

Women's Land Rights in Asia: A summary of country studies

In many countries in Asia, which hosts more than half of the global population and most of the world's poor, agriculture remains the main engine that drives economic growth. Thus in this vast continent, more than in any other, scarce land resources command a significant value, not just in monetary terms but in social terms as well. Here, land ownership translates to a stable livelihood, security, and human dignity.

Unfortunately, women in Asia generally do not benefit as they should from the land that they till just as much as – perhaps even more than – the men.

This is due mainly to a pervasive patriarchal culture that considers men naturally superior to women, who are therefore treated as second-class citizens. This view prevails not just in social norms but also in the legal framework that governs rights to land.

In this scoping study on women's access to land, the Asian NGO Coalition (ANGOC) sought to provide a comprehensive view of the status of women's land rights in the region. Land rights here refer to the inalienable ability of individuals to freely obtain, use, and possess land as long as this does not impede on the rights of others.

In each of the seven countries covered, ANGOC delved into the current status of women's land rights as well as the legal framework that covers such rights. It also assessed the key factors

promoting or impeding women's land rights and concluded with opportunities and strategies to permanently change the landscape, address gender inequality, and advance women's rights to land.

Status of Women's Land Rights

The level of discrimination against women varies across the seven countries covered by this report. But it is clear that the classic patriarchal social structure has severely undermined the rights of women to land in most of these countries.

While all the countries have ratified international laws that fight against discrimination, such as the UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), these are not enforced in their entirety locally. Traditional rules still hold sway.

In Bangladesh, legal, religious, and social values hinder women's ownership of land. Despite the fact that a high 88% of women are involved in agriculture, they actually own only 4% of the country's total land. This is due to various factors such as the lack of resources to purchase land in their own name and the fact that Bangladesh does not have the legal concept of co-ownership of marital property.

The constitution of Bangladesh actually recognizes the equal rights of men and women. However, property rights are still largely influenced by



religious inheritance laws, both Muslim and Hindu, that discriminate against women.

While many customary laws of indigenous communities are likewise discriminatory against women, e.g., only sons inherit land or, if women do inherit property, control of the land is left in the hands of the male members of the family.

As globalization drives more male members of rural families to migrate to urban areas in search of better income sources, women are expected to pick up the slack. Thus feminization of agriculture, in this case, does not necessarily result in greater empowerment of women.

Studies show that, although Bangladeshi women are engaged in agricultural activities, 48% are deprived access to land. Since they are not recognized as farmers, their access to government-provided agricultural assistance, such as seeds, fertilizer, and small credit is severely limited. Women in India face even more grave circumstances.

In India, the country has some of the worst indicators of gender inequality in the world, including a very low female-male ratio, a major gender bias in literacy rates, and a low share of women in the labor force. Gender-related development indicators, such as maternal mortality rates and sex-selective abortion, have likewise thrown a harsh light on the predicament of Indian women.

The situation is even worse in the context of land rights of women. Hardly any attention has been paid to legal and institutional impediments to their acquisition of land. This despite the fact that a very large proportion of rural female workers are cultivators and that farming households are

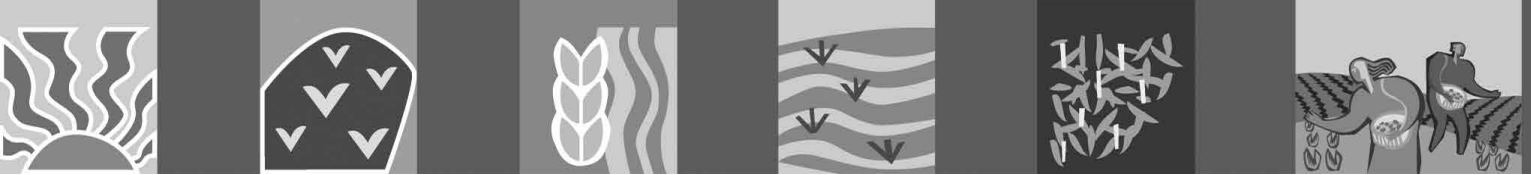
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headed by women due to male migration, death, or desertion among other reasons.

