> This is a summarized version of a paper on land and resource conflicts prepared by Timothy Salomon of the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC).



Landowners used threats, intimidation, physical attack, and killings. Many landless farmers and even DAR officials performing their tasks were physically and psychologically harassed by landowners and their goons. Even those who have been awarded with CLOAs were unable to gain access, control and possession of their land because their former landowners are blocking their entry.

### **Conflicts in Ancestral Domain**

A more pressing concern is the protection of IP rights on the approved CADTs. Reports abound on the intrusion of migrants, the use of power by politicians to control these resources and the non-observance and even manipulations of FPIC.

Many of these intrusions have resulted to conflicts and violence. In 2017 to 2018, 126 incidents of forcible entry into ancestral domains without FPIC were documented. These were committed by businesses or migrants against ICCs/IPs who wanted to claim ownership and/or use the land without proper consultation and not in observance of indigenous culture and processes in the area.

A more indirect infringement but having a direct impact on the environment are the cases of mining and illegal logging. These interventions had resulted to soil erosion, landslides, and exposed communities to become more vulnerable to natural disasters. Some even had major impacts to public health due to water contamination.

### **Disputes over Aquatic Resources**

Reports on maritime disputes include intrusion of commercial fishers in municipal waters. With the incomplete delineation of municipal waters in many areas, however, violations become difficult to litigate. Resource-use conflicts also arise among municipal fishers – e.g., hook and line fishers cannot fish in areas where nets and pots had been set up. The LGU has the mandate to intervene in such cases.

Fisherfolk are also invited on a voluntary basis to participate in law enforcement through the *Bantay-Dagat*. Unfortunately, the fisherfolk groups engaged in *bantay-dagat* sometimes are the ones charged with court cases instead of being the ones to help prosecute apprehended violators. Some are even killed in the performance of their duties.

### **A Summary of Resource Conflicts (2017 to 2018)**

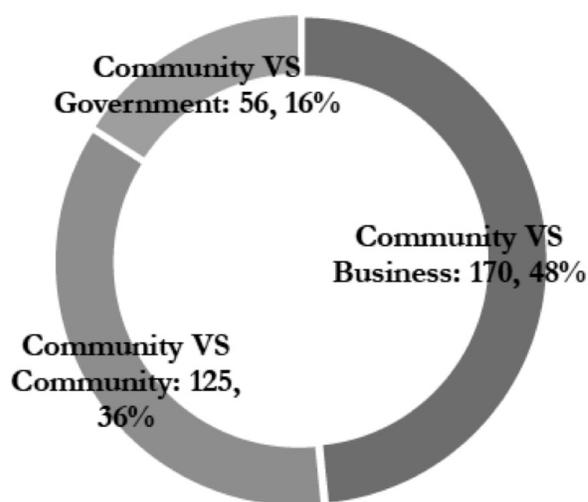
Land and resource conflicts are considerably prevalent in the Philippines. Cases, policy and institutional documents were gathered from six National Government Agencies, 10 Civil Society Organizations (CSOs), and 14 online/media sources using the purposive sampling method. Three



hundred fifty-two (352) land and resource conflict<sup>14</sup> cases were studied and analyzed. 59 percent (208) of the documented cases took place in Mindanao, 23 percent (82) occurred in Luzon, and 18 percent (62) transpired in the Visayas region. The cases documented were concentrated in four percent of the total territory of the Philippines (over 30 million hectares).

Nearly half (48 percent) of this number were conflicts between communities and business establishments. A significant percentage (36 percent) occurred between and among community members, while the remaining percentage (16 percent) is comprised of conflicts between community members and the government. The duration of conflict ranges from less than a year to 68 years, with a mean of 14 years.

**Figure 3. Types of Land Conflicts**



**On Human Rights Violations in Land and Resource Conflicts.** Aggression against land and environment rights defenders, as well as rural poor communities has been on the rise in connection with land and resource conflicts.

The Philippines is considered as Asia's most dangerous country and second only to Brazil as the world's deadliest country for land and environment defenders (The Guardian, 2018). About 431 instances of human rights violations (HRV) were found in 233 of the conflict cases studied.

Majority of these HRV incidents (272 incidents or 63 percent of total HRVs) occurred in the island region of Mindanao. Violations came in the form of killings, disappearances, injuries, detention, displacement, damage to property, unfair contracts and labor practices, intrusion into territories without FPIC, and criminalization.

There were 61 killings perpetrated during the period January 2017 to June 2018. More than 90 percent of those killed were affiliated with CSOs and social movements. Furthermore, 66 percent of the killings were committed by the military in the guise of anti-insurgency campaigns that subsequently emboldened landowners to resist CARP coverage, or facilitated investments in ancestral domains. These investments were owned by influential families, particularly cronies of the late dictator Ferdinand Marcos, and/or prominent legislators and local chief executives.

<sup>14</sup> Conflict in this study is defined as "a situation wherein two or more stakeholders compete for control over resources, decision-making and truth." More specifically, this study looks into land and resource conflicts, which is defined as a "situation where two or more stakeholders compete for control over the use, decision-making, and transfer of land and resource rights". Land and resource conflicts threaten the enjoyment of tenure rights of stakeholders particularly those with less power, such as rural poor communities. Some land conflicts hinder the transfer of land rights, others deny the full range all land rights, while still others reduce rights to lower levels of enjoyment.



