

# Exploring the Changing Terrain of Land Rights Advocacy\*

Throughout Asia, land is the main source of livelihood and employment among rural communities. A large portion of the population is involved in agriculture, and many livelihoods remain dependent on subsistence farming and access to resources managed as common property, including forests, pastures and water. Secure access to land and other natural resources, however, remains elusive for many poor men and women, as the agrarian contexts of South and Southeast Asian countries are characterized by skewed distribution of private land ownership, with large areas of lands (as high as 80%) owned by minorities (from 5 to 20%) of the population.

Land and agrarian reform initiatives have been developed in many Asian countries, but the implementation of these has generally been wanting because of corruption, changing political leadership and priorities, and a lack of political will. In most countries, even where agrarian reform efforts have been undertaken or are underway, there are significant sectors that do not benefit in these programs such as rural women, indigenous peoples' communities, and youth. Particularly in South Asia, the marginalization of women and *dalits* is a key factor, as land access is often impeded by class/caste dynamics and gender discrimination; discrimination against indigenous peoples (IPs) is also a concern throughout the region.

Land rights advocacy has become more complex because land is increasingly being treated as a commodity. Being in short supply, land is in great demand in the global market.

The competition for land, especially in developing countries, has become even more intense in the last few years. This is clearly manifested by the slew of land deals, either between governments or between governments and private interests, whereby farmland in developing countries is bought or leased to produce food for the buyer or lessor country.

## The New Landgrabbers

According to Olivier de Schutter, in the last three years, 40 million hectares of land in developing countries have been targeted for acquisition by foreign investors from countries such as China, South Korea, Japan, India and Saudi Arabia.

This phenomenon has been attributed mainly to the need to secure present and future food supplies. For instance,

## GLOBAL TRENDS WITH IMPACT ON LAND RIGHTS

The following global trends are expected to have an impact on land rights advocacy:

- **Decisions are increasingly externalized and more complex** – by faceless, absent corporations with no direct systems of accountability to the community;
- **New opportunities are provided by new information technologies**, and the ability to establish direct information links between local and global actors;
- **Roles and powers of the state have been decreasing** due to increasing privatization and globalization; and
- **Vacuum in ideological frameworks** on property rights with the decline of socialism and the rise of unbridled capitalism.

These trends are exacerbated by:

- **Increasing pressures on land driven by global markets:** landgrabs, biofuels, carbon trading, special economic zones (SEZs);
- **Land increasingly treated as mere commodity**, and this is assisted by MDBs through land administration and land market projects.

– Excerpted from a presentation by Antonio Quizon, ANGOC boardmember

China has 40% of the world's farmers but only 4% of the world's farmlands. India, which is seeking to acquire land in Burma and Indonesia, is investing in these countries because of declining agricultural productivity – the

\* This article was excerpted from a presentation by DR. FAINA L. DIOLA, former ANGOC deputy director

## Land Issues in Bangladesh

**Access to and distribution of *khas* land.** Agricultural *khas* (government owned) land covers some 321,323 hectares, of which 139,691 or 43.47% has reportedly been distributed to landless households. Government policy states that *khas* lands are to be distributed to landless peasants dependent on agriculture for their livelihood, but leakage of *khas* land has been as much as 17.2%, as indicated by a 2001 report. *Khas* recipients are supposed to pay government a minimal fee of 1 Taka (US\$ 0.01 in 2008 prices) per acre of land received. However, in practice, they have to fork out bribes almost a thousand times more (US\$ 105-150) to various officials even at the lowest tiers of government.

**Access to and distribution of non-agricultural land.** Previously, no guidelines existed for the management of non-agricultural land. Influential and well-connected persons were thus able to claim ownership of non-agricultural land, usually with forged documents. When the government in 1995 issued detailed guidelines for the management and settlement of state land in urban areas, most of such lands had already been awarded to the rich and powerful.

**Absentee ownership.** Around 13% of households own more than half (58%) of the country's land. Many of these households do not engage in agriculture, but reside and make their living in urban areas, either by running their own businesses or by being employed in the government and private sector. This encourages rent-seeking behavior.