The constitution recognizes equal rights for men and women, including the legal right of women to own land. However, very few actually do as a result of the patriarchal practices that dominated the nation until recently. Examples of these are patriarchal inheritance, patrilocal residence, gender division of labor, gender segregation of public spaces, and discouragement of widow remarriage.

One of the most critical problems in relation to women’s land rights is non-availability of segregated data about the operational land holding owned specifically by women. This shows the general apathy of the government as well as society towards the land rights of women in India – particularly the widows, deserted, and unmarried women who are rendered statistically invisible.

In Nepal, women are not much better off. They too face severe discrimination. Land is left mainly in the hands of the head of the household, such as the father, father-in-law, or husband. Thus,



women only manage to gain hold of land through these male relatives.

But while land ownership by women is dismal – government data show that, as of 2001, women owned only about 8% of total landholdings – they play a big role in agriculture. In 2010, according to the Ministry of Agriculture and Cooperatives, 72.8% of women are in agriculture versus just 60.2% for men, partly because of the migration of males from the farmland to other countries or to the cities in search of work. This puts a double burden on the women, who not only have to handle all household chores but tend to the farm as well.

The extent of women's access to land varies greatly across different ethnic classes, castes, and locations. What may work with one ethnic group may not be suitable for another, making it difficult to formulate appropriate policies and programs to address the lack of adequate access of women to land.

Fortunately, the National Code of Nepal was revised in 2002 due to pressure from activists. This resulted in some favorable provisions for daughters and widows. However, other discriminatory provisions remained.

Women have a more serious fight on their hands when it comes to customary laws, which determine access to land according to caste, class, ethnic background, and geographical region. One example is the Muluki Ain, which is derived from Hindu law and customary law. When new provisions under the Eleventh Amendment Muluki Ain, granted daughters and sons equal rights to inherit land, this challenged the cultural practices and social norms. However, these provisions remain largely ignored. It is still the men who get favored status.

The truth is the majority of women in Nepal are not even aware of their rights as enshrined in national laws. The culprits are the low level of literacy among women and the lack of awareness regarding women's issues. Hence, the vital role that advocacy campaigns play to increase the level of information available to people.

After restoration of democracy in 1990, the government did give priority to gender issues in every national plan, but very few programs were launched specifically to improve women's access to and control over land. In the Three Year Interim Plan, for example, government's programs to empower women and promote gender equality focused on public awareness programs against domestic violence and human trafficking as well as skills development and income generation, without any significant mention of promoting women's rights to land.

Some progress, however, can be found – such as in the issuance of joint ownership certificates for wives and husbands. The government claims that such land titles provide security to women, protect them from marital violence, and enhance their role in decision-making.

As for major issues that affect women's access to land, often cited is commercial pressure on land, which is also felt in the rest of Asia. Land is being grabbed for industrial agriculture, mining, infrastructure projects, dams, tourism, conservation parks, industry, urban expansion, and military purposes.¹ The victims are usually the indigenous people, ethnic minorities, and women who are expelled from their territories to make way for such developments.

¹ DENUNCIÁ. 2011, November 22. Stop land-grabbing now! [Blog Post]. Retrieved from <http://ewwaunel.wordpress.com/tag/nepal/>.



In Indonesia, land grabbing poses an especially serious threat to resource-rich country. The country has seen a decline in the number of farmer-households, not just because of the increase in population but also due to massive conversion of land to give way to, among others, plantations and industrial estates.

The rate of farmlands and forest conversion for infrastructure and plantations reached 100,000 hectares per year, according to Galamedia.com, and the land ended up in the hands of mining and plantation corporations, based on data from the National Commission for Women.