Other perpetrators of killings were guns for hire, private armed groups, rebel groups and paramilitary groups employed by businesses, and community members in cases of inter-community land ownership conflicts.

On top of the killings, there were six individuals that disappeared; eight individuals maimed and 17 individuals illegally detained. All these incidences of physical violence, except one case of maiming, were allegedly committed by the military.

***On Impacts on Rural Communities.*** Rural communities bear the brunt of the impacts of land and resource conflicts. HRVs committed at the community level involved displacement, damage to livelihood, unfair/exploitative economic arrangements, criminalization of actions of community leaders and members, forcible entry without FPIC, and denial of participation in decision-making processes affecting land and resource rights.

A sizeable number of households have experienced displacement as a result of land and resource conflicts. There were 99 cases involving displacement and 29 cases of threat of displacement. Cases of displacement included the eviction of 17,000 households from their residence, and damages to livelihood or displacement from their sources of livelihood for nearly 75,000 households. Business investments, particularly in mining and forestry indirectly caused more than 47,000 livelihoods to be damaged by pollution, or caused land and natural resources used for livelihood to become vulnerable to natural disasters.

Threats of displacement were also documented. More than 47,000 households experienced threat of eviction from their residence and close to 44,000 households experienced threat of displacement from or damage to their sources of livelihood.

Economic violence in land and resource conflicts was observed to have also been committed against rural communities, with 56 incidents documented. A majority (89 percent) of the incidents of economic violence found in the study involved businesses manipulating farmers to enter into unfair Agribusiness Venture Arrangements (AVAs). Such arrangements deprive the farmers of land rights and/or bury them in debt. Other forms of economic violence are labor issues in *haciendas*/plantations and the refusal by mining companies ancestral domains to pay royalties.

Data analysis also showed 126 incidents of forcible entry into ancestral domains without free, prior, and informed consent (FPIC). A majority (78 percent) of these incidents occurred in Mindanao, southern Philippines. These violations were committed by businesses or migrants wanting to claim ownership and/or use of land for purposes not properly discussed with the existing Indigenous Political Structure (IPS) in the area. Other forms of political violence documented were criminalization of activities of community leaders and members, and the denial of access to decision-making processes affecting land and resource rights.



**On Impact on the Environment.** Damage to the environment is considered a pronounced yet indirect effect of land and resource conflicts arising from investments. Some investments have major impacts on public health such as contamination of bodies of water, while others are felt by communities by way of damage to biodiversity. The clearing of forests makes communities vulnerable to natural disasters and climate change, resulting in hundreds of deaths. Mining operations weaken the integrity of soil, leading to siltation and landslides.

**On Causes and Trends.** There were three main causes of land and resource conflicts identified: (a) resistance to agrarian reform; (b) overlapping claims; and, (c) land investments. Of all causes of land and resource conflicts, resistance to agrarian reform was the most violent in terms of killings. Resistance occurs in 62 percent of agrarian reform conflicts, mostly during the latter stages of installation (the third and last stage of the land distribution process). It is in this stage that landowners pursue desperate means to thwart the redistribution of land to Agrarian Reform Beneficiaries (ARBs). Apart from depriving ARB's of land to till, landowner resistance results in HRVs such as killings, injuries, detention, grave threats, and criminalization.

Overlapping claims, the second cause of land conflict, are symptoms of the fundamental problem of overlapping land laws and programs of the government. A majority of land conflict caused by overlapping claims relate to ancestral domains. The key issue is the poor security of tenure afforded by the State to ICCs/IPs over their traditional territories. Tremendous delays occur in the issuance of Certificates of Ancestral Domain (CADTs) and Certificates of Land Titles (CALTs), and their registration with the Land Registration Authority (LRA). On the other hand, government programs for land titling, distribution, and investments are unhampered. As a result, the encroachment of property claimants within ancestral domains is legitimized. More than 7,000 households have been evicted from their residence due to overlapping claims, the most number in all causes of land and resource conflicts in this study.

Land investments as a source of conflict account for 55 percent of the 352 cases of conflict analyzed. Most of these cases are conflicts between businesses and communities, and some are between government and communities. In terms of type of investment, conflict arose most frequently in plantations (101 cases of conflict), mining (44), infrastructure (40), and forestry (7). Amidst the slow implementation of land and resource reform programs, the government has been pursuing initiatives to streamline land investments in energy, agribusiness, and infrastructure. Currently, investments in forestry and to a certain extent, mining are strictly monitored by the government and hence, violence in these industries are at a decline.

**On Conflict Management Mechanisms.** When parties pursue conflict resolution, legal battles are generally time-consuming and resource-draining with litigation lasting from three to 17 years. Legal battles are especially costly for the rural poor. Quasi-judicial bodies and local dispute resolution mechanisms are available and deliver quicker resolution of conflicts, but data is



generally unavailable if decisions arrived at through these mechanisms are favorable to rural poor communities or to landowners/investors.