**Commercialization of agriculture and forestry.** Shrimp culture used to be practiced in the household and on fallow or marginal land to augment farm incomes. Because shrimp culture is more profitable than crop farming, various coastal land including rice farms, mangrove areas and marshes, were brought under shrimp cultivation, resulting in several serious environmental problems like water quality decline and loss of biodiversity. Also, rubber and fuel wood plantations have destroyed forests, displaced forest-dwelling communities and have caused conflict between forest-dependent groups and the government's forestry department.

**Land conversion.** Agricultural land has been considerably reduced due to forcible land acquisition to make way for export processing zones, residential development, infrastructure development and other government projects. Much of the land that has been converted is *khas* land which the government had committed to distributing to landless peasants.

Source: *Securing the Right to Land: A CSO Overview on Access to Land in Asia*, ANGOC & ILC, 2009

result of large-scale conversion of farmlands into Special Economic Zones (SEZs).

The major investors from Japan are private corporations Hitotsu and Sumitono, for instance, are leasing farmlands for organic food production.

Some reports indicate that Japanese firms have already leased 12 million hectares of farmland abroad for food production.

In the case of the Gulf States, a statement from Salim Allowzi, Director General of AOAD (Arab Organization for Agricultural Development) is indicative of private sector interest in Arab countries to step up investments in farming projects.

Allowzi said "sufficient investments in Sudan, which is the most fertile country in the region, could already meet the region's need of cereals and other basic food items. Further, if there is a real interest and seriousness for the investors in the farming sector, then all of the Arab world's requirements for cereal, sugar, and other essential foodstuffs could be met by Sudan alone."

Private Arab interests have made inroads into the Philippines. Reports have it that Saudi Arabia, the UAE and Bahrain have been securing lands in the Philippines to supply their food needs.

Apart from food crops, investors are interested in the money to be made from large-scale production of crops that would be converted to biofuels.

Developing countries that sign on to such land deals are enticed by the huge payouts, which presumably would go towards financing the country's infrastructure development.

Currently "idle" lands, for example, in Africa, would be "opened up;" the export market would get a boost from biofuel production; and new jobs would be created.

The downside is that most of the lands being "sold off" are tenanted lands. As a result, many farmers are being evicted from land that they have been cultivating. Water is another resource that is being commodified.

Contracts for these land deals rarely specify the obligations of the investors, but are generally clearly in their favor.

Moreover, the targeted countries usually have no legal or procedural mechanisms to protect the rights of the farmers and local communities whose access to land for local food production would likely be threatened.

In fact, many countries have begun to change their laws and policies in regard to land ownership to pave the way for land deals. In China, one major reform has made it easier for peasants to use their land rights as collateral for loans. In Kazakhstan, the government implements land share policies. Sudan allows foreigners to own land permanently.

Pressure on developing countries to enter into land deals is also coming from development agencies. Recent policies of the World Bank, the International Finance Corporation (IFC) and even the FAO have been observed to encourage the flow of investment and to relax land ownership laws to facilitate such investments.

### Frail Defense

How are the targeted countries dealing with investor incursions? The Thai government claims that its laws provide sufficient protection.

## Land Issues in India

**Forest Act and Wildlife Protection Act.** These Acts emphasize conservation of forestlands and the establishment of “human free” wilderness sanctuaries and national parks. However, no survey was conducted prior to delineating these as protected areas; current occupants (numbering about 4 million) and their land rights were not considered. Thousands of communities have been displaced.

**Special Economic Zones (SEZs).** Land expropriation for establishing these SEZs is covered by the “public purpose” clause of the 1854 Land Acquisition Act. Seen as the necessity of the moment, SEZs are being actively promoted by the Indian government. However, much of the land set aside for SEZs is either tribal or prime agricultural land.

**Corporate/contract farming.** Several Indian states are promoting contract/corporate farming, as emphasized by the National Agriculture Policy (NAP). However, corporate farming threatens the food security of India’s farmers, most of whom are landless or own very small landholdings, because it pushes farmers and peasants from the land. The increasing cultivation of biofuels on scarce agricultural land is another threat to food security.