The marginalization of farmers from their land hits women especially hard as they are regarded as “invisible farmers”. For centuries now, farmer women in Indonesia only have access rights to land and other resources in Indonesia. These refer to the right to enter the territory of the resources that have clear boundaries and receive the non-extractive benefits; withdrawal rights or the right to utilize the resources; and the right to produce.

Meanwhile, control over land in the form of management rights, right to determine the rules of resource utilization, exclusion rights, and alienation rights remain in the hands of the men. Indonesia has a national agrarian policy or the Basic Agrarian Law (BAL) that replaced the colonial agrarian law (Agrarische Wet) and also accommodated customary rights. The spirit of BAL was evident in some of the legal principles developed, including gender equality in Agrarian Law. However, the definition of national and state interests in BAL was used as a means for the government to encourage the liberalization of various sectors, especially agriculture.

Claims of development for the people’s benefit served as a means for capitalists from developed

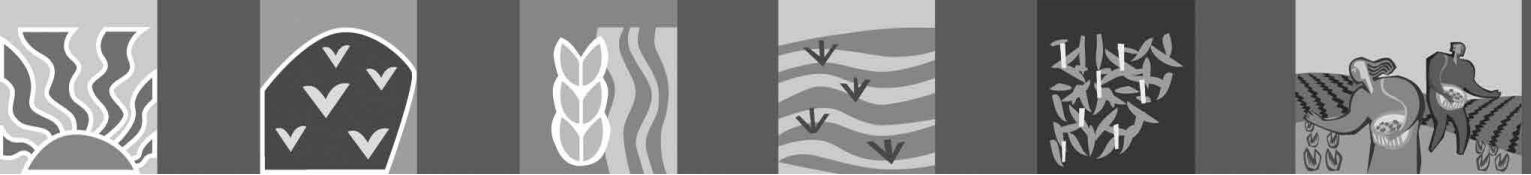
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countries to take advantage of the abundance of Indonesia’s natural resources and policies that do not consider small farmers in rural areas. Rural women consequently became the most marginalized group in Indonesia, given legislation that promotes agricultural liberalization.

In terms of access to and control over agrarian resources, it can be said that BAL is gender neutral; or it has not addressed gender inequality. Women’s ownership/ control of land remains very limited.

Experts have said that, in Indonesia, the root of the farmers’ difficulties was the legacy of the colonial agrarian law, which favored the interests of big private capital over those of the people, by giving special privileges to foreigners. In this context, women, especially rural women in the lowest social classes (peasants, traditional fishers), are the most threatened group.

In Pakistan, it is difficult to determine the extent of women’s access to and control over land as data are nonexistent. Official documents including census, household panel surveys, and other official surveys do not include gender-disaggregated data pertaining to these issues. However, anecdotal evidence suggests that



very few women own land and even fewer control it. They are forbidden to hold land titles, manipulated over land inheritance, and expected (sometimes pressured) to surrender their land inheritance rights in favor of the male members of their families.

Land rights in Pakistan are regulated by an intricate combination of civil, Islamic, and customary laws.

Thus, the system of inheritance for women is a complex and multi-faceted issue impacting lives of countless women. A recent report from the National Commission on the Status of Women (NCSW) noted: "Inheritance right is one of the most ignored gender issues owing to biased interpretations of religious directives and deep-rooted patriarchal customary practices denying women their due right. If they are at all given a share in inheritance, often possession and authority over it is denied. This problem is aggravated owing to inadequate policies/laws, inefficient implementation, enforcement system and absence of monitoring mechanism. Lack of political will is also a contributing factor to this situation."

In 2002 the National Policy on Development and Empowerment of Women (NPDEW) was formulated. The policy envisions gender equity in Pakistan, and defines women empowerment as social, legal, and economic, as well as inclusion of women in decision-making processes in the country. NPDEW specifically seeks to provide rural women access to land, agricultural and livestock extension services, support mechanisms and facilities, as well as micro-credit programs.