Conflict-prevention mechanisms are also embedded in land and resource governance. Procedural safeguards such as permits, licenses and other government requirements can sometimes prevent land and resource conflicts. Representation and participation mechanisms, when utilized properly, allow poor sectors and communities to register their concerns to decision-making processes in governance. However, in certain instances, these only serve as rubber stamps for land investments. There are cases wherein representatives to governance bodies are beholden to the government officials who appointed them and are not necessarily held accountable by the sectors/communities they supposedly represent. Freedom of information (FOI) policies are in place, but do not necessarily translate to public access to data on land.

Recourse for the rural poor is often fleeting. The government is often caught in fundamental conflicts of interest, which comes in two forms. First, various agencies imbued with their respective mandates and programs compete for jurisdiction over the same parcels of land and natural resources. In the absence of clear harmonization of overlapping laws, land and resource conflicts often turn violent and persist unresolved. This renders the tenure of land and natural resource stakeholders, particularly rural poor communities, insecure, and perennially contested. Consequently, their lives and livelihoods are beset with danger.

The second form of conflict of interest can be seen in the deliberate policies of government to expedite investments in the name of “ease of doing business” and “readiness for integration.” In many cases of land investments, the government is a facilitator or even a direct partner. Thus, the government often fails to perform its mandate to regulate business, particularly when the rights of people and communities are being trampled upon.

There is a dearth of responsive mechanisms to address land and resource conflicts. Only with aggressive and sustained lobbying and advocacy can these conflicts be addressed and prevented.

One factor is bureaucratic inefficiency or a lack of political will to address legal, administrative, and judicial hindrances towards the completion of land and resource reforms, and the harmonization of agency jurisdictions.

Another important factor is the multitude of loopholes and bottlenecks in law and policy that enable the reversal of gains in land and resource reform, and to facilitate the entry of corporate interests in land and resource governance. Given the broader human rights situation in the Philippines (i.e., the War on Drugs, Martial Law in Mindanao, All-out War against terrorism and insurgency), impunity has characterized the rule of law in Philippine society. It is in these times that the barrel of the gun has been pointed at the very people in need of protection the most.



## TRANSPARENCY IN LAND GOVERNANCE AND ADMINISTRATION

While the country can boast of its legislative achievements, an equally important governance question is the execution of these laws and policies. Good laws can be circumvented in many ways such as non-allocation of budget, lack of technical know-how of personnel, absence of implementing rules and regulations and long process of conflict resolution. In the Philippines, all these have contributed to the delay of implementation and evasion of coverage sometimes even leading to conflicts and violence.

- *Budget.* In CARP/CARPER, budget allocation for its implementation is clearly articulated. Unfortunately, this is not so with IPRA and the Fisheries Code. NCIP, the government agency entrusted to implement IPRA, has inadequate budget given its scope and responsibility. For the Fisheries Code, the implementation has been lodged with local government units where budget allocation is dependent on the chief executive and his/her council.
- *Technical capacities.* NCIP requires trained personnel to administer technical aspects of land title issuance. This has been found wanting and delayed the issuance of CADTs. For agricultural lands, the lack of capability and resources to conduct surveys and field investigations have slowed down the process of land acquisition and distribution and contributed to DAR's under performance.
- *Implementing guidelines and transparency.* A good example of this administrative concern is the establishment of fisherfolk settlements. Given its importance and urgency, this has been included in the Fisheries Code. However, implementing rules and regulations on how this is to be achieved is still not yet formulated, thus no fisherfolk settlement has been established to date. On the issue of transparency and non-compliance to existing regulations, COA, in its audit report of 2011, observed that NCIP deviated from its approved work and financial plans that delayed the processing of CADTs, thus depriving IPs of their rights.
- *Conflict resolution.* In the Philippines, resolution of legal cases is costly and can take more than 20 years. Landowners have used this strategy to delay or even stop land distribution. Farmers, IPs and fisherfolk with their income barely enough to sustain their daily needs are at the losing end in legal battles. Some organizations, in coordination with their CSO partners, have instituted training programs for paralegals but this is limited to mediation and administrative cases.

### Sectoral Mechanisms

Participation of farmers, indigenous peoples and fisher folks is mandated in the laws and pertinent mechanisms have been established accordingly.



## ***Agrarian Reform***

For agricultural lands under CARP, a monitoring mechanism has been established where farmers and civil society organizations (CSOs) participate to put forward their concerns and advocacies.

Among the key mechanisms at the national level include:

### *Presidential Agrarian Reform Council (PARC)*

- Six farmer representatives (two from each island region).
- The PARC and the DAR have the power to Implement and issue rules and regulations, whether substantive or procedural to carry out the objects and purposes of CARL.

### *Land Bank of the Philippines (LBP)*

- Two agrarian reform beneficiaries' representatives to the Board of Trustees
- An implementing agency of CARP involved in land evaluation, compensation to owners of private agricultural lands, and collection of amortizations from CARP farmer-beneficiaries.
- Provide the farmers' perspectives on issues in providing adequate agrarian and agricultural support to small farmers, particularly credit.

### *National Anti-Poverty Commission (NAPC)*

- Farmers and landless rural workers sector have 25 council members and a sectoral representative.
- Recommend policy and other measures to ensure the responsive implementation of the commitments under the Social Reform Agenda.

