

Bangladesh

2014 Land Reform Monitoring Report⁴¹

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A poor sharecropper of Pahan community (indigenous people) is ploughing land in a village of Naogaon district, Bangladesh.

Photo by HDRC

⁴¹ For the full country report, please contact <alrd@agni.com>.

As early as its 2011 Land Reform Monitoring Report, Bangladesh had formulated a Land Reform Development Index (LRDI), which was acclaimed by the academia, practitioners, and the society at large as an innovative and practical endeavor to track the state of land reform of a country. However, in its Report for 2014, it was pointed out that the experiences of acceptance of the LRDI and its outcomes by the government are yet to be satisfactory. The expected positive results are acknowledged to be dependent on the government's commitment and seriousness in addressing land reform itself.

years, the value of the overall LRDI has remained almost unchanged—except for certain indicators, which are actually manifestations of a worsening situation (e.g., issues related to land grabbing and associated indicators, number of people killed per 100,000 population, etc.). In the last three years as compared to 2010-11, the absolute number of people killed due to land-related disputes and litigations has increased. However, the relative number has not increased, primarily due to Bangladesh's increased population size during this period. Therefore, the relevant index value measured in terms of “number of people killed per 100,000 population” remains the same or near the same.

Indicators Used/Key Findings

Despite the updated information/data in this latest Report, it was also noted that, during the last three

years, the value of the overall LRDI has remained almost unchanged—except for certain indicators, which are actually manifestations of a worsening situation (e.g., issues related to land grabbing and associated indicators, number of people killed per 100,000 population, etc.). In the last three years as compared to 2010-11, the absolute number of people killed due to land-related disputes and litigations has increased. However, the relative number has not increased, primarily due to Bangladesh's increased population size during this period. Therefore, the relevant index value measured in terms of “number of people killed per 100,000 population” remains the same or near the same.

What is the practical use of the above LRDI results for development and monitoring of land reform in Bangladesh? The following could be the key directions to address:

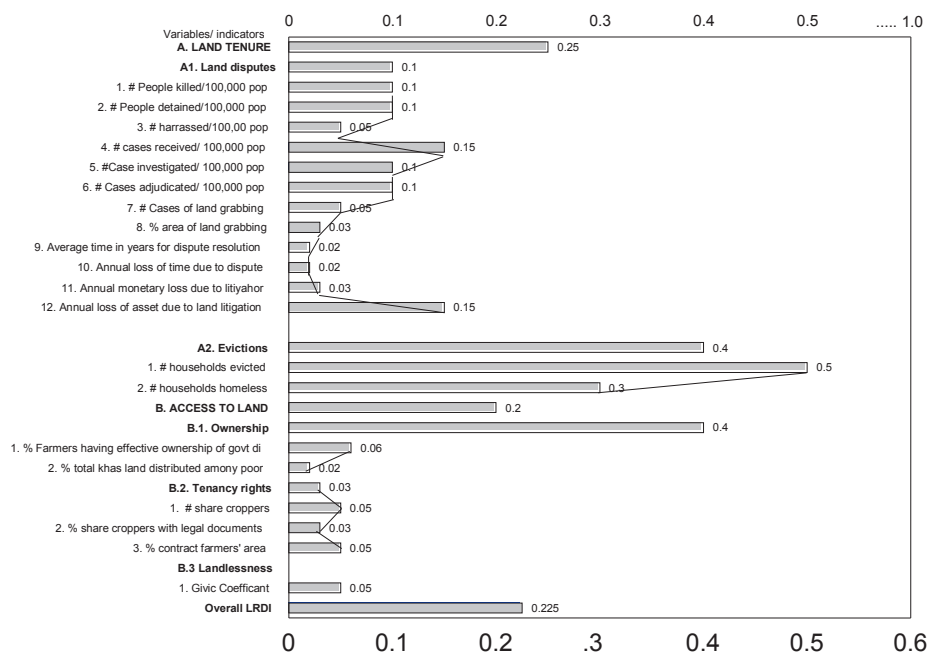


Figure 8. Land Reform Development Index (LRDI), Bangladesh 2010 and Three Years After.

Source: From *Scoping Study on Women's Land Rights in Cambodia 2013* by STAR Kampuchea. For more details of the case, contact: star-director@starkampuchea.org.kh.



- The overall LRDI in 2011 was 0.225. This went down to 0.221 in 2013. In a best land reform environment, LRDI should be close to 1. The country's LRDI is closer to "zero," implying that land reform is still in its embryonic stage. Therefore, vigorous efforts are needed to accelerate land reform in Bangladesh.
- Relatively speaking, both blocks of land reform ("access to land" and "land tenure") are lagging much behind the expected level. However, between the two, the "access to land" block is lagging behind the "land tenure" block (with transformed value* of 0.2 and 0.25, respectively). This implies that, although attention should be given to both blocks, greater emphasis should be given to the "access to land" block.
- Indicators with transformed value*—say those equal to or less than 0.02—represent the least addressed domains of land reform, and therefore need aggressive interventions (including advocacy efforts).

**the formula for computing the transformed value is explained in the full country paper (contact-hdrc.bd@gmail.com or alrd@agni.com)*

Recommendations

On possible new variables and indicators to be included in the Land Reform Monitoring Framework—specifically for the Bangladesh context—the following were recommended to be added: (i) Grabbing of land and forest of the indigenous peoples, religious minorities and other marginalized peoples; (ii) Acquisition of *khas* land (government-owned land) by state agencies for non-agricultural purposes (e.g., military cantonment, para-military purposes, so-called development projects, etc.); (iii) Vested Property Return Act implementation status; (iv) Status of implementation of CHT Accord, especially those related to resolution of land disputes; and (v) Land-related acts and policies implementation status.

If any of the suggested variables and indicators are to be included in the LRMF, this must be done by relevant stakeholders in a participatory way. Further, two different LRDI will need to be developed: one for comparison purposes with other countries, and the other for understanding the dynamics of LRD in Bangladesh itself.

On Land Reform Development and Implementation of the LRMF

On the Macro-level

1. Institute a learning process of constructing a Land Reform Development Index (LRDI) and the monitoring scheme and tools with land-rights based NGOs working in the real field.



2. Continue more research on this endeavor for further refinement and consensus building involving the core team members deployed by ANGOC.
 3. Organize large-scale dissemination meetings (seminars, conferences) to sensitize all relevant persons both at home and abroad including the development partners.
 4. Share the LRDI and the associated monitoring scheme and tools with the relevant persons/departments in the National Parliament, government, academia, and civil society.
 5. Organize expert group meetings to work out expected ideal situation/normative scenario for each indicator by time deadline (e.g., reduce the number of people killed/100,000 population by 10 times by the year 2020, and so on).
 6. The government should get out of 'politics of statistics' and all national statistical documents should be designed to ensure higher level of accuracy and comparability.
2. Organize proactive efforts not only to ensure distribution of undistributed *khas* land to the eligible poor, marginalized, and women, but also provide them with subsidized input, low/zero interest bank loan, and linking effectively with the market.
 3. Reduce land dispute and litigations through an Alternative Dispute Resolution (ADR) mechanism to be instituted by the government in which the land rights-related NGOs and civil society may play a pivotal role.
 4. Have civil society take to Parliament the newly-devised laws/amendments on land-water-forest that have been analyzed from a rights-based approach, have these passed, then ensure their implementation.
 5. Institute a strong, active and permanent advocacy programme to stop/minimize the practice of evictions without prior acceptable rehabilitation.
 6. Provide legal deeds for all sharecroppers—with both government and civil society working hand in hand on this matter—in order to ensure empowerment of the tenancy right. ■

On the Micro-level

1. Undertake vigorous advocacy towards stopping land grabbing—involving Parliamentarians (for making relevant laws), law enforcement agencies, the Ministry of Land and the Ministry of Law, and the broader civil society.



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Cambodia

Processes, Challenges and Prospects in Land Registration in Cambodia⁴²

By *Sor Sontheary*

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Cambodia is endowed with abundant arable land, with 50% of the land being suitable for agriculture. Despite this, Cambodian peasants occupy only about 3 million hectares (ha) of arable land, while companies and small groups of wealthy landholders control more than 4 million ha.⁴³ These wealthy groups and political elite have received

large-scale land, forest, and mineral concessions from the government (Figure 9).

Since the collapse of the Khmer Rouge regime in 1979, the various governments of Cambodia have introduced a number of land administrations, especially the land registration processes,

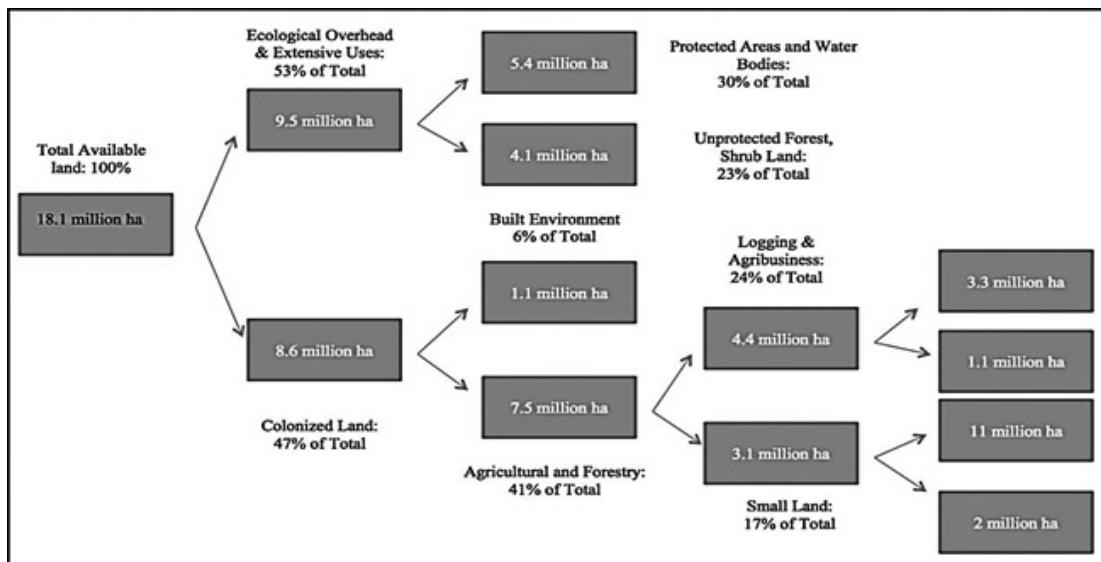


Figure 9. Cambodian Land Use

Sources: Adopted from Scheidel et al. 2013

⁴² For the full country report, please contact <star-director@starkampuchea.org.kh>

⁴³ Based on the report of LICADHO issued in March 2015, three fourths of Cambodian agricultural land is under the control of the private companies, the majority of which are foreign corporations.



to manage land effectively and productively. From 1979 to 1989, land throughout the country belonged to the State and was operated by collectives. The farmland was operated as *krom samaki* or solidarity groups in which people were divided into small groups—consisting of 10 to 15 families—working on the same plot of land together and sharing the yield.

With the political trend and the influence of free market economics, most collectivized land was transformed to private lands from 1989 to 1992. In 1989, the Cambodian State Party's newspaper quoted the People's Republic of Kampuchea (PRK) leaders who admitted that collectivization produced low yields because of the lack of ownership among cultivators. This statement is believed to have triggered subsequent legal action that recognized communal de facto land ownership that had been inherited by these farmers. From 1989 to 1992, three legal documents were issued related to land, its acquisition and registration: the Council of Minister's Instruction No. 03, dated 3 June 1989; the Sub-decree 25, dated 22 April 1989; and the Land Law 1992.

The Land Law (1992) was ratified to provide legal support to land privatization reform, recognizing private rights of property holders. For example, Article 3 stated, "the State guarantees the user of the land the right to possess, to use, and to obtain the legal status to utilize their lands." The tasks of surveying and registering land parcels were handed to the Department of Cadastre.⁴⁴ Statistics from 1989 to 1990 indicate that 3.7 million land plots were issued,

complete with receipts of the land title applications (Sokbunthoeun, 2010).

After the general election in 1993, Cambodia accepted free market economics and welcomed foreign investors. The political stability and increased demand for land triggered the rise of land values and increase in transactions, which has also precipitated an increase in land conflicts since the 1990s. For example, from 1992-1993, there were reports of land grabs by both civilian and military officials targeting poor farmers. By 2001, 1,310 court cases related to conflict over land were reported (George Cooper, 2002). By mid-2005, the number of land conflict cases increased rapidly following the approval by the Royal Government of Cambodia (RGC) of Economic Land Concessions (ELCs) to be granted to corporations.

Impact of land concessions

More than 4 million ha of land in Cambodia are controlled by small groups of people in the form of various "land concessions." Prior to the 2000s, around 6 million hectares of Cambodian forestland were granted to companies and individuals in the form of forest concessions. However, the Cambodian government cancelled the majority of these forest concessions due to their significant negative impact on forest

⁴⁴ The Cadastre Department was first established in 1898 by the French. The department has been annexed to different ministries from time to time until it was assigned to the Ministry of Land Planning, Urban Planning, and Construction in the early 2000s.



resources. At the same time that the RGC abolished forest concessions, the government began to grant large amounts of land to companies and individuals in the form of ELCs. By 2013, the Cambodian government had granted more than two million ha of ELCs to private companies and wealthy individuals.

The impetus of land concession was formalized and increased after the enactment of sub-decree 146 on ELCs. The sub-decree was signed on 27 December 2005 and is guided by a number of environmental and social safeguards. For example, the sub-decree specifies the conduct of Social and Environmental Impact Assessments (SEIAs) prior to the granting of ELCs. The sub-decree also requires public consultation with various authorities and local residents before ELCs are granted. However, many of the required pre-approvals were not complied with. Numerous case studies of ELCs indicate conflicts with local residents and the violation of sub-decree 146 regulations (Chandet et al., 2010; Neef et al., 2013).

Granting of ELCs has created many unintended problems such as land grabs, land conflicts and forced eviction, with multiple reports on the impacts of ELCs on the land security of local people, as well as cases of land grabbing and evictions (Thiel, 2010; Scheidel et al. 2013; Neef et al. 2013; Springer 2013). Based on LICADHO and Adhoc reports, almost one million people have been affected by the granting of land concessions. Individuals and communities who are affected by ELCs have staged protests for appropriate compensation.

Cambodian-based international and national NGOs have advocated for the rights of those dispossessed of their lands. These organizations have supported affected communities to take their protests to the public domain in their demand for a resolution to land grabs and illegal occupation by the wealthy elite and corporations. Protestors have captured national and international media attention through blockades of national roads, city marches and gatherings in front of the National Assembly building and the Prime Minister's house in Phnom Penh (Dara and Blomberg, 2014). In some cases, the villagers have used violent measures to protect their homes and land, but were suppressed by security forces and the spurious use of the judicial system (Titthara & Boyle, 2012; Radio Free Asia, August 12, 2014).

History of land distribution/transfer in Cambodia

In the 15 years following the ratification of the Land Law by the RGC in 2001, Cambodia has introduced a number of land registration mechanisms to provide land titles to land holders. These include: (i) Systematic Land Titling (SLT); (ii) Social Land Concessions (SLC), (iii) Sporadic Land Registration (SLR); (iv) Communal Land Titling (CLT), and (v) Directive 01.

Sporadic Land Registration (SLR)

The departure of occupying Vietnamese forces on 26 September 1989 triggered the formation of the State of Cambodia (SoC). The SoC introduced



Sporadic Land Registration (SLR) in late 1989, responding to those who wanted to immediately apply for land registration. In the SLR process, the applicants submit their applications through the commune chief to the district cadastral authority, who then applies on behalf of the applicant for land registrations. According to the study team's interviews with district cadastral officers in the targeted survey areas, the villagers could approach cadastral officers directly to register their lands.⁴⁵ The cadastral officers determined that, if the proposed land was involved in a conflict, the application would be held off until the conflict has been resolved through mediation with the Cadastral Commission. In such circumstances, the applicant is issued an application receipt and is informed of the date for land surveys and demarcation. According to Sokbunthoeun (2010), a public announcement is made for a period of 15 calendar days to ensure that all conflicts have been resolved. After this time, the cadastral officials conduct land surveying and demarcation with the participation of the land owners, neighbors and local authority.

After surveying and demarcation, the cadastral officials sign the form that shows the land's boundary and other information related to the ownership of land. This information is displayed publicly for 30 days in order to give individuals a chance for comment and corrections where necessary. The proposed land registration is

⁴⁵ Interview on March 21, 2015 (Svay Rieng Province)


then included in the cadastral map of Sporadic Land Registrations. Finally, the document is submitted to the provincial Cadastral Office before submitting to the national Cadastral Office for land titling.

The literature on SLRs reveals that this system has not been efficient due to the lack of human, technical, and financial resources. This is confirmed by district cadastral officers who complained of the shortage of staff and inadequate office facilities. In addition, SLR is costly, which means that only the wealthy are able to afford this type of registration. This has resulted in the absence of land titles for millions of poorer rural and peri-urban Cambodians.

Systematic Land Titling (SLT)

Systematic Land Titling (SLT) registration promised to speed up land registrations after the SLR had proven to be time consuming and inefficient. It was also expected to provide new solutions for land conflicts, through enhancing land security, providing the basis for land taxation, and facilitating secured land market transactions (Sokbunthoeun, 2010). The benefit of SLT is that land plots can be registered at relatively low cost.

SLT is a 15-year project spanning 2002 to 2017. Its general procedure involves sending cadastral officials to the field to determine land locations, conduct surveys, and register land systematically. In its first five-year phase, SLT surveyed more than one million land parcels and issued more



than 800,000 land titles in the project area covering 11 provinces. However, similar to the case of the Sporadic Land Registration process, SLT has not reached its goals as of the end of 2014. Major impediments cited are poor management of the scheme overseen by a corrupt government bureaucracy.

Social Land Concessions (SLC)

Social Land Concessions (SLC) were created under the Land Law 2001 to grant land to land-poor and landless households and community groups, mainly for residential and farming purposes (Neef et al., 2013). In the Land Policy Framework, the RGC linked land distribution to poverty reduction through promoting cultivation and on-farm income generation. SLC was introduced through sub-decree No. 19 in 2005, which describes the process and the scope of granting SLCs at both local and national levels. At the local level, commune councils can initiate a SLC and submit an application for approval to the provincial or municipal land use offices. At the national level, government ministries can propose SLCs on behalf of those who are affected by ELCs or natural disasters, such as landslides and perpetual flooding.

Unfortunately, SLC did not bring the expected benefits because real implementation was rarely seen. The scope of the initiative was very small, with SLC being completed in Kampong Cham and Kratie Provinces with only 4,000 ha of land granted. According to Neef et al. (2013), the only major SLC project was the Land Allocation for Social and Economic Development

(LASED) program introduced in 2008. This project was funded by the World Bank (WB) for a period of five years with the aim of granting 10,000 ha to 3,000 households.

Communal Land Titling (CLT)

Under the Land Law (2001), several articles were designed to enable indigenous people (IP) to manage their natural resources including forests, uplands and agricultural land, as well as to provide a legal entity for IPs to acquire Communal Land Titles (CLTs). To initiate a CLT, communities have to create local land use and management plans and come to an agreement with neighboring communities to solve conflicts, if there are any.

As of March 2013, five communities had received communal titles from the government, which showed its willingness to grant three additional titles in May 2013. Furthermore, there are around a hundred other indigenous communities working through this process, of which 72 villages have been self-identified with the Ministry of Rural Development, and 49 villages have been recognized as legal entities by the Ministry of Interior and are waiting for the last step of the process. However, the process of CLT is time consuming, complicated and costly, thus hindering many communities from obtaining communal titles.

Recently, a new government initiative on land acquisition - known as Directive 01 (D-01) - significantly derailed CLT because it unwittingly encouraged many IP communities to apply for private land ownership. This led to legal



conflicts where companies became the legal owners of large parcels of community land (with support of the courts) which would have not otherwise been contested. The end result was that large tracts of community land were lost to corporations and wealthy individuals.

Directive 01

The RGC launched Directive 01 (D-01) on 9 July 2012, aimed at reinforcing and increasing the efficiency of land management, with an emphasis on reducing land conflicts and providing titles to incumbent landholders. The policy aimed to offer systematic issuance of private land titles for 1.2 million ha of land covering 350,000 families living within ELC forest concessions or State-owned land. To implement this initiative, thousands of student volunteers were recruited and provided with basic training before being sent out to the provinces to assist land titling offices and departments with two main tasks: (i) to measure disputed land between communities and companies and (ii) to assist with the issuance of private land titles, although students were given subsequent instructions to avoid lands under dispute.


In the field, volunteers defined areas to be demarcated, measured families' individual land plots and issued preliminary titles. Under D-01, each family could claim and register a maximum of five ha. The details of the demarcated land were displayed publicly for one month and families could choose to accept or reject the

results on a plot by plot basis. If there was no complaint or protest, families were issued a private land title. Uncultivated, forested or State land could not be titled under this process.

Unfortunately, D-01 intensified the already contentious area of land use, especially for indigenous communities. D-01 saw large tracts of communal land pass from IPs to ownership by corporations and wealthy landholders. The IPs assumed that D-01, which provided for private ownership of communal land, was the quickest method to secure land titles. However, many applications for private land titles by IPs were overturned by the courts in favor of corporations and the wealthy elite. Although D-01 is widely accepted as being beneficial for farmers who seek tenure and security for their existing land, D-01 also provides the legal basis for companies to control large parcels of State and forest lands through issuing title on such lands.

Literature Reviews

There is a large volume of literature on Cambodian land policy, conflict, and illegal acquisition. Among the publications on Cambodian land conflicts and land grabbing, there are three main groups: (i) those that focus on the land policy and titling projects; (ii) the literature on ELCs and their impact on livelihoods, and (iii) Order D-01 on land and its impacts on IPs in the northeastern area. The first group of literature focuses on land policy history and especially the Land Management Administration Project (LMAP) - a joint project between the



RGC and the World Bank (ADI, 2007; Sokbunthoeun, 2010; Thiel, 2010; Dwyer, 2013; Biddhulp, 2014).⁴⁶

These previous writings did not focus much on the mechanisms to solve conflict, especially the mechanisms at the district, commune and local levels. There are few studies that trace the views of local officers on land conflict and resolutions, which is the core theme of this proposed monitoring report. Thus, this research study was aimed at gathering the monitoring mechanisms of land conflict and land grabbing to help policy-makers make decisions and find solutions for land-related issues. To do so, it sought to address the following questions:

- How has land been distributed, and who benefits and who loses? (tenant/landless/women)?
- What are the status and role of women in the land redistribution process and ownership?
- How does the land redistribution, mainly ELCs, link to land tenure, land security and landlessness in Cambodia?
- What is the scope of the conflicts emerging out of the land distribution process—both with the government’s systematic land registration and the D-01 land registration campaign?
- What mechanisms would be best to support key stakeholders to deal more effectively with the current land conflicts, in compliance with the contemporary land law?

⁴⁶ For an extensive discussion and analysis of these resource documents, see the full country report.

Research Methodology and Sampling

The research team conducted extensive desktop research of relevant literature while designing the research methodology. This included developing interview instruments and collecting different types of source data. The areas that were covered used different types of processes for land registration—such as sporadic land registration, systematic land registration, communal land registration and the D-01. All of these mechanisms are presented with different challenges; for example, the nature of conflicts, responses and resolution mechanisms.

The qualitative approach enabled an in-depth understanding of current issues linked to land distribution, registration and land grabbing. It also allowed the study team to understand how these issues are treated by various mechanisms in respect to land distribution and land conflicts. The study covered two communities in each of the five selected provinces – Banteay Meanchey, Pursat, Svay Rieng, Ratanakiri and Mondulakiri. Given the time and resources that the research team was allocated, the selection of these study areas was based on criteria including a mixture of geographic areas (lowlands and uplands), a range of mechanisms used for land registration, and locations where land conflict is occurring.

Interviews were conducted with focus groups of affected communities and individuals, key informant interviews with police officers, commune councilors, district officials, provincial

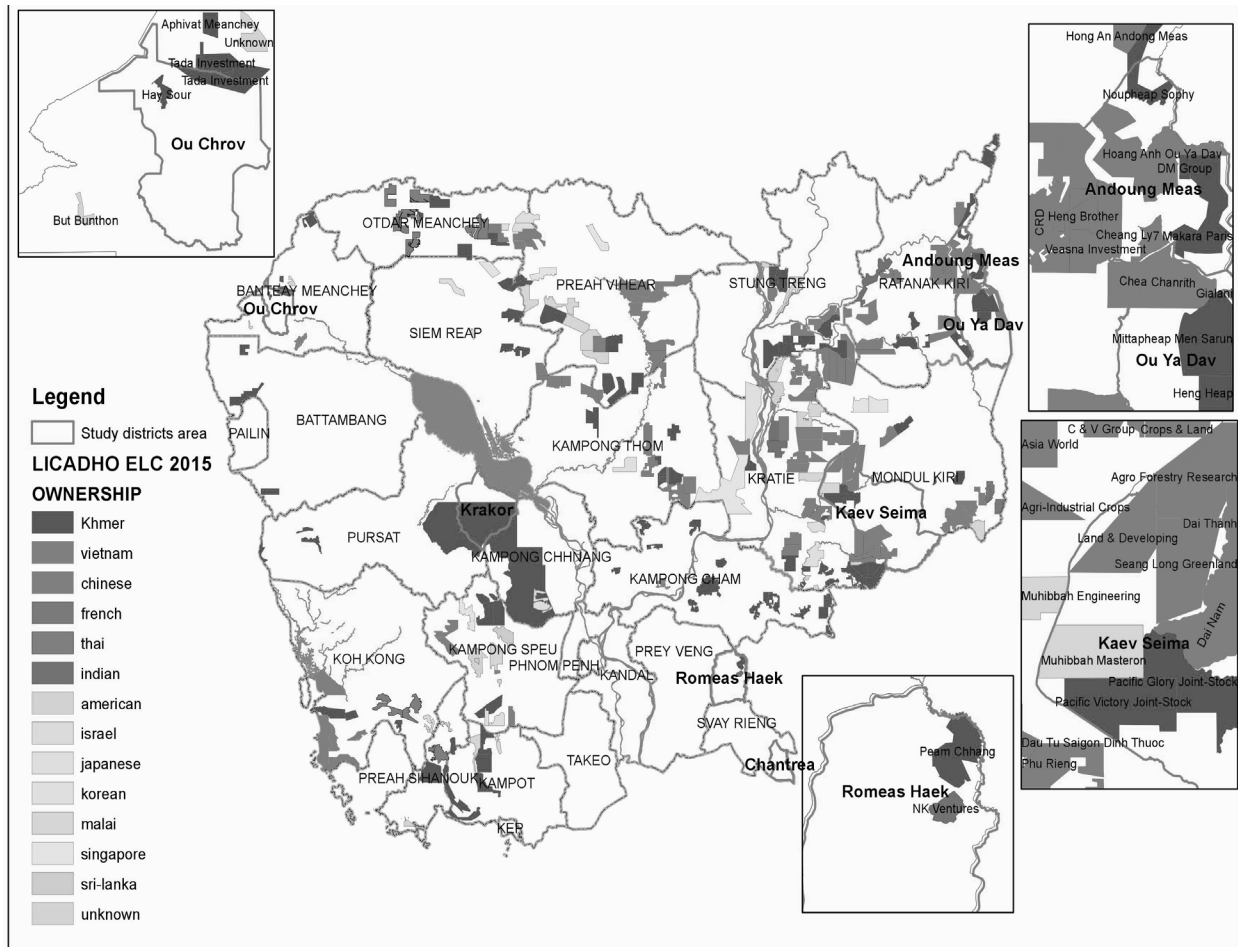


Figure 10. Map of the Study Areas.

officials and department officials, and selected case studies. At the national level, the team interviewed an official at the Ministry of Rural Development (MRD) responsible for the ministry’s participation in communal land registration in the indigenous areas. Additional interviews were conducted with officials from line ministries, including the Ministry of Land Management, Urban Planning and Construction (MLMUPC) and the Ministry of Agriculture, Forestry, and Fisheries (MAFF). Interviews were also conducted with individual NGOs working with land management and

registration applicants, including Development and Partnership in Action (DPA) and the NGO Forum.

The analysis focuses on examining the differences between the indigenous communities and non-indigenous communities concerning land registration, land conflicts and land grabbing; and the mechanisms used to register land. This disaggregation of data allowed the research team to analyze the dimensions and differences of land titling between indigenous and non-indigenous peoples.



Constraints and Limitations

While conducting field interviews, the research team faced a number of unexpected challenges. First, there was the contextual difference among the selected geographic areas. One of the selected areas in Svay Rieng had not been involved with Systematic Land Titling (SLT) at all, thus making it difficult to track information on land conflicts and land grabbing. Some of the field research sites faced sensitive issues over land ownership and predictably some people were reluctant to give interviews and provide their opinions because of fears for their personal security.

Access to conflict sites was yet another challenge. Land controlled by companies was particularly difficult to access as company security guards would not allow entry to plantations or farms without permission from management. Such barriers to physical access are directly caused by the politicization of land ownership in the provinces. The research team did, however, visit conflict areas in Svay Rieng without asking permission from the person accused of grabbing that parcel of land.

Key Findings

Emerging Trends of Land Distribution: ELCs and SEZs

Cambodia was drawn into the global land boom from 2002 - 2008 with land prices exploding in rural and urban areas. As the price of land rose, so too did land conflicts related to ownership and

titling. Land conflicts have continued to increase each year with the highest peak to date occurring in 2014. Cases of land grabs and forced evictions have been widely reported, with a sharp increase in land grabbing carried out by a group of powerful individuals who are closely linked to either high-ranking government officials or the military. Demonstrations against forced evictions and land grabbing are being reported on a daily basis, both in local and international media.

The steep rise in land prices has also caused a rapid increase in land clearing across the country, especially on State land. This problem has been further exacerbated by the massive increase in the number of immigrants seeking land for cultivation and occupation. Local villagers in Pursat Province reported *“within our areas, we have seen a lot of newcomers, some from soldier families come to our village and clearing the land.”*⁴⁷

From the mid 2000s, a new form of land conflict has been occurring as a result of the government’s new policy introducing Economic Land Concessions (ELCs). Forty two percent of Cambodia’s total arable land has been granted for ELCs, with an estimated 230 companies, both local and international, reportedly being involved in these ELC deals. Various research documents and reports reveal that the allocation of land for ELCs has been completed without any form of consultation with local people. People affected by ELC concessions have

⁴⁷ This was reported through a community FDG in Pursat Province



reported, *“As is usually the case, we knew nothing about the plan, except when the company and powerful individuals sent the bulldozers to clear our fruit trees and residential areas.”* They further elaborated that *“...in some areas, we are told to either sell our land to the company or just to leave the area, as the government has already decided to give the land to the company.”*⁴⁸

The government has also adopted a wide range of other development initiatives, including land allocation for “Special Economic Zones” (SEZs) intended for subsidiary businesses. Within these SEZs, the government reserves the right to allocate available land to international companies that want to invest in export businesses in Cambodia. As reported in the FGD interviews and amongst the community people who live next to these special zones, communities often knew nothing about the plans to zone these land areas. Residents in Banteay Meanchey province, for instance, explained, *“Before the word ‘Special Economic Zone’ was heard by our people here, we saw a lot of powerful people including some government officials come to the area, along with the hard copy of the land certificates, explaining that our community land now belongs to them.”*⁴⁹ In this community, at least 25 families are still fighting to reclaim their land from a powerful person,

who is believed to have grabbed the community land adjacent to the SEZ.


At the same time, the rapid expansion in land clearing for economic concessions and agro-business type cultivation has also affected state forests and conservation areas. As a result, the government has increased its efforts to protect the remaining state forests, where widespread destruction has already occurred. This “too little too late” approach by the RGC has spurred more conflicts, particularly with local people who have cleared forests for their own cultivation.

Cases of land grabbing, eviction and land alienation due to the lack of a transparent and effective land distribution and conflict resolution process have also been reported by IPs across the country. Land concessions for economic development, such as ELCs, have been granted mostly in the areas occupied by IPs. This is particularly the case in the northeast where large areas of forest and community land have now been converted into plantations for rubber, cashew nut, cassava, beans and other large agribusiness crops. This plantation practice has rapidly changed the lives of IPs. Their farming practices have now been transformed from traditional subsistence farming to cash croppers.

Again in this area, ELCs have been granted with no consultation with the local people. As IP groups involved in the FGDs explained: *“Surrounding our village, we only know that all forests and land now belong to the Vietnamese companies with different names. We have never seen any local authority come to discuss with us about this.*

⁴⁸ This statement has been made by most people involved in the interviews, within the selected provinces.

⁴⁹ Although this was reported by people from Obei Chorn community, such cases has also occurred in other places where the wealthy elite hold (manufactured) hard copies of land certificates as the basis for land grabs and, as result they can use it, for filling complains to the courts.



They dig a long canal surrounding our village, preventing our animals to cross into the plantation. We often are fined heavily by the companies just because our buffaloes and cows went into their plantation site.”

The “leopard skin strategy⁵⁰” which aims to divide land between the village and company, has also been applied within the IP areas. This method or agreement has not stopped these foreign companies from colonizing community and IP land.

In conclusion, the lack of effective and functional mechanisms for land tenure and land management has been described as a key contributor to the current land crisis in Cambodia, along with poor law enforcement and systematic corruption. The functioning of government mechanisms designed to facilitate land distribution has also been constrained by the lack of political will and conflicts of interest among political officers within the various tiers of government. The CPP and the wealthy elite have also benefited enormously as a result of the deficiencies and delays in the land registration system. Consequently, land conflicts are likely to continue and further increase, at least in the short- to medium-term.

Analyzing approaches and processes of each land registration mechanism

This section provides some critical analysis on the processes and approaches that could help (or hamper) the quality of land redistribution as identified by this research study.

▪ *Community Participation and Empowerment*

Participants in both individual interviews and FGDs agreed that individuals and communities should be actively involved in the process of land distribution. Interviewees recalled the first mechanism for land distribution in 1989 - when both local authorities and families in the village worked together to measure the land and formulate the documents, before sending the information to the office of land management for an approval certificate.

In some areas visited by the study team, the community people and local officials were asked to compare the 1989 mechanism and the current Systematic Land Registration to hear their views on the level of community participation. Most of them argued that *“although the mechanism still tries to encourage us to participate, most of the works are instructed and controlled by the government technical committees and we just follow the process.”*⁵¹

⁵⁰ It is a method that accounts for people’s location within the ELC, leaving them to live on “leopard spots”, rather than evicting them from the concession. (Source: <http://www.phnompenhpost.com/post-weekend/playing-rules-novel-approach>, dated 9 August 2014).

⁵¹ Quoted from FGD and Local authority in Ou chrov District, Banteay Meanchey province.



The D-01 campaign, meanwhile, is viewed by some as politically motivated, as it was carried out one year before the 2013 general election and finished shortly after the election, with direct support of the Prime Minister. The level of community participation also appears to have been less within the recent D-01 land registration campaign.

In the IP community, the need to maximize community participation was strongly emphasized to ensure that every IP family has access to all relevant information relating to the registration. The processes for registering IPs' land are complicated and time consuming.

In some villages, the level of community participation is still a key issue. Even though they participated in the process, some of the villagers were not aware of the purpose of the meeting.

- *Access to Information (Land law, steps and process)*


Although some basic education on land laws was provided in some areas, this message was coursed through the local authority, with the belief that the information would be further shared with the broader community. However, as the study team found, the level of knowledge held by communities in respect to the land laws was very low. All members of the commune councils and local authorities involved in the interviews agreed that community education on land laws must be provided to the community before the registration period. This not only

helps to lay out a smooth process of land registration, but also provides a measure to minimize land conflicts while awaiting land registration.

A similar finding was also identified in IP communities where education of land laws has been challenged by language barriers, which render some technical terms difficult or incomprehensible for local IPs. For example, the difference between private land registration and communal land titling was not clearly understood by the IPs. Part of the reason is that the government and NGOs working on land registration still cannot agree on the advantages and disadvantages of each title. The fieldwork interviews in Mondulkiri indicates that the confusion of CLT and private property (D-01) made people feel hesitant about which was the right land titling mechanism to choose to protect their land.

- *Constraints with Time and Facilities*

All the interviewees expressed the need for more time for them to prepare and fully participate in the process. For both the SRT and D-01 processes, time was allocated to explain the technical procedures. However, very little time was reserved for consultations with experts regarding the registration process itself and dealing with other questions—such as even the basic details of the 2001 Land Law. As suggested in an FGD, community education should be organized a year ahead of the registration process. Notably, the research team found that there was no space provided for local partners (NGOs) to participate in the process of land registration.



Cadastral officers also encountered shortages of facilities to execute and complete land registration tasks. As expressed by the district cadastral officer in Chantrea, “*We use old machines to survey and print documents. We desperately need advanced technology to help us complete our tasks. The shortage of staff is also another challenge for us to improve productivity and reduce time.*”⁵²

- *Involvement and Engagement with Local Partners*

This study found that the level of collaboration and cooperation between local partners—referring to both local authorities and NGOs working with communities—and the technical team from the land registration office was not well developed. In some cases, NGOs were not allowed to engage in or discuss the process or be involved in community education activities.⁵³ A similar finding was also identified in the Systematic Land Registration process.

- *Social Land Concession versus Economic Land Concession*

The government approval of ELCs without prior assessment or regard to SLCs has generated substantial negative impacts on the livelihood of

the local communities. This problem has been also exacerbated by the lack of consultation with local communities as well as a poor system of transparency and limited compliance with Social and Environmental Impact Assessments (SEIAs). This study found that a lack of adequate studies on land classification, usage and ownership prior to the time of registration has caused confusion for government technical teams, and in some cases this has created conflicts between people in the communities.

- *Fees and Charges*

Although reports of ‘unofficial payments’ were made in the land registration process, there is now concrete evidence that bribery and graft are major problems for Cambodia’s land management system. In addition, in recent years the government has adopted a new policy to charge a fee (approximately US\$39/ha) for communal land registration. This fee does not include the operational costs for staff time and other community education activities linked to land registration. All of these fees combined make it impossible for IPs to complete communal land registration, unless supported by NGOs.⁵⁴ This is seen as highly discriminatory on the part of the government.

⁵² Key Informant Interview with district governor, district cadastral officer, and commune council in Chantrea.

⁵³ In IP communities, during the D-01 campaign, NGOs were instructed by the provincial government, not to interfere with the process and should even not to discuss with people about the D01 process. All matters must be undertaken by the government technical team.

⁵⁴ The cost becomes much higher as the process of communal land registration takes years to complete and, thus staff are paid to do their job.



Impacts, challenges and gaps

▪ *In Indigenous Communities*

Internal struggles within the CLT communities to manage their land effectively have resulted in land fragmentation and internal tension. At the same time, however, indigenous communities have also demonstrated strong cohesion. In La-In village located in Kon Mum district, for instance, the CLT land was encroached upon by outside land grabbers. The IPs and their leaders could sue the land buyers and win in the courts, because they have strong legal support through provisions of the Land Law. In fact, it is the commune authorities who have the responsibility to prevent land grabbing and encroachment from happening.

In a separate case in Ochra village a misunderstanding over conflicting land titles is observed. While land laws and policies provide administrative boundaries up to the commune level, it is not so for the village level. Villagers are well aware of their traditional boundaries and their own unique landmarks such as a stream bank or big tree marks, even though these are not recognized as such by the Land Law. According to the commune councilor of Srae Preah, the CLT area of Ochra village was encroached upon by two households from the adjacent Poucha village, due to ancestral land claims that remain unresolved. However, it is very hard for him and his colleagues to help solve this problem since all of the parties involved in the conflict live in the same commune. Land titles and transactions are unofficial and any claim before the courts would not be legally valid.

The potential for overlaps also arises between ELC applicants and communities during their registration process, especially after the introduction of Directive 01 (D-01).

Communal land-titled areas are also still under threat from in-migrants and ELCs.

The threat of encroachment by migrants is even more severe for IP areas where registration is on-going and titles have not yet been obtained.

The process of Communal Land Titling has been complicated, protracted and difficult to understand for local communities. There has been confusion regarding the principles of CLT, such as the required percentage of IPs in a community applying for CLT—with some saying that IP communities need to constitute at least a 70% majority to be entitled to the CLT process, while the Department of Lands say there is a need to have clear village administrative boundaries before CLT starts. Given the constraints and risks of CLT, an alternative to communal ownership in the form of D-01 emerged as a means for IPs to acquire their land. However, one provincial councillor emphasized and cautioned that “*D-01 helps provides new opportunity for powerful people to increase their wealth through legalizing large tracts of land that they occupy. Poor people hold only around 1 hectare per family, while the rich hold more than 10 hectares.*”

Some CLT communities began their applications in mid-2000s but have not received formal titles to their land. Thus, many communities have lost faith in the CLT process.



The process of Directive 01 has also excluded IP access to their traditional swidden lands. In practice, the measurement of land has been designed for land plots where residents and farmers reside or practice permanent agriculture. This is not the case for traditional IP land management and cultivation practices where crops are rotated and land is left fallow to rejuvenate for the following years. During the D-01 land surveys, these types of areas were excluded by the survey team and classified as ineligible for private land titling.

Participation in the CLT process for IPs is further complicated by the need to deal with at least three ministries to recognize IPs themselves. Before a title is issued by the Ministry of Land Management, Urban Planning and Construction (MLMUPC), the Ministry of Rural Development (MRD) needs to confirm the identity of an IP community. The Ministry of Interior (MoI) then needs to issue a legal document to confirm the IP community.

It is important that all aspects of relevant laws are well disseminated to the broader IP population. This calls for broad-based participation of stakeholders in respect to IPs and land use and an exploration of land use options. Officials from the Department of Land Management in Ratanakiri have pointed out that, in addition to IPs request for obtaining CLT, IPs have access to other land areas and resources providing they can show sufficient evidence of use. Non Timber Forest Products (NTFP) areas are open to use by IPs under the Forestry Administration. IPs can also

request for and establish community forestry (CF) in forest and NTFP areas. Similarly, if the NTFP areas fall under the jurisdiction of the Ministry of Environment (MoE), IPs can request for and establish community-protected areas (CPA). However, these options do not appear to be well understood at this time among IP communities.

▪ *In Non-Indigenous Communities*

This section presents the current impacts and challenges that exist in the process of registration within the Khmer mainstream community. Legally, the land ownership for Khmer families is granted through individual land titles. Over the past decades and due to population pressure, more farmers have sought to expand their land plots to provide for their growing families. As a result, many Cambodians have moved to search for more land in new areas for their resettlement and cultivation. Due to the lack of proper management on land redistribution, confrontations and conflicts among land seekers, land owners and local authorities have often been reported through social media and newspapers. This issue has been further exacerbated by the high price of land which encourages small land holders to sell more land.

At the same time, in recent decades, the government land registration has been also hampered by the rapid expansion of the ELCs, where it generates more alienation and resentment amongst local communities. The Army has also been listed by this study as another key player involved in land grabbing, the clearing and smuggling of high



value timber, and forced evictions. Interviews with key informants revealed that illegal land clearing has been carried out prior to any form of land registration. Cambodia's forests have largely been destroyed as a result of illegal clearing by the Army and ELCs. The government's poor implementation of its ELC investment policy has been directly responsible for this catastrophic outcome.

In the context of Khmer mainstream society, the receipts of land ownership (or *soft title*) issued in the 1980s are still valid. The hard copy (or *hard title*) of land certificates can also be obtained through the SLR. However, interviews with government officials from the office of land management showed that so far only wealthy families can afford this process as it is rather expensive and mostly done for business reasons. The SLT registration has also been carried out as basis for providing hard titles of certificate to the families. In SLT process, time and space were allocated for the mechanism to define the land identity and preparation before the registration team can be dispatched to the areas for land measurement. Sufficient time was also provided and that has enabled active participation from families and local authority. Based on the interviews with government officials involved in the interviews, this process need at least six months to complete and it requires a thorough investigation and formal agreement between all land owners whose land boundaries are next to one another.

In several districts covered by this study there have been no systematic

land registrations completed yet and there is no clear plan for notifying the district level land management about how or when the registration will begin or complete.

It should also be noted that the campaign of D-01 was intensive and carried out across the country shortly before the national election in 2013. Thus, it was perceived as political rather than a social concession. Experts involved in the study of the impact of the D-01 point out that, compared to the SLR, the time for the implementation of D-01 was short and the process lacked participation from the local people.

Conclusions

Cambodia is endowed with ample arable and fertile agricultural land that has attracted many to invest in its resources, particularly through ELCs for large scale plantations. The granting of land concession has created widespread land conflict, led to land grabbing, and created insecurity for small acre land holders. To provide land tenure security and improve the productivity of the land, the RGC has initiated a number of mechanisms in order to provide private land titles to landholders. These include Sporadic Land Registration, Systematic Land Titling registration, Communal Land Titling, and Directive 01. This study has explored these mechanisms regarding land distribution and conflicts and illustrated the challenges and constraints faced by communities across Cambodia.



The research findings indicate that land conflict in the research areas is still occurring, mostly in the locations where formal land titles are not yet available for incumbent landholders. Surprisingly, villagers who have already received land titles and IP communities that have CLT titles still encounter land grabbing and encroachments from migrants, ELC concessionaires and wealthy adjacent landholders. The research also found that land titling mechanisms such as D-01 have provided both benefits and harm. On one hand, D-01 has been beneficial for those who hold less than 5 ha of land and prefer private land titles to secure their land. On the other hand, D-01 has hindered the operation of CLT among IP communities.

Still, land registration mechanisms have played a crucial role in resolving land conflicts and preventing a land-grabbing epidemic. However, the process of each mechanism should include far more participation from local communities and local authorities who have a better understanding of local geography and the social context of the land to be registered. Greater transparency is also required on the part of all individuals, companies and their government representatives registering land, particularly ELCs. Support of the national line ministries for the rule of law will provide the general population with confidence in land management and titling and, in turn, create an environment for greater security of tenure for land in Cambodia.

Proposed Policy Options

For the government

- Consider a decentralized approach, empowering district and commune local government authorities with proper support and resources; thus creating greater convenience for local people in the process of land registration in any of its forms.
- Provide sufficient technical assistance for the land registration process to be executed, and recruit more qualified people to staff cadastral teams to implement and speed up land registrations.
- Speed up land registration in conflict-prone areas and those occupied by IPs to provide land tenure security and increase productivity of land as soon as practicable and within stated time frames which are acceptable to these communities.
- Re-consider the roles and the efficiency of a land conflict resolution authority to guarantee effective land conflict resolution.
- Engage broader participation of stakeholders in land registration, such as the previous practices used in 1989.
- Find plots of land for the new settlers in order to avoid violation of the rights of CLT owners, and enforce the rule of law and protect the rights of legal and de facto legal occupants of land and protect these occupants from all forms of intimidation and violence.



- Monitor carefully the performance and behavior of those companies/individuals that have been granted ELCs to ensure that they abide by the law and conditions set forth in ELC agreements.
- Allocate more land in the form of SLCs to people who have been made landless as a result of natural disasters, unregulated development or evictions.

For development partners

- Achieve coordination amongst partners involved in supporting land registration in order to share information and mobilize resources to support the government's efforts to expedite land registrations.
- Hold a regular forum between development partners/donors and the government mechanism to monitor the overall performance and status of land registrations in Cambodia.
- Allocate support for conflict resolution interventions and mechanisms

For non-governmental organizations (NGOs)

- Provide greater support (coaching and mentoring) to cadastral staff, to provide community education on land laws and other policy information relating to land registration. This assistance must include coaching and mentoring.
- Prior to the time of land registration, work side by side

with the cadastral staff to provide education to communities on the land registration processes, to produce IEC materials, to promote community mobilization, as well other logistical support when necessary.

- Work as mediators to bring the facts to the relevant authorities or international stage for fair and just solutions to the victims of land grabbing and forced evictions.

At the community level

- In the process of land registration, communities should be empowered to form their own monitoring mechanisms, be trained to assist the cadastral staff, and actively support land registration within their communities. A local support mechanism of this type can play an important role in organizing community meetings, providing community education, as well as assisting the government cadastral staff when needed.
- The community should be well equipped with knowledge on land law and land policy, both regarding the land registration process itself, as well as to use it as basis for reducing or preventing land conflicts amongst their neighbors.
- Each family should have boundary posts installed and properly marked for easy reference against land titles, to prevent the recurrence of land conflicts between neighbors in the community.



For indigenous peoples

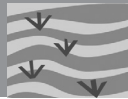
- As a part of IP self-determination and identity, it is recommended that more research be carried out to identify the exact current and future demand for CLT and private land titling.
- Collective actions are needed by IPs to demand that government review the very high fee for CLT registrations, and speed up the CLT process as a matter of priority.
- As the participation of IP communities remains crucial in the process of CLT, IPs should be empowered to understand all the basic steps in the land registration process and other information needed; and this should be conveyed in the local language.■

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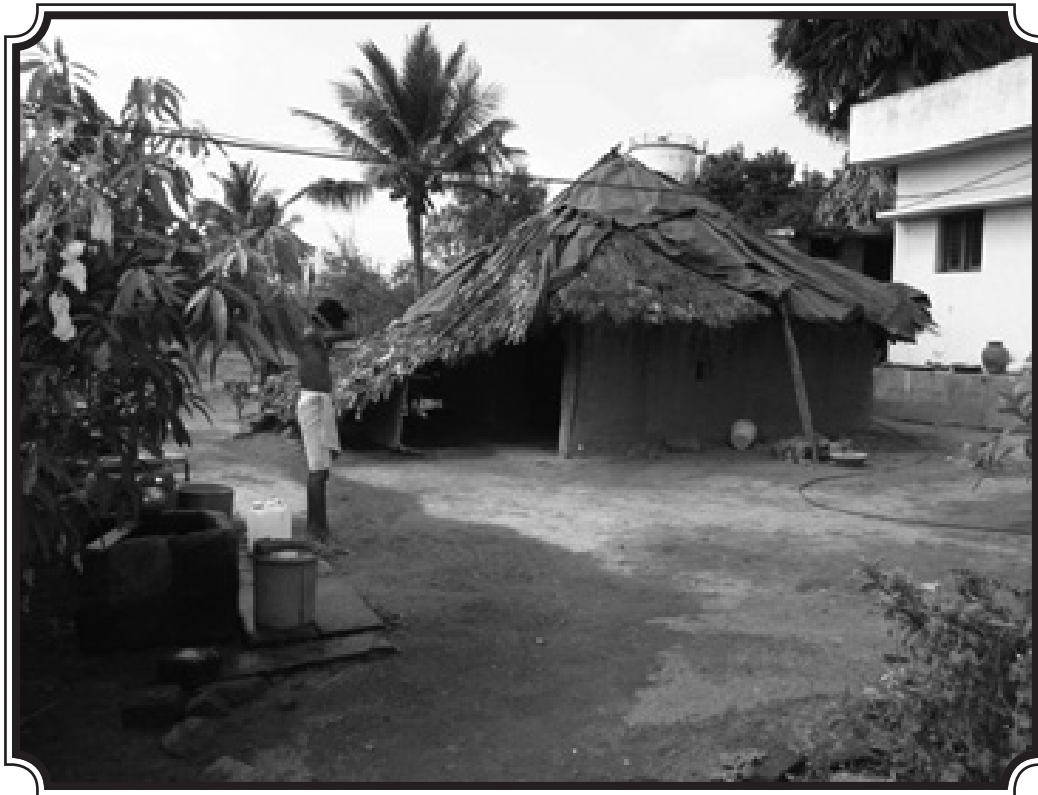
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India

Homestead Land in India: A Research Report⁵⁵

By Jill Carr-Harris and Aasha Ramesh



Tribal village in Telegana state.

Photo by Aasha Ramesh

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Context

The distribution of homestead lands emerged as a national priority in India in 2012, preceding the large people's Jan Satyagraha march in October of that year. The Union Government was looking for a way to advance the land reform agenda without disrupting the interests of the current landholders. Thus the distribution of shelter land found its way into the listing of the Ten-point Agreement that was signed between the Government of India and the Jan Satyagraha in Agra on 11 October 2012 and has remained an important point of consultation with the new Government in power.

At the time of the discussions around the Ten-point Agreement in late 2012, the then ruling United Progressive Alliance (UPA) government headed by Congress finalized the draft of the Homestead Act for Parliamentary approval. The Planning Commission in the 11th Plan document had already recognized the "right to a roof over one's head to be seen as a basic human right" (Kumar, 2010).

Why the Homestead Land Issue is So Critical - At the national level in India, it has become apparent that land is being earmarked increasingly for corporations at the expense of the poor. So much so that a high-level report of the Committee on the State of Agrarian Reforms and the Unfinished Task in Land Reform spelled out 350 recommendations, specifically addressing *homestead rights*. It recognized that homelessness is an incidence of landlessness and was an urgent priority.

In 2012, the Rural Development Ministry and the Ekta Parishad advocacy team drafted the Rural Homestead Rights bill (*Annexure 1 in the full country paper*). It was based on the fundamental rights of the Constitution, and therefore gave the responsibility to the federal state to make and implement laws on homestead land, even though agricultural land was primarily a state subject. In effect, this Rural Homestead Rights bill seemed like a political opening in furthering the land reform agenda. It meant that state governments would be compelled to draft this act in their own states, focusing on all those without land on which to live.

However, when the new Government of Narendra Modi came to power, the land reform agenda and the draft Homestead bill were eclipsed by the introduction of a Land Ordinance (through an emergency Executive Order) in December 2014 and again in April 2015. This Land Ordinance (2014/15) modified the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement" Act, 2013 (Act No. 30 of 2013), virtually stripping it of the guarantees protecting farmers (especially small and marginal ones) and the landless poor against dispossession and displacement. As this was part of the larger plan of increasing investment and industrialization, the Land Ordinance favored development based on urbanization, industrialization, massive infrastructure development, and so forth. This meant that homestead protection and distribution for rural people was suddenly replaced with government priorities towards



urban housing and the establishment of 100 smart cities.⁵⁶

In this report, the two states of Bihar and Telangana are examined in terms of their homestead acts. Bihar currently has a draft Homestead Act while Telangana has none to date. This provides an interesting comparison for pressing for more policy advocacy.

The Bihar Right to Homestead Bill 2014

A Bill to ensure that every landless and homeless person living in the rural areas of the State of Bihar shall have a right to homestead:

- Recognizing that extreme poverty in rural India is rooted in landlessness and homelessness;
- That the poorest and most vulnerable among the rural families are those who are landless and homeless;
- Recognizing the international human rights norms and standards that establish that land, as a housing resource, is an essential element of the human right to adequate housing;

⁵⁶ Authors' update: In August 2015, this Land Ordinance was defeated by the opposition of farmers, agricultural laborers and other supporters in the country, who backed opposition parties blocking its passage in the upper house of Parliament. This also gave a new boost for the draft National Homestead Rights Act in India to be reintroduced. In the days ahead, there will need to be greater research and political advocacy. As the current national government is pressing for urban housing, homestead for rural populations can also be added.

- Recognizing the inequality of land ownership, discrimination faced by the women, *dalits*, *adivasis* and other marginalized communities in the society, and marginalization of the rural poor;
- Recognizing that homestead provides a sense of identity and dignity to the human beings;
- And, believing that a homestead provided to a poor landless and homeless family would enable his/her to build a house and take up supplementary livelihood activities such as backyard poultry, goat-rearing and vegetable cultivation;

The Government of Bihar hereby enacts the Bihar Right to Homestead Act to guarantee minimum land for rural landless and homeless families to build a house and carry out supplementary livelihood activities.

[Of special note are the underlined provisions in Sections 6 to 9 of the draft Act, excerpted below]

Eligibility - All the landless and homeless families living in the rural areas are eligible to demand and receive Homestead as per the eligibility criteria prescribed by the State Government.

Provided that the following families shall not be eligible to demand and receive Homestead -

- (a) Families who own homestead land in the State or any other parts of the country;
- (b) Families who have agricultural land which is accessible and fit for habitation;

- (c) Families whose annual income is one and half *lakh*⁵⁷ or more;
- (d) Government employees and pensioners;
- (e) Any other grounds of exclusion prescribed by the State Government.

Title - The title to the homestead shall be granted in the name of an adult woman member of the eligible family. In cases, where there is no adult woman member in the family, the title to the homestead shall be granted to an adult male member.

Priority - The priority in allocation of homestead under the Act shall be given to families belonging to Mahadalit Castes, other Scheduled Castes, Scheduled Tribes, Extremely Backward Castes, Other Backward Castes and to the indigent widows, divorcees and single women. Once all such eligible families living in a district are covered, eligible families under other categories living in that district shall be covered in a phased manner.

Responsibilities of State Government

- The State Government shall for the purposes of this Act

- (a) Undertake preparation and accomplishment of the Implementation Plan as envisaged under section 4 of this Act.
- (b) Allot and provide titles and deliver possession of the homesteads to all eligible families in the state.

- (c) Provide basic civic amenities including drinking water, approach roads, internal roads, sanitation and electricity in the clusters of the allotted homesteads.
- (d) Establish grievance redressal mechanism.
- (f) Ensure transparency and accountability in the implementation of the Act.
- (g) Facilitate conduct of social auditing on the implementation for the Act.

HOMESTEAD MONITORING REPORT


Indicators Used

The aim of this study was to raise the issue of homestead land once again, by showing the layering of injustices that have occurred particularly for the marginalized sections of the society—and to show homestead land as an important aspect of the land reform agenda in India.

The research problem explored was the number of people that do not have ownership rights but that reside in semi-permanent or permanent housing. The study also looked at the policies which provide for homestead plots; and raised the distinction between those who have a homestead but no title, and those who are homeless due to lack of any physical shelter.

The Bihar and Telangana studies each surveyed two districts and each covered 400 households, totaling 800 surveys in four districts of two states.

⁵⁷ In Indian currency, 1 lakh refers to 100 thousands.



The survey form had 25 questions related to all aspects of homestead. (*The questionnaire is an Annex to the full country paper.*)

Key Findings and Analysis

From the Bihar study - The Bihar study points to the various groups of Dalits and their acute situation of landlessness in the context of a genuine shortage of revenue land for homestead. The survey and focus groups showed how important it is to regularize the land on which people are currently living. Most of those surveyed lacked title, not the actual possession of land. Giving a land deed removes the family's insecurity. This would be most helpful to Dalit caste groups in helping to reduce discrimination, to agricultural laborers in increasing their negotiating space with landlords, and especially to women who are managing the households.

There is no denying that the problem of regularizing a three-decimal⁵⁸ plot, in which a family is currently living, does not address the family's expansion and space issues. This minimum plot size does not allow for a milch cow or a small kitchen garden or any form of livelihood generation. However, given the current low availability of land in Bihar, such regularization is a first and necessary step. Otherwise, land pricing will make even a three-decimal piece of land an unfulfilled dream for those most in need.

⁵⁸ A unit of measurement commonly used in Bangladesh and India equivalent to 40.46 sq. m. or 0.004 ha (Farlex Financial Dictionary, 2012) Retrieved from <http://financial-dictionary.thefreedictionary.com/decimal>.

Also it has to be borne in mind that the settlements which people inhabit are primarily caste-based neighborhoods. By regularizing where the communities live, the low castes will have some security as well as some power of decision making.

From the Telangana study - In the Telangana state study, the focus was on showing the relation of homestead land to the marginalized groups such as Dalits, *adivasis* or pastoral people. The Government had given land of 1 to 1.5 decimals for Scheduled Castes (SCs) and asked them to build their houses on it, but the communities were not aware of how to obtain their titles. Nomads, in contrast, wander around and are compelled to settle down on a piece of land identified by the government, which was allocated to them. As the community is impoverished, they have to set up *kacha* structures (one-room tenements). However, most of the people have been given a *patta*⁵⁹ for the site that was allotted. But irrespective of whether they have the *patta* or not, all pay taxes for the houses annually depending on the type and size of the house plot.

Respondents from both the districts surveyed in Telangana had various problems in accessing sites, houses, and grants for construction because they do not have proof of identification and the necessary personal documents.

⁵⁹ *Patta* is a legal document stating the actual owner of a land (Apna Complex, 2013. *Land patta and its importance as a legal document*. Retrieved from <http://blog.apnacomplex.com/2013/09/21/land-patta-and-its-importance-as-a-legal-document/>).



All of the participants in the survey and focus group discussions were of the opinion that they should be given more than three cents of land for housing and preferred that the houses be constructed by the government itself. This is because accessing funds from the government for construction is a herculean task with red tape, massive documentation requirements, and rampant bribery. Tribal communities were of the opinion that government should construct houses as per the local culture. The *adivasis* are so used to living under the sky with open spaces, so the small cement block units that the government constructs is very restricting to these communities.

Another problem that surfaced in the research was that of people not being able to hold on to their land (and therefore their homestead) as they do not have the appropriate inputs, such as water, to cultivate the land.

There is also the situation where people live in homes (which they see as their own) yet they do not own the land—which means that they can be displaced. This is the reason why people seek the *parcha*⁶⁰ for claiming homestead right or, in some cases, use their tax slips to prove residency for a long period of time. Therefore having a title is an important defense against land acquisition by others or eviction. It is also important to be in the record of rights once the land deed is acquired.

In other instances, homeless people are offered the opportunity to acquire a piece of land. But the land that is offered is under the possession of someone else. The police and district officials do not take responsibility for settling the family with the land *patta*. In the focus group discussions in Telangana, it was evident that many people are not able to acquire land for this reason.

Conclusion

Since the Government of India has policies for redistributing land, the failure lies in insufficient transfer. The justification is that there is not enough available land. If the government can find so much land for infrastructural development and industrialization, then it is ironic that there is not enough to regularize homestead plots. It is for this reason that having the Homestead Rights Act is so important to regulate the states into providing homestead land for India's homeless. ■

⁶⁰ "any settlement document" (Bihar Land Disputes Resolution Act, 2009)



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Indonesia

2014 Land Reform Monitoring Report⁶¹

By *Iwan Nurdin*

Konsorsium Pembaruan Agraria (KPA)

Since the passage of the Basic Agrarian Law No. 5 of 1960, the Indonesian government has had an obligation to its people to implement the agrarian reform (land reform) agenda. However, the agenda was never implemented—neither within the New Order government of Soeharto nor after it. This is despite the Basic Agrarian Law No. 5 having been strengthened by the MPR decree No. IX/2001 on Agrarian Reform and Natural Resources Management in November 2001.

Land is the key element in natural or agrarian resources in Indonesia, as well as in so many places in Asia. The way land is governed, however, very much depends on the assumptions underlying it. There are some fallacious assumptions that need to be changed regarding the governing process of land as an essential resource.

Firstly, the state is seen as the only institution that can efficiently extract essential resources to guarantee people's welfare. Hence, the state has received a mandate from the Constitution to generate wealth for its citizens, and one of the schemes employed is through the extraction of natural resources.

Secondly, it is a common belief that the abundance of essential resources will last for generations. Thus, there is still some difficulty for past and current governments to make a stand for the future conditions when those resources are completely depleted.

Thirdly, for many people land is a source of wealth and therefore a symbol of authority as well as a source of political power. Throughout the history of Indonesia, feuds and even wars occurred as leaders claimed pieces of land as their territory, and marked their power.

Lastly, contemporary Indonesian society has developed new assumptions based on the fact that land is scarce, and that land is a commercial commodity to generate capital through selling or leasing. All these assumptions have, over time, shaped the way people perceive and acquire land, as well as the way land is governed.

However, there are other important meanings of land for the Indonesian people that have currently begun to erode. Almost all traditional communities, all over Indonesia, have long understood land as having sacred meanings, as a means of 'continuity,' of heritage, or a form of duty or responsibility which has been entrusted to them by their ancestors for the sake of their future descendants.

(condensed from "Mainstreaming Land Rights and Indonesia's Land Governance Transformations" by Lilis Mulyani, Research Centre for Society and Culture - The Indonesia Institute of Sciences. For more details, contact <lilis.mulyani@lipi.go.id

⁶¹ For the full country report, please contact <iwan_selamat@yahoo.com>, <dewi@kpa.or.id>.



Process

This report by Konsorsium Pembaruan Agraria (KPA) presents the main agrarian problems in Indonesia in the light of the political context in 2014—an election year for the country. It focused its monitoring on two main areas: (1) agrarian conflicts and (2) land policies.

Documentation of land conflicts - KPA documented the data of agrarian conflicts nationwide from January-December 2014, by recording the conflicts reported through mass media and through members of the KPA regional network to the KPA national secretariat. The monitoring focused primarily on ‘structural agrarian conflicts,’ which are those caused by various policies or public officials’ decisions which resulted in land grabbing and social, economy and political impacts. Individual land disputes and those involving inheritance rights or private-vs.-corporate disputes were not included in the monitoring.


In line with recording the data on agrarian conflicts, the KPA legal aid team discussed several cases to increase public awareness on the impact of land conflicts. They organized media briefings and made a formal report to the National Parliament and the National Commission on Human Rights. A major case in 2014 took place in Karawang Wes Java Province where hundreds of households were evicted by land grabbing for purposes of building an industrial area.

Monitoring land policies and advocacy on the Land Bill - KPA continues to monitor the regulations that are still in the deliberation process, or that have already been endorsed to Parliament. KPA also produced the position paper for the regulations as a basis for policy advocacy.

For laws that, in KPA’s view, were counter to the agrarian reform principle, KPA developed alliances to challenge these laws before the Constitutional Court. Thus, in 2014, their alliance won the appeal to eliminate certain articles in Law No 19/2013 on Protection and Empowerment of Farmers that discriminated against farmers’ organizations that had been developed by CSOs. KPA also conducted several discussions and public hearings in Parliament regarding the draft Land Bill.

Land Governance Issues

Law No. 6 of 2014 on Village Affairs - On 15 January 2014, Law No. 6/2014 on Village Affairs was passed after seven years of debate. This law is intended to address rural development problems, such as budget imbalances, inequality of natural resources management in rural areas, and inequality of infrastructure development. It also hopes to encourage rural transformation and rural people and indigenous people (IP) empowerment in agrarian reform implementation, as every village government will receive a generous development fund annually from the central government. (This law defines ‘rural area’ as one in which the main activity is agriculture—including



natural resources management—with area functions such as village housing, infrastructure facilities, social services, and economic activities.)

This law provides a chance for agricultural and rural development in which the village government and people are the main actors. The challenge, however, is ensuring transparent village financial management for the benefit of the people.

The Land Bill - With the 1960 Basic Agrarian Law (BAL) marking its 54th year, there was a push by the Indonesian Parliament and Government to pass the Land Bill to be a substitute for the 1960 BAL. It was intended as an ‘operationalization bill’ for the BAL, the provisions and details of which needed to be aligned with the present agrarian conditions—while upholding the broad agrarian dimensions (not the narrow sense of land) and the populist principles held highly in the BAL.


Basically, the Land Bill is envisioned to translate certain provisions of the BAL, specifically the ones governing land. In addition, civil society has further expectations of the bill:

- integrated and holistic approach on addressing land issues among various government agencies;
- address agrarian conflicts;
- implement agrarian reform;
- strengthen the rights of indigenous peoples (IPs), women landless tillers, and small peasants; and
- strengthen land use through just spatial plans which protect the environment.

Constitutional Court Decision on the Judicial Review of Peasant Protection and Empowerment Legislation - 2014 was marked by a victory of the civil society movement in the fight for peasant constitutional rights. The Indonesian Constitutional Court had earlier granted a judicial review of Law No. 19/2013 on Peasant Protection and Empowerment (*Perlantan*), in response to a case filed by the Advocacy Team of Peasants’ Rights. In the resulting ruling on 5 November 2014, the Constitutional Court granted the rewording of certain key terms and phrases in the law to more strongly safeguard peasants’ rights.

The success of civil society’s lawsuit against the *Perlantan* legislation is seen as ‘a breath of fresh air’ for peasants’ position and status in the eyes of the law. Further, the law also provides security to peasants through the granting of free state land (up to a maximum of 2 ha in an agricultural area), including the government’s obligation to provide capital loans for peasants.

Civil Society Lawsuit on Law No. 18/2013 on Prevention and Eradication of Deforestation - Civil society once again—through an Advocacy Team of Anti Forest Mafia—filed a lawsuit against Law No. 18 of 2013 on the Prevention and Eradication of Deforestation (P3H). A number of this law’s articles were assessed as law enforcers and corporations as violations guised as forest protection acts. Therefore, in order to fulfill and protect the constitutional rights of indigenous peoples, local people, and peasants within, surrounding, and in direct contact with forest claimed-



areas, such a judicial review of the Law on P3H by the Constitutional Court has become a necessary and relevant cause to fight for.

Joint Regulation of Four Ministries on Procedures for Settlement of Land Tenure Problem Inside Forest Areas -

On 17 October 2014, a Joint Regulation was issued by the Ministry of Domestic Affairs, the Ministry of Public Works, and the Head of the National Land Agency on Procedures of Land Tenure Settlement Inside Forest Areas. It was expected to address problems of peasants and IPs whose land claims or other evidence of ownership have become sources of conflict regarding tenure and management inside forest areas. Now they would have the chance to register their rights/claims to be acknowledged and legalized by government. However, the joint regulation also contained a number of challenges, such as those concerning status acknowledgment of IPs and generalizing peasants/IPs with other applicant groups (individual or government) in applying their claims/rights.

Institutional Changes on Land, Forest and Rural Development -

Under the previous administration, President Soesilo Bambang “SBY” Yudhoyono was unable to direct his ministers/heads of agencies to sit together and put an end to sectoral-ego in the agrarian sector and ensure the fulfillment of agrarian reform promises. Therefore, in order to realize Nawa Cita, which targets to distribute 9 Million ha of land to peasants, it is necessary for the current President, Joko “Jokowi” Widodo, and his working cabinet to

achieve coordination and cooperation among the ministries/institutions implementing agrarian reform. And this effort must be led directly by the President himself. The primary ministries concerned with bringing the Presidential agrarian reform vision and mission to reality are:

- **Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN)** - The establishment of this Ministry by Jokowi was in response to the demands of agrarian reform groups. It is envisioned to protect the millions of peasant, IP, and villager households, which have been living within forest areas without any legal protection, simply because there was no administration system for land rights that applied to them. This would entail making adjustments in the many land and agrarian resources legislations and regulations which have been overlapping for years—as many as 632, from legislations at the national level to regulations at the minister level (National Land Agency, 2013).

As mandated by MPR Decree No. IX/2001 on Agrarian Reform and Natural Resources Management, the Ministry should be the primary mechanism for national legislation concerning agrarian affairs and natural resources—thereby answering the ‘sectoral-ego’⁶² problem among ministries/

⁶² An approach when institutions work in a sectoral manner.



institutions in the land, plantation, forestry, energy/mineral resources, agriculture, and coastal-marine sectors.

Further, a primary task of the Ministry is the redistribution of 9 million ha of land as promised in the vision and mission of Jokowi-JK, as well as the resolution of agrarian conflicts which have been categorized into structured, systemic, and massive conflicts. It should immediately identify which lands would become the object of agrarian reform, i.e., all types of state land not subjected for redistribution (maximum excess land, absentee land, autonomous ground); productive forest land that can be converted; abandoned land; and concession land that has been the source of agrarian conflicts.


In addition, the Ministry should ensure that the beneficiaries of agrarian reform are landless tillers (farm workers), peasants, IPs, and other poor people groups whose livelihood depends on land as their primary production tool. It should also ensure active participation and involvement of local people and existing people's organizations (peasant unions, IP organizations, fishermen's unions, etc.) in determining agrarian reform objects and beneficiaries.

In all these undertakings, the Ministry of ATR/BPN must work in coordination with the Ministry of Environment and Forestry, the Ministry of Agriculture, and the Ministry of Village Affairs, Disadvantaged Area Development, and Transmigration.

- **Ministry of Environment and Forestry** - Despite the sectors of environment and forests being joined under one Ministry, these have frequently clashed with each other on matters involving the agrarian sector. In the context of agrarian reform implementation, the forestry dimension should merge into the environment dimension, and not the other way around.

The Ministry of Environment and Forestry has an important role, considering that most agrarian reform objects are located within forest areas, as a result of the Law No. 41/1999 on Forestry claims. This law had led to overlapping of mandates between the Ministry of Forestry and the National Land Agency regarding agrarian resources tenure, use, and management. Therefore, in the Jokowi-JK government era, there must be strong cooperation and coordination between the Ministry of ATR/BPN and the Ministry of Environment and Forestry in contributing to agrarian justice through providing agrarian reform objects from within forest areas.

- **Ministry of Agriculture** - In addition to achieving agrarian justice, another objective of agrarian reform is to bring about food security and independence for the nation and its people. Thus, the Ministry of Agriculture should ensure that peasants, IPs, and other marginalized groups are able to make productive the land distributed through agrarian



reform. The Ministry should also encourage ecological restoration and natural resources sustainability in the agriculture sector.

The agrarian reform program implemented by the Ministry of ATR/BPN should, therefore, be in synergy with the Ministry of Agriculture, considering that the latter is directly related to the process of food production and food security, key factors to peasants' and villagers' prosperity.

Furthermore, the Ministry of Agriculture has a responsibility to decrease food importation, end agricultural (food) land conversion, and prioritize capacity building and empowerment of peasants and fishermen to have control over their use of seeds, fertilizer, and pesticides. As such, this Ministry is one of the foundations of agrarian reform success.

- **Ministry of Village Affairs, Disadvantaged Areas Development, and Transmigration** - Those belonging to the poor sector in urban areas are often informal workers, workers in the manufacturing sector, and migrant laborers—most of whom are former rural inhabitants who had left their villages because of their lack of assets and access to land and natural resources. Thus, the passage of the Law on Village Affairs and the move of government to accelerate village development through the Ministry of Village Affairs, Disadvantaged Areas Development and Transmigration must likewise be in line with the agrarian reform agenda.

Some priority matters for the Ministry to address: (1) villages as legal subjects and beneficiaries of agrarian reform can be created through a Village Property Business which controls and manages land and other village natural resources, such as village forests, ancestral forests, and land of the village treasury; (2) villages as living spaces for agrarian reform beneficiaries who are peasants, agricultural workers, and IPs who, together with the village government, are primary actors in village development; and (3) village government, villagers, and people's organizations (peasant unions) taking the lead in determining agrarian reform subjects and objects.

Key Findings and Analysis

For this 2014 report, KPA focused its monitoring on agrarian conflicts which they characterize as 'structural agrarian conflicts.' These are caused by various policies or public officials' decisions which have led to the grabbing of people's land and resulted in social, economic, and political impacts. Therefore, land disputes involving individuals, inheritance rights, or private-corporate disputes are not included in the agrarian conflict categorization presented in this report.

Data Collection Method - The quantitative data on agrarian conflicts throughout 2014 recorded by KPA were from victims who reported the incidents through its network partners at both the national and local levels. Other data were also gathered by

monitoring mass media news reports (print, electronic, and on-line). It may be concluded, then, that the number of conflicts presented is actually a minimum of those that, in fact, happened or are happening. Not all areas of the country could be covered, especially with regard to their agrarian conflict situation; and media coverage of agrarian conflict issues tends to be limited.

Agrarian Conflict Number - For 2014, KPA recorded at least 472 agrarian conflicts throughout Indonesia. These involved 2,860,977.07 ha of land, and affected at least 105,887 households. Along with the Masterplan project on Indonesian Economic Development Expansion (MP3EI), which stressed on infrastructure development, the highest number of agrarian conflicts in 2014 can be seen in infrastructure projects—with at least 215 agrarian conflicts (45.55%) in this sector alone. Plantations ranked second, with 185 agrarian conflicts (39.19%). The rest

were from the various sectors: forestry with 27 conflicts (5.72%), agriculture with 20 conflicts (4.24%), mining with 14 conflicts (2.97%), water and marine with 4 conflicts (0.85%), and ‘others’ with 7 conflicts (1.48%). Compared to 2013, the number of conflicts had escalated by 103 incidents, or 27.9%.

Observing the large number of agrarian conflicts caused by infrastructure development throughout 2014, it can be surmised that the implementation of the Law No. 2/2012 on Land Acquisition for Development in Public Interest and its other derivative regulations is a major cause of the ease of land grabbing in the name of development. Another critical factor was the implementation of the MP3EI program which divided Indonesia’s mainland-water area into six economic corridors based on primary commodities. The intensified production necessitated increased infrastructure which has led to destruction of natural resources and harm to the environment.

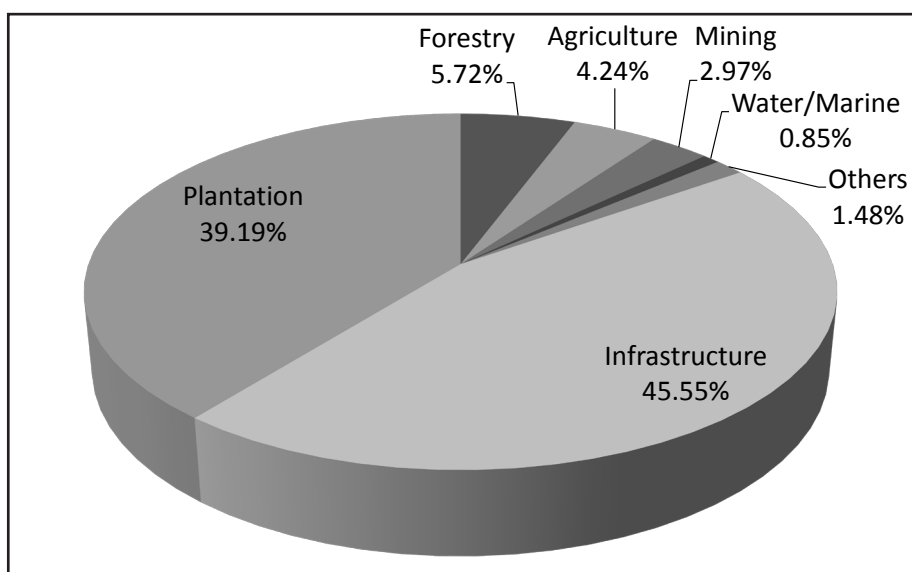


Figure 11. Agrarian conflicts per sector, 2014.

KPA records for the last 10 years show that, from 2004 to 2014, there have been 1,520 agrarian conflicts on 6,541,951,000 ha of land, involving 977,103 households. That translates to an average of two agrarian conflicts per day, 1,792 ha of people's land grabbed per day, and 267 households per day whose control and management of their rights have been taken away.

Agrarian Conflicts Coverage - In terms of the size of area covered or affected by the recorded conflicts in 2014, the water and marine sector was in the highest position with 1,548,150 ha (54.11%). Next was the plantation sector with 924,740.09 ha (32.32%), followed by the forestry sector with 271,544 ha (9.49%), the infrastructure sector with 74,405.16 ha (2.6%), the agriculture sector with 23,942.7 ha (0.84%), 'others' with 11,242 ha (0.39%), and the mining sector with 6,953 ha (0.24%). The water and marine sector had the broadest agrarian conflicts coverage due to the annexation of mineral and gas concessions on the Malaysia-Indonesia border. This was an escalation in coverage area for this sector of 1,579,316.91 ha (123%) compared to 2013. Every year, the agrarian conflicts coverage area continues to rise. Over the last 10 years, agrarian conflicts have involved a total of 6,541,951,000 ha.

Victims and Actors of Violence in Agrarian Conflicts - The number of victims of violence related to agrarian conflicts is likewise increasing every year. For 2014, there were 19 killed, 17 shot, 110 injured through

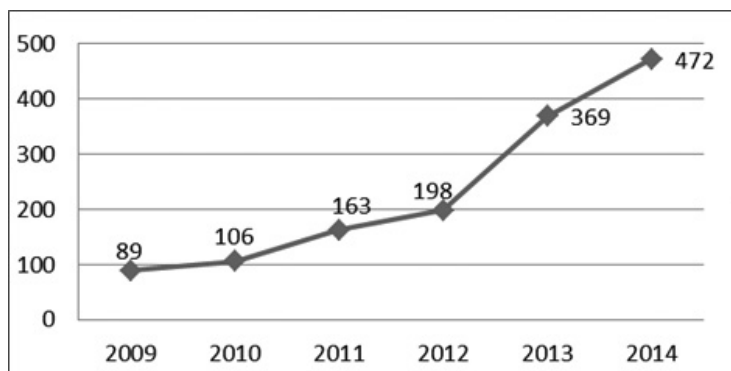


Figure 12. Escalation of agrarian conflicts by number, 2009-2014, (KPA, 2014).

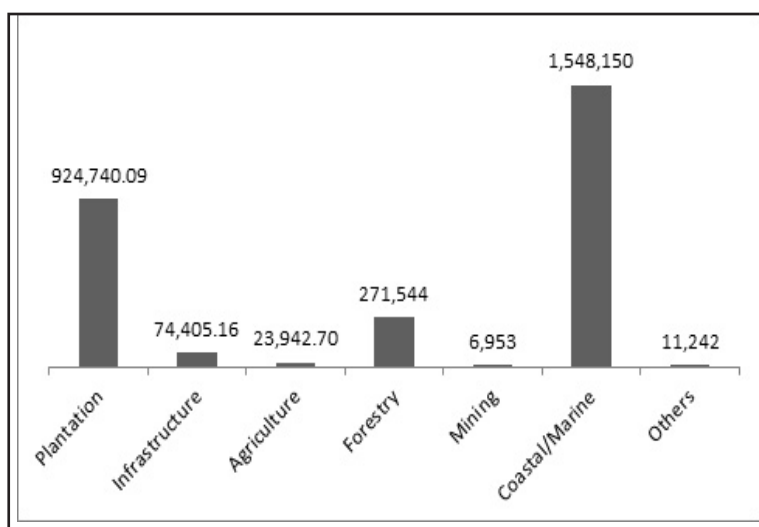


Figure 13. Agrarian conflicts coverage by sector,

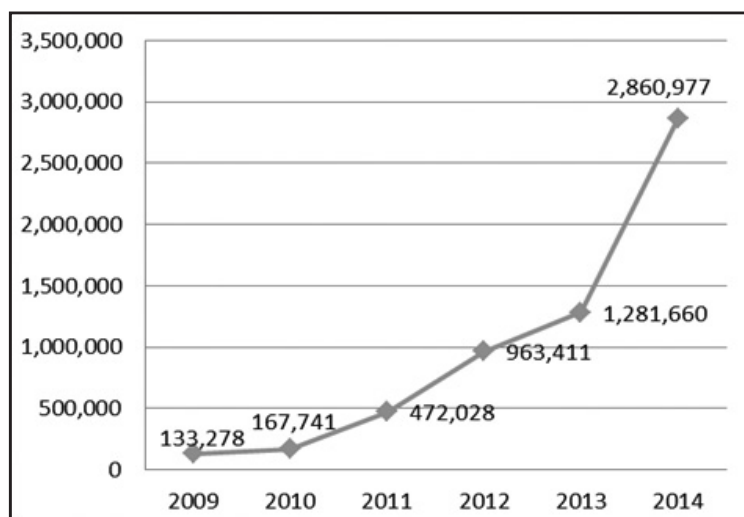


Figure 14. Escalation of agrarian conflicts by area covered, 2009-2014 (KPA, 2014).



physical violence, and 256 arrested in the course of such conflicts. This level of violence in agrarian conflicts shows that the Indonesian National Army and the Indonesian National Police have failed to provide and enforce security for the victims, as well as ensure the people's livelihood rights over their land and water resources. In fact, the police and army involvement has worsened the acts of intimidation and terror against villagers.

In terms of actors of violence in agrarian conflicts within 2014, the number of cases dominated by police forces was 34, by villagers was 19, by corporation security was 12, by thugs was 6, and by the Indonesian National Army was 5. Repressive measures taken by security forces, corporation security, and thugs worsened the conflict situations in the field. The Indonesian National Army/Indonesian National Police always served as the 'right hand' of corporations and of the political/government elite.

Within the last 10 years, a total of 85 people have been killed, 110 shot, 633 wounded from physical violence, and 1,395 arrested. This shows that the use of arrests in dealing with agrarian conflicts is on the rise. In the course of KPA's advocacy work on agrarian conflicts, especially the ones which involved its members (peasant unions, IP organizations, and urban poor groups), KPA also had data that there were 260 victims of agrarian conflicts perpetuated by state apparatus. (131 in West Java, 44 in Central Kalimantan, 17 in North Sumatera, 15 in Central Sulawesi, 14 in Sumatera, 13 in Central Java, 11 in NTT, 8 in East Java, 4 in

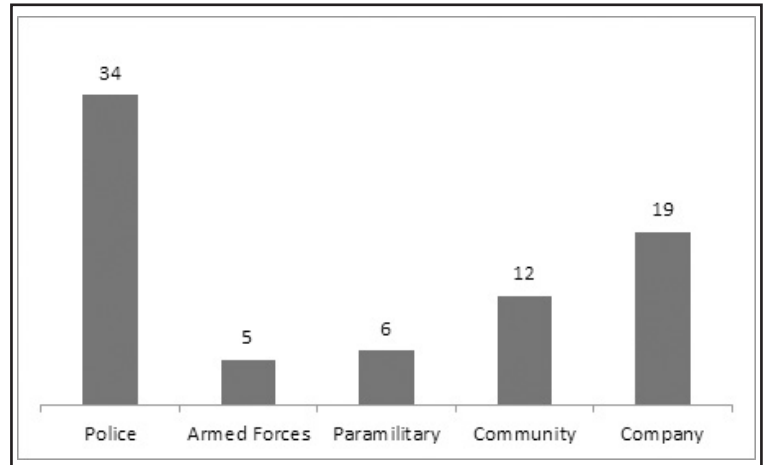


Figure 15. Perpetrators of violent acts in agrarian conflicts (KPA, 2014).

Bengkulu, 2 in West Kalimantan, and 1 in East Kalimantan).

Agrarian Conflicts' Incidence by Province - In 2014, KPA's records showed the 10 provinces with the highest incidence of agrarian conflicts: Riau 52 conflicts (11.02%); East Java 44 conflicts (9.32%); West Java 39 conflicts (8.26%); North Sumatera 33 conflicts (6.99%); South Sumatera 33 conflicts (6.99%); Central Java 26 conflicts (5.51%); DKI Jakarta 25 conflicts (5.3%); Banten 20 conflicts (4.24%); South Sulawesi 19 conflicts (4.03%); and Jambi 17 conflicts (3.60%). It is possible, however, that there could be latent agrarian conflicts in certain provinces which did not go off in 2014.

The high number of conflicts in Riau points to the vast expansion of industrial forests and oil palm plantations there. The granting of concessions on people's governance areas to corporations by public officials has resulted in what amounts to land grabbing from those who had been controlling and managing the land.

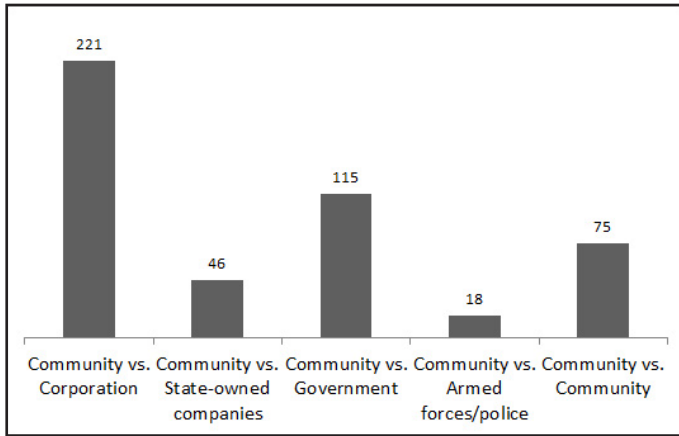


Figure 16. Agrarian reform stake actors involved in conflicts (KPA, 2014).

Next to Riau, all the provinces in Java (East Java, West Java, Central Java, DKI Jakarta and Banten) had the highest incidence of agrarian conflicts. These cases point to the Javanese forest monopoly by Perhutani, PT Perkebunan Nusantara (PTPN)⁶³ operation, and other expansion projects and infrastructure developments as causing the rise in agrarian conflicts in Java. In the infrastructure sector, the incidence of conflicts increased from 105 in 2013 to 215 in 2014, a significant rise of 104%.

Agrarian Conflict Actors - Disputes over land and natural resources in various areas of the country showed the following groups of actors involved: 221 agrarian conflicts involving people against private corporations; 115 conflicts involving people against government (central/region); 75 conflicts involving people against people; 46 conflicts involving people against state corporations; and 