Awareness of such important laws, however, is severely lacking. A number of research studies confirm that lack of knowledge and access to information about laws, policies, and court

procedures are major hindrances to women getting their land rights, particularly in the rural areas of Pakistan.

Since the creation of Pakistan in 1947, there have been several attempts to redistribute land through legislative reforms. Most of these laws, however, failed to deliver on the promises. Despite their permitting women to inherit land, the ownership and transfer of agricultural land remained "governed by customary laws that excluded women."

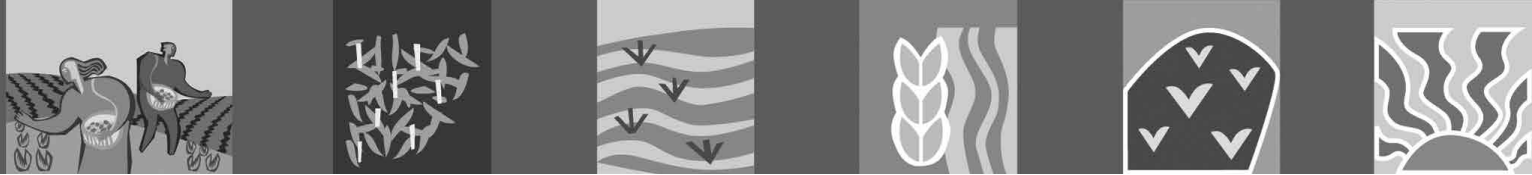
There were also attempts to redistribute state land in favor of landless farmers, largely women. However, these were criticized because no gender assessment tool was used to make sure that women would truly benefit from the programs.

In Cambodia, the government is still developing its agrarian reform laws following the reign of the Khmer Rouge and women here likewise face debilitating discrimination.

The first real change happened in 1992 when a Land Law was passed, allowing Cambodian nationals to own and transfer land. Changes continued throughout the 1990s, with private land ownership increasing in the larger towns, especially in the capital of Phnom Penh.

Then in 2001, the Royal Government of Cambodia (RGC) improved the Land Law and affirmed private ownership of land. The new 2001 Land Law set in place a framework allowing individuals to register their land and have their ownership recognized.

Land ownership, however, remained concentrated in the hands of a very small elite, which emerged as the new ruling class after years of civil war, causing deep social rifts in the population of Cambodia. A mere 1% of the population owns



between 20% and 30% of the arable land of the entire country, whereas the number of landless households who own no farm land has increased from 13% in 1997 to 30% in 2012.

The RGC claims to recognize the important role of women in the unpaid sector of the economy. Such recognition means little, however, since economic and social benefits are not afforded to these workers. Women in the unpaid sector do not have access to medical care, maternity leave, and basic rights under the labor law.

One surprising statistic which needs closer study indicates that, in conservative Cambodia, about 20% of all land titles are registered by single women in contrast to only 5% by single men. The majority is registered with couples (70%). There are no research results available which verify this, thus leaving room for speculations. One possible explanation could be the high number of widows after decades of civil unrest during and after the Khmer Rouge regime. Another possibility, though not widely discussed in literature, is that wealthy and influential men, like government officials, hide their wealth under the names of their wives, sisters, etc.

In general, there is only very limited information, mainly published by NGOs and foundations, about the land-rights situation of women in Cambodia. Though a wealth of literature on development in Cambodia in general is available, these papers usually provide only very scarce information on the gender specific aspects of land rights.