At the local level:

### *Provincial Agrarian Reform Coordinating Committee (PARCCOM)*

- One representative from a PO or NGO and two representatives from the agrarian reform beneficiaries.
- The PARCCOM shall coordinate and monitor the implementation of the CARP in the province. It shall provide information on the provisions of the CARP, guidelines issued by the PARC and on the progress of the CARP in the province.

### *Barangay Agrarian Reform Committee (BARC)*

- Five representatives from PO, NGO, farmers in the barangay
- Assist in the identification of qualified beneficiaries and landowners within the barangay.

### *Local Development Council (LDC)*

- Representatives of the private sector and non-governmental organizations (NGOs) operating in the barangay, who shall not be more than one-fourth of the members of the fully constituted Council.

- Assist local legislative bodies in setting the direction of economic and social development and coordinating development efforts in their respective territorial jurisdictions.

#### *Other land governance mechanisms*

- Task Forces
- Bilateral engagements

### **Indigenous Peoples**

For ancestral domain under IPRA, Section 16 of RA 8371 provides that the indigenous cultural communities/indigenous peoples (ICCs/IPs) have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policymaking bodies and other local legislative councils.

### **Fisheries**

The Fishery Code mandated the establishment of Fisheries and Aquatic Resource Management Councils (FARMCs) composed of fisherfolk organizations and NGOs/CSOs in the locality under the leadership of the LGUs the responsibility in the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters. Fisherfolk also participate in law enforcement through the *Bantay-Dagat* (sea guardian). *Bantay-Dagat* is a community-based law enforcement program that engages fisherfolk in coastal villages on a volunteer basis to support the detection and enforcement of illegal fishing in coastal waters. It is mandated under Sec 158 of the amended Fisheries Code (RA 10654).

### **On Limited Participation of Sectors**

Unfortunately, these mechanisms have been rendered ineffective for a number of reasons:

- The formation and appointments of representatives reside on the government where the criteria for selection is not clear;
- Convening of the mechanism is a decision of the Chair who is a government official;
- The mechanisms have become recommendatory not executory in nature; and,
- Given its size, there is difficulty in mustering a quorum.

Among farmers, the BARC at the village level is the most accessible. This is also more effective as the Chair of the committee is often from the ranks of farmers. In most cases, however, the



Council does not fulfill this function and not operational. In some cases, there is no BARC set up in a barangay. Some of the BARCs are actually one-man operations with only the BARC Chair as member. The lack of BARCs leads to the increase in the number of agrarian justice cases filed because the BARCs are supposed to resolve issues at their level before these are elevated to the PARAD or the MARO.

It has also been raised in the focus group discussions that the sector should hold the representatives in these mechanisms accountable. They should be required to report on what have been accomplished. Thus, it has been recommended that assemblies be set up for these representatives to provide regular reporting to the sector.

### **On Limited Access to and Quality of Land Data and Information**

Data on land governance from the government are produced *per sector* (farmers, fisherfolk, IPs) by specific agencies (Department of Agrarian Reform [DAR], Bureau of Fisheries and Aquatic Resources [BFAR], Department of Environment and Natural Resources [DENR], National Commission on Indigenous Peoples [NCIP]). Although available, data is not consolidated, and national-level aggregates or summaries may not be produced.

Generally, information on land policies and regulations are available and accessible. Accessibility of administrative and management information, however, varies as responsible agencies have their own information management systems. For the agrarian sector, documents on land ownership are readily available for smallholder farmers. These data may be sex-disaggregated. For the IP sector, the number of indigenous peoples living within titled ancestral domains may be determined but may not be disaggregated by sex. For the fishery sector, accessibility of information is more difficult. In some agencies, users have to pay fees to access data.

Quality of the data is another story. Most of the data are outdated, not user-friendly, and are pre-tabulated. There is also no nationally-consolidated data catered to by government agencies. Also, in most cases, shapefiles of land data are not available.

Gender disaggregation of data is done by several government agencies for specific sectors. However, gender disaggregation of data is not applied in all datasets of the government and not available in all agencies (e.g. NCIP does not provide readily-processed gender disaggregated data for indigenous peoples).

Further, there is no available data on landlessness and official data on informal settlers are often based largely on estimates.

## LAND ADMINISTRATION IN THE PHILIPPINES<sup>15</sup>

The land administration system in the Philippines can be described in three words: *obsolete, complex and dysfunctional*. It is governed by multiple, at times contradictory regulations, and is (mis)managed by a multitude of institutions with inadequate coordination, and overlapping mandates and functions (CPBRD, 2011).

The very core of the system predisposes it to failure as it follows an *obsolete legal and regulatory framework*. The laws and edicts on land administration are contained in 60 separate issuances which were promulgated a century ago. These policies<sup>16</sup> therefore are outmoded, upholding processes and standards that have long outlived the social contexts that they were crafted for.

While countries in the ASEAN have long progressed towards a land titling system relying purely on administrative processes, the Philippines mandates land titling and registration to undergo *both judiciary and administrative processes*. This is based on the American model, the Torrens System, that is particularly contentious due to the requirement of court intervention in the registration process. This has even further bogged down the justice system whereby it was found that 15 percent of all cases handled by courts are in relation to land registration.