*Source: Securing the Right to Land: A CSO Overview on Access to Land in Asia, ANGO & ILC, 2009*

## Land Issues in Cambodia

### **Rising demand for land as an economic asset.**

Economic growth has spurred the privatization of public lands, mega-development projects, and the establishment of special economic zones (SEZs), in turn resulting in land grabbing in areas attractive for tourism, allocation of land to the military, land speculation and unregulated granting of land concessions. Demand for land has been thus increasing, and land values are skyrocketing.

**Poor land governance.** The Cadastral Commission set up in 2002 as a dispute resolution mechanism is plagued with bureaucracy and corruption, and has only been able to address small conflicts. Land registration has proceeded too slowly, and has tended to concentrate on non-disputed areas. Also, parallel and overlapping operations in the Cadastral Commission, the courts, and the National Authority of Land Dispute Resolution (NALDR) have resulted in many legal ambiguities.

**Insufficient implementation of the Land Law of 2001.** According to NGOs in Cambodia, only 10-20% of the Land Law has actually been enforced. In several cases, government itself has violated Land Law decrees, particularly regarding protection against eviction, fair compensation for eviction, and ceilings for economic concessions. Also, a sub decree of the Land Law yet to be adopted by the government is that which recognizes and provides for the registration of land rights of indigenous peoples.

*Source: Securing the Right to Land: A CSO Overview on Access to Land in Asia, ANGO & ILC, 2009*

Thailand’s Foreign Business Act allows foreigners to set up shop in the country but requires that nationals own 51% of the company. The government further claims that it does not need foreigners to invest in the country, particularly to grow rice, because Thailand can meet its export requirements.

In Brazil, the legislature is considering a draft law to make land deals more transparent. The draft legislation mandates the government to determine how much foreign ownership is involved in agri-business contracts, for instance.

Paraguay enforced a law in October 2008 prohibiting foreigners from buying domestic farmlands.

## Land Issues in Indonesia

**Expansion of plantations.** Since Indonesian independence, the control of plantation areas has passed back and forth from the Dutch colonizers to peasants. In 2003, President Wahid declared that some plantation companies were guilty of grabbing land from peasants and demanded the return of lands to their former owners as well as restructuring of companies. Unfortunately, his reforms never materialized due to formidable opposition from plantation owners. The “partnership model” promoted by the government is contract farming, intended to diffuse tension between plantation companies and peasants. However, the model has benefited only plantation owners and foreign investors; the conditions of the poor have barely improved.

**Indiscriminate awarding of forest and timber concessions.** The rapid rate of deforestation in Indonesia is largely attributed to exploitative practices of forest and timber concessionaires. By virtue of the Basic Forestry Law (Law No. 5) of 1967 and Government Regulation No. 21 of 1970, large-scale investments in the forestry sector have been facilitated and all commercial forestry has become the preserve of private investors holding forest concessions. Communities living in or around forest areas are prohibited from logging within concession areas, and can do so only if they have a permit from the concessionaire. Conflicts have erupted between communities and forest concession holders.

**Mining on indigenous peoples’ lands.** Article 33 of the 1945 Indonesian Constitution grants the State exclusive rights to the country’s mineral resources. Law No. 11 of 1967 or the Law on Mining provides that all mineral deposits are State-controlled assets. These two laws have given the State blanket authority to conduct its own mining operations or grant mining concessions. Such mining operations encroach on IP lands and have had injurious effects on IP communities.

*Source: Securing the Right to Land: A CSO Overview on Access to Land in Asia, ANGO & ILC, 2009*

Nevertheless, the trend of private-government ventures to buy up farmlands in developing countries appears to be unstoppable. This is already undermining efforts to promote agrarian reform and indigenous peoples’ rights.

### What Can Be Done?

Civil society organizations (CSOs) that are monitoring this trend could intervene at different levels.