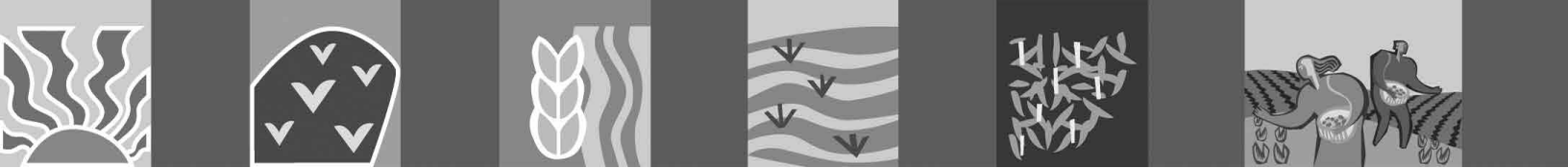
It is striking that NGO documents as recently as 2011 do not even mention the word “women” or, at best, refer to the vulnerable sectors of women, children, and indigenous people that together constitute more than half of the population of Cambodia.

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Although the government has increased its program of individual land titling substantially, communal land titles continue to be granted extremely slowly and many indigenous communities who have requested them have faced extreme pressure and conflict with local authorities. This has a disproportionate effect on women in a number of ways. Local communities report increased gender-based violence against women from private company workers, which restricts women’s freedom of movement. While land disputes increased sharply in 2012, with women often in the forefront of protests and suffering abuse and imprisonment alongside loss of land and livelihoods.

The Constitution, as adopted in 1993, provides that all forms of discrimination shall be abolished and that all persons, individually or collectively, are entitled to the right to ownership, including right to own land. The 2001 Land Law, in fact, provides for joint land titles for husbands and wives. Unfortunately, , the Chbab Srey, a customary law which is the traditional code of conduct for women reinforces the belief in their inferior status and promotes inequality in all aspects of women’s family and social life.

The Chbab Srey explicitly prohibits them from voicing opinions, and advises them at all times



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to respect and obey their husbands and avoid embarrassing their families.

Given this context, the challenges to achieving gender equality in Cambodia remain. Traditional discriminatory attitudes and norms are obstacles in achieving gender equality, including in the area of land rights.

In the Philippines, women are in a better situation compared to those in the six other countries. But it is still far from ideal. Based on data on tenurial instruments, men are the main holders of land, accounting for more than half of property covered by different tenurial arrangements. While it is provided in the national laws that gender equality in terms of land rights is imperative, these data alone show that the provisions have not been translated into action. This can be partly blamed on persisting customary laws.

For example, in the indigenous communities, men are usually the head of the tribes and therefore hold the upper hand in decision-making processes, particularly in the use of the land.

Then among fisher communities, women are considered “unlucky” when it comes to fishing and are relegated to other activities such as mending the fishing nets and marketing. Indeed, in practice, men still have the advantage in terms of ownership and land rights.

The Philippines also does not lack for national laws that seek to promote gender equality. National laws that specifically mention women’s land rights are the Indigenous Peoples Rights Act of 1997 (IPRA) for indigenous women, the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER) for women farmers, and the Fisheries Code for fisher women.

However, provisions for women’s land rights are only subsumed in certain sections and are not fully elaborated, especially in the IPRA and the Fisheries Code. Due to its amendments, CARPER, on the other hand, is more gender-responsive when it comes to acknowledging women’s right and access to land.

Themes present in the legal frameworks include titling, access to information, statement of rights and entitlements, share in the produce/recognition of the value of work, right to representation and participation, and budget provisions. While not all these provisions necessarily translate into actual implementation, great strides have been taken on titling. Policies on land titles and stewardship contracts and patents now include the names of women, unlike in the past when only the men’s names appeared in such documents.

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 titles be issued in the name of both



spouses, or joint titling. DAR's Administrative Order 1-11 is exemplary in terms of elaborating on the extent of titling, decision-making, and even land transactions between spouses. There are, however, no specific provisions on titling for fisher women and indigenous women.

While there are no comprehensive studies on the extent of women's awareness on the land laws and policies governing them, several data point to the efforts conducted by both national government agencies and CSOs in providing information to women beneficiaries (Department of Budget and Management, 2012).

However, while the major laws and programs on women's land rights are strong in terms of specific provisions for titling and access to support services, they are weak in terms of implementation and monitoring. Certain laws may be overlapping and in conflict with customary rights. ■