Given the multiple laws on land administration, there are at least 19 government agencies<sup>17</sup> involved in land administration. This results in a *complex web of overlapping bureaucratic functions and processes* in each of the areas of land classification; conduct and approval of land surveying; disposition of land; maintenance of maps and records; compilation of maps and land information; and, land valuation. This provides an enabling environment for institutionalized chaos characterized by bureaucratic “turf-wars.”

There are a host of serious consequences for sustaining such an inept system:

- **Economic losses:** the multitude of methods and systems for land valuation have made it altogether unreliable. A study of the Department of Finance reported that for 2000-2005, local government units (LGUs) have lost an estimated P9.5B in annual revenues due to poor collection efficiency.
- **Public confusion:** the absence of a single authority for mapping, and the varied tenure instruments over land have perennially sowed confusion among citizens seeking to avail of land administration services.
- **Proliferation of informal transactions:** This is caused by high tax rates on land owing to the multiple bases for taxation by national agencies and LGUs, and the high cost of land registration. This has discouraged formal transactions and have made non-formal ways more viable.
- **Corruption:** According to the Business Anti-Corruption Portal, overlapping and conflicting laws and policies on land have caused the system to short-circuit and instead, follow the “rule of arbitrariness.” This has set the stage for bribery and political manipulation in the system.

Given the overall state of land administration system in the Philippines, it has contributed to further entrench injustice in the system and weaken the enforcement of land rights. When Thailand and Vietnam already have registered 80 percent and 90 percent of their lands, respectively, the Philippines has only registered 66 percent. This is especially alarming in rural areas where only one out of three lands are registered.

<sup>15</sup> This is a summarized version of a paper prepared by Dave de Vera of the Philippine Association For Intercultural Development (PAFID) for the International Land Coalition National Engagement Strategy in the Philippines entitled The State of Land Administration System in the Philippines: The Proposed Land Administration Reform Act (LARA) (2015).

<sup>16</sup> Among the said framework laws for the Land Administration System of the Philippines are: Land Registration Act of 1902, Cadastral Act of 1913, Public Land Act of 1936, and Revised Administrative Code of 1917. All these laws have been supplemented and/or amended by subsequent issuances.

<sup>17</sup> The main agencies of the executive branch comprise the DENR (LMB, PENRO & CENRO), DOJ (LRA/ROD), DOF (BIR & BLGF), DAR, DILG, LGUs, HUDCC (HLURB & NHA), and NCIP; while the judiciary involves regional trial courts, municipal/circuit trial courts, and the Special Court on Tax Appeals.



## RECOMMENDATIONS

More than one-third of the total land area of the country has been covered by distributive reforms. This is a substantial accomplishment but, based on recent developments, this has remained an unfinished business with risk of being reversed.

In moving forward, the following programs and activities are recommended to continue advancing land rights in the country.

### Strengthening Ranks of Stakeholders

The substantial accomplishment is an outcome of the long struggle of the peasant movement, indigenous peoples and fisherfolks that gained widespread support from the general public after a long period of political suppression under a dictatorial regime. Despite global appeal for a more sustainable and inclusive development, however, recent developments indicate a non-supportive political environment. Given this atmosphere and uncertainty, social reform advocates should persevere in completing the programs and building on the gains.

The low accomplishments of mandated agencies in recent years reflect a weakening among the ranks of reform stakeholders vis-à-vis the strong resistance of landowners and the intrusion of the business sector. While continuing on with the sectoral engagements, much can be achieved if reform stakeholders come together as one. An overriding goal that can bring groups together is the enactment of the National Land Use Act where landscape governance becomes the unifying approach.

Collaboration with allied groups should also be pursued. There is a need to establish mechanisms in collaborating with partners, both in government and in the private sector. In the FGDs conducted, for example, government representatives shared the concerns raised by reform advocates and they have agreed to collaborate and set up mechanisms to resolve implementation issues.

But what can the poor basic sectors do themselves? In 2018, the farmers, IPs and fisherfolk under the Land Watch Asia campaign arrived at a common action agenda to pursue and protect their respective resource rights claims as follows:

- **Protect** our rights based on these tenure laws
- **Persevere** in strengthening and broadening our mass base; building our knowledge on laws and skills in dealing with threats like climate change, foreign investments, conversion, commercial interests over agricultural and ancestral land and waters; continue to form and strengthen community-based organizations, especially involving the youth and women, in protecting reform gains through economic empowerment; how to preserve unity within these CBOs to pursue what they are struggling for together without falling for monetary payoff.

- **Promote** alliances with support groups, such as legal groups, academe, church, women, youth, even socio-civic groups, social entrepreneurs and allied political individuals and blocs.
- **Participate** in processes that would further unify the sectors in defending their resource rights and enhancing their empowerment through policy dialogues, local government lobbying, etc. Apply a landscape framework of advocacy instead a sectoral one. Our advocacies should not harm that of another sectors, hence we must work in tandem and in consideration of other sectors and landscapes.

### Protecting the Gains

Given the growing economy, resources that have been distributed are being eyed by business corporations for their investments, sometimes with the assistance of the government. More often the offer becomes tempting especially when resources are unable to meet their basic needs. Accessing support services, introduction of productive and climate-resilient technologies, value-chain processes especially for women and socialized credit can go a long way for the farmers, IPs and fisherfolk to hold on to their lands.

If dealing with investors become an imperative, getting a fair deal with potential investors should be ensured. This can be achieved by enhancing their capacities on FPIC processes, establishing standards and indicators on fair investments and learning the art of negotiation with investors.

### Resolving Land Conflicts

As such, based on the findings and analysis during the joint ANGOC-CHRP (Commission of Human Rights of the Philippines) forum, the following recommendations are put forward:

#### *For Government:*

- Address the root causes of land and resource conflicts: complete land and resource reform programs and ensure tenure security for the rural poor.
- Institute an effective and efficient mechanism to resolve overlapping claims on land.
- Ensure the integrity of safeguard mechanisms that regulate land investments by integrating the UN Guiding Principles on Business and Human Rights (UNGP-BHR) in land and resource governance.
- Enhance the awareness of government on land rights as human rights especially the military.

#### *For Businesses:*

- Comply with government regulations to ensure the sustainability of their investments.
- Engage in discussions related to the UNGP-BHR



*For CSOs and social movements:*

- Unite under a common goal and program of responding to the needs of rural poor communities.
- Organize and empower the rural poor to enable them to effectively defend their rights.
- Improve on existing reporting and protection mechanisms, and widely disseminate these so that they and the rural poor can utilize these in cases of violations of their rights.
- Sustain and strengthen non-violent struggle to hold rights violators accountable for their actions.

### **Improving Land Administration**

- There is a need to discard the Torrens System and adopt a fully administrative approach to the recognition of land rights and the resolution of land disputes.
- Streamline the land administration system and possibly, form a single land administration agency with clear roles and responsibilities, and set forth institutional reforms towards efficiency, transparency, and accountability.
- Adopt a citizen-focus rather than process- and regulation-focus in the delivery of land administration services and where possible, make clear commitments on quality, time and cost of key services.
- Adopt a mass program to systematically register rights to land, bearing in mind social justice principles as laid down in the 1987 Constitution.

### **Influencing Policies**

With the increasing globalization and similarities of issues with other countries, reform advocates, especially ILC Philippine members, should link their advocacy work with international agreements and global initiatives. While this is already being done to a certain extent, this has to be emphasized more. For example, land access, poverty and food insecurity issues should be connected with the governments' agenda on SDG 1 and 2. Similarly, the recognition of IPs in managing their ancestral domains can be linked to the Convention of Biodiversity and to ICCA. This will strengthen the policy work at the national level and contribute to international agenda. ■

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### ACRONYMS USED

ARBs	Agrarian Reform Beneficiaries
ADSDPP	Ancestral Domain Sustainable Development and Protection Plan
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
AVAs	Agribusiness Venture Agreements
BARC	Barangay Agrarian Reform Committee
BFAR	Bureau of Fisheries and Aquatic Resources
CADTs	Certificate of Ancestral Domain Titles
CALTs	Certificate of Ancestral Land Titles
CHR	Commission of Human Rights
CLOAs	Certificates of Land Ownership Award
COA	Commission on Audit
CSOs	civil society organizations
DA	Department of Agriculture
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
FGD	focus group discussion
FPIC	free, prior, and informed-consent
ICCA	Indigenous Community Conserved Areas
ILC	International Land Coalition
IPs	Indigenous Peoples
IPRA	Indigenous People's Right Act
GDP	Gross Domestic Product
Kaisahan	Kaisahan tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan
LAD	Land Acquisition and Distribution
LRA	Land Registration Authority
NAMRIA	National Mapping and Resource Information Authority
NCIP	National Commission on Indigenous Peoples
NDRRMC	National Disaster Risk Reduction and Management Council
NES	National Engagement Strategy
NFR	NGOs for Fisheries Reform
PARC	Presidential Agrarian Reform Council
PARCCOM	Provincial Agrarian Reform Coordinating Committee
PAFID	Philippine Association For Intercultural Development
PEZA	Philippine Export Zone Authority

PSA Philippine Statistics Authority  
SDG Sustainable Development Goal

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# Bangkok Declaration on WCARRD@40

## “Recognize, Defend, and Protect Access to Land, Resources and Tenure Security of the Rural Poor”

**W**E, the participants of the “Regional Workshop on Land Rights and Land Governance”, hailing from members of the Land Watch Asia campaign of people’s organizations, land rights social movements and civil society advocates, together with partners from cooperating government agencies, national statistical offices, development and intergovernmental bodies, have gathered from 14-15 February 2019 in Bangkok, Thailand to mark the **40<sup>th</sup> year of the World Conference for Agrarian Reform and Rural Development (WCARRD)**.

### ***WE RECALL that...***

The WCARRD adopted “The Peasants’ Charter” in 1979 that brought global recognition and multi-stakeholder consensus on the imperative for agrarian reform to fight hunger and poverty and fulfill rural development. It previously emphasized the principle of “Growth with Equity through People’s Participation” through access to land, water and other natural resources; people’s participation in designing, implementing and evaluating rural development programs and policies; the integration of women in rural development; access to inputs, markets and services; extension and research activities.

### ***WE RECOGNIZE that 40 years later...***

- Land reforms brought about complete agrarian transformation in East Asian countries through an egalitarian land distribution and development of rural institutions. However, land reforms in other Asian countries contributed little or no transformation of agrarian structures as large landholdings remain untouched.

- 
- The collective perseverance of people's land rights movements across Asia successfully asserted the demand for tenure and asset reforms as a continuing agenda both at the national and global arena.
  - Land rights and tenure security are now enshrined as critical issues in significant global conventions and programs of action, such as the Earth Summit, World Food Summit, World Summit on Sustainable Development, the Beijing Conference on Women, the Social Summit, among others.
  - The customary rights and self-determination of indigenous peoples over their ancestral domains and territories are embedded in the UN Declaration of the Rights of Indigenous Peoples (UNDRIP).
  - With the escalating and conflicting demands of varied interests and land-related investments on the use of land, forests, waters and other resources, States and global bodies adopted the Voluntary Guidelines for Responsible Governance of Tenure of Land, Forests and Fisheries (VGGT) and the UN Guiding Principles on Business and Human Rights (UNGPs BHR).
  - Land is back in the global agenda and not just a domestic concern with the passage of the Sustainable Development Goals 2030 Agenda and the Magna Carta on the Rights of Peasants and Other People Working in the Rural Areas, which aims to better protect the rights of all rural populations, including peasants, fisherfolks, pastoralists, agricultural workers, and indigenous peoples.

***WE REMAIN CONCERNED that...***

- Ironically, 75 percent of the world's farming households are found in Asia where more than half a billion people suffer from hunger and food insecurity and are still landless or near landless.
- The rural poor's access to land and resources in Asia remain unresolved with agrarian and other land reform programs still unfinished or are poorly implemented in countries.
- Indigenous peoples who contribute significantly to global conservation with their customary practices find their domains highly threatened by encroachment of private and public investments and programs.
- There is little or no formal recognition of women as farmers even when their contribution to agriculture has increased.
- Land reconsolidation and "land grabbing" by private investors is escalating in response to a market-driven land rush to lease large tracts of land for food or commercial crops. This insatiable demand for the world's natural resources is causing more land use and resource conflicts, leading to violence and dispossession of the rural poor.
- Natural and human-made disasters have displaced the poor and vulnerable and kept them from regaining their land and resource rights in affected areas.
- Transparency and accessibility of land-related data by the rural poor are still limited.
- Human rights and democratic freedoms are diminished and suppressed with a global resurgence of State autocracy, which takes away the control of resources by the rural poor.



## **OUR CALLS, OUR COMMITMENTS**

WE ASSERT that LAND to the rural poor is more than just an economic asset but defines their lives, identity, inclusion, and dignity. Therefore, their legal and customary claims, access and control over land, forests, water bodies and common resources must be recognized, defended and protected.

We, thus, encourage those accountable and responsible to pursue the equitable and continued distribution of land assets and resources to the rural poor, especially by upholding the commitments of the Sustainable Development Goals on land and resource rights, and the Magna Carta on the Rights of Peasants and Other People Working in the Rural Areas.

### **We join the global land rights community in advocating for the following:**

1. Enactment and enforcement of national legislation and policies that promote access and tenure security to land, forests, waters, and pastures of smallholder farmers, fishers, indigenous peoples, rural women, pastoralists, youth, differently-abled persons, and other marginalized sectors; and prevent the unnecessary destruction and conversion of fertile land, forests and water bodies in favor of urbanization and infrastructure development;
2. Implementation of agrarian reforms and provision of adequate support to smallholders to improve farm productivity and increase participation in the value chain;
3. Legal recognition and respect of land and territorial rights of indigenous peoples and promotion of locally-managed ecosystems by indigenous peoples, pastoralists and traditional forest users;
4. Implementation of integrated water resources management on joint use of transboundary river flows, and introduction of effective and transparent mechanisms for water distribution, through amendment of laws regulating the issues of water users on tariffs and subsidies for costs of on-farm irrigation systems and development of policies to improve water management at the local level;
5. Upholding the spirit and compliance of international human rights instruments (e.g., CEDAW, ICCPR, ICESCR, ICERD, CBD, Paris Agreement, UNGP BHR, Voluntary Guidelines on the Responsible Governance of Tenure, ILO 169, UNDRIP, UNDROP, etc.), specific to land rights for marginalized sectors, such as smallholder farmers, indigenous peoples, rural women, tenants, sharecroppers, leaseholders, agricultural laborers, fisherfolk, pastoralists;
6. Ensuring the integrity of safeguard mechanisms that regulate public and private land investments and strengthen local mediation mechanisms for resolution of land and other resource conflicts;
7. Support the ratification of the UNGP BHR as a legally-binding instrument at country levels;
8. Effective implementation of social and environmental impact assessments, and adherence to Free Prior Informed Consent (FPIC);

- 
9. Continuous engagement among National Statistical Offices (NSOs), government land agencies and CSOs to include and improve national indicators on access to land and other resources, transparency and public access to land data; and,
  10. Safeguarding of political and democratic space of civil society organizations and people's organizations by recognizing the vital role of people's organizations and NGOs/CSOs in inclusive development through regular consultations and dialogues between government and communities.

WE commit to uphold and pursue these recommendations and synergize efforts towards a more people-centered governance of our land and resources through multi-stakeholder partnership to realize the spirit of the Sustainable Development Goals that no one should be left behind.

**15 February 2019; Bangkok, Thailand**

## SIGNED:

### **National Statistical Offices**

- Hem Raj Regmi, *Central Bureau of Statistics, Nepal*
- Mursabekova Gulzeinep, *National Statistics Committee, Kyrgyzstan*
- MA Kadarmanto, *Central Bureau of Statistics, Indonesia*
- Lay Chhan, *National Institute of Statistics, Cambodia*
- Faith Lea Cabrera, *Philippine Statistics Authority*

### **Government land agencies**

- Marie Grace Pascua, *National Commission on Indigenous Peoples, Philippines*
- Shankar Bahadur Thapa, *Ministry of Land Management, Cooperative and Poverty Alleviation, Nepal*
- Sagynbayey Askarbek, *Ministry of Agriculture, Kyrgyzstan*

### **Civil Society Organizations**

- Francis Lucas, *Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Regional*
- Tevita B. Taginavulau, *Center for Integrated Rural Development for Asia and the Pacific (CIRDAP), Regional*
- Chet Charya, *STAR Kampuchea, Cambodia*
- Ward Anseew, *International Land Coalition (ILC), Global*
- Erkinbek Kozhoev, *National Union for the Water Users Association of the Kyrgyz Republic (NUWUA), Kyrgyzstan*
- Rohini Reddy, *South Asia Rural Reconstruction Association (SARRA), India*
- Shah Mobin Jinnah, *Community Development Association (CDA), Bangladesh*
- Nathaniel Don Marquez, *Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Regional*
- Jagat Basnet, *Community Self Reliance Centre (CSRC), Nepal*

- Joy Demaluan, *Center for Agrarian Reform and Rural Development (CARRD), Philippines*
- Dave de Vera, *Philippine Association For Intercultural Development (PAFID), Philippines*
- Saurin Siagian, *International Land Coalition (ILC), Asia*
- AKM Bulbul Ahmed, *Association for Land Reform and Development (ALRD), Bangladesh*
- Roni Septian Maulana, *Consortium for Agrarian Reform (KPA), Indonesia*
- Maricel Tolentino, *People's Campaign for Agrarian Reform Now! (AR Now!), Philippines*
- Antonio Quizon, *Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Regional*
- Nhek Sarin, *STAR Kampuchea (SK), Cambodia*
- Jitram Lama, *NGO Federation of Nepal (NFN), Nepal*
- Rowshan Jahan Moni, *Association for Land Reform and Development (ALRD), Bangladesh*
- Timothy Salomon, *Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Regional*
- Tanveer Arif, *Society for the Conservation and Protection of the Environment (SCOPE), Pakistan*
- Marianne Naungayan, *Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Regional*
- Sanatbek Iuldashev, *Kyrgyzstan Association of Forest and Land Users (KAFLU), Kyrgyzstan*
- Vaing Samrith, *NGO Forum on Cambodia (NGOF), Cambodia*
- Roel Ravanera, *Xavier Science Foundation, Inc. (XSF), Philippines*
- Gerard Jerome Dumlao, *Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Regional*
- Denise Hyacinth Joy Musni, *Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Regional*
- PV Rajagopal, *Ekta Parishad (EP), India*
- Surendra Kumar, *Association of Voluntary Agencies for Rural Development (AVARD), India*

### **Individual**

- Marianna Bicchieri, *Italy*

# INTERNATIONAL LAND COALITION

The International Land Coalition (ILC) is a global alliance of civil society and intergovernmental organizations working together to put people at the center of land governance. Their shared goal of ILC's over 200 members is to realize land governance for, and with people at the country level, responding to the needs and protecting the rights of women, men and communities who live on and from the land.

ILC Global Secretariat:  
c/o International Fund for Agricultural Development (IFAD)  
Via Paolo di Dono 44  
00142 - Rome, Italy  
Tel.: +39 06 5459 2445  
Email: [info@landcoalition.org](mailto:info@landcoalition.org)  
Website: [info@landcoalition.org](http://info@landcoalition.org)

ILC Regional Coordination Unit:  
c/o Konsorsium Pembaruan  
Agraria (KPA)  
Komplek Liga Mas, Jl. Pancoran  
Indah I No. 1 Block E3  
Pancoran, South Jakarta  
12760 Indonesia  
Tel: +62217984540  
Email: [asia@landcoalition.info](mailto:asia@landcoalition.info)

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 **Sida**

Land governance helps in determining how women and men, families and communities are able to acquire rights, and associated duties, to access, use and control land, forests, pastures and water resources.

Taking off from previous initiatives of the Land Watch Asia Campaign, this book discusses key issues in access to land and tenurial security for small farmers, rural women, indigenous peoples and other rural sectors in eight Asian countries. It also analyses the mechanisms needed for responsible land governance and the resolution of growing land conflicts.



Rural Development Fund