1. Make an inventory of overseas investments, for example, investments covering over 500 hectares.
2. Examine these agri-business contracts in the light of national and international laws/policies. Look into domestic laws governing foreign investments, taxation, labor, natural resource use, etc., and whether or not these contracts comply with such laws. Find out if there are international investment contracts that govern these types of businesses.
3. Lobby for legislation that provides for transparency in regard to foreign investments on land; obliges land operators who purchase land to declare the amount of foreign participation in their ownership; prohibits foreigners from buying domestic farmlands.
4. Conduct policy review. Aside from examining existing contracts, investigate contracts that are still being negotiated.
5. Conduct financial and economic analyses of these types of agreements.
6. Conduct environmental impact assessment as well as social impact assessment to make sure safeguards are in place. ■

## Land Issues in Nepal

**Centralized land governance.** Decisions related to land management are made at Ministry level. In effect, people in remote areas either have to bring their case all the way to Kathmandu, or wait for the Ministry’s decision to be handed down to district offices. However, local government agencies usually do not have authority to settle issues and are frequently biased against the poor. Land administration is procedurally complex and poor people cannot deal with the formalities it requires.

**Abolition of collective rights.** Indigenous and ethnic groups are rapidly being displaced from their land, as a result of State-supported lucrative activities such as oil exploration, mining, construction of dams, logging, cash crop cultivation, cattle ranches, and development of tourism infrastructure.

*Source: Securing the Right to Land: A CSO Overview on Access to Land in Asia, ANGO & ILC, 2009*

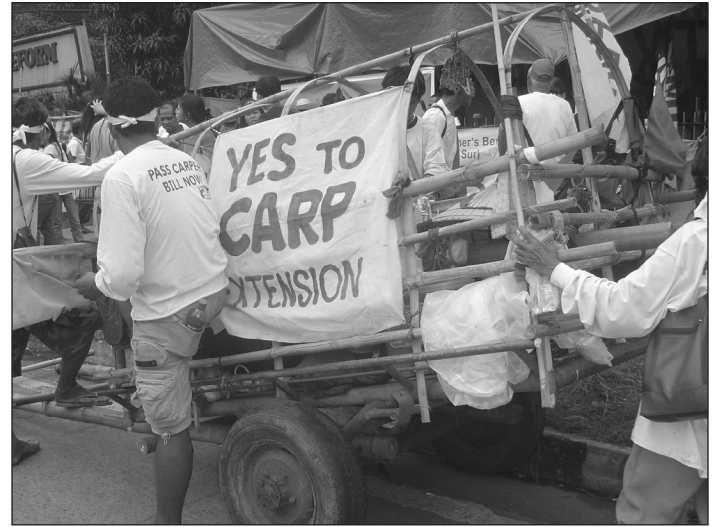


## Land Issues in the Philippines

**Limited funding for support services.** Support service delivery has been insufficient, due to limited funding. Quality support services have only reached a quarter of the 2 million agrarian reform beneficiaries.

**Snail-paced ancestral domain titling.** Ten years after the passage of the Indigenous Peoples' Rights Act (IPRA), only 20% of the targeted area has been awarded to IP communities and limited support has been given thereafter. The IPRA lacks support from government. Meanwhile, the National Commission on Indigenous Peoples (NCIP) has been inefficient in fighting for the rights of the IPs.

**Overlapping land claims.** IP claims over their ancestral lands are being contested by the agrarian reform claims of lowland farmers (with the support of the Department of Agrarian Reform or DAR). In a growing number of areas, this has resulted in conflicts between indigenous communities and farmers. Local Government Units (LGUs) represent another group of competitors to IP community land claims.



Source: AR Now!



Source: ANGOC Photobank

**Extractive industries.** The current administration has anchored the country's economic development on extraction – timber production from forests and mining exploration. This is a sharp departure from the social reform and asset reform agenda of previous administrations and has increased pressure on the remaining natural resources of the country.

**Market-oriented tenurial schemes.** Various arrangements designed to circumvent actual land transfer to farmers are being promoted, like the "leaseback" arrangement whereby AR beneficiaries (ARBs) turn over control of the awarded land (via a lease contract) to agribusiness corporations or former landowners, as a precondition for the release of the Certificate of Land Ownership Award. Another dubious arrangement is the "corporative" scheme wherein ARBs are given shares of stock in the agricultural corporation of the landowner in lieu of actual land transfer. Conversion of agricultural land to commercial, residential and industrial uses is also prevalent, further reducing the scope of land reform.

Source: *Securing the Right to Land: A CSO Overview on Access to Land in Asia*, ANGOC & ILC, 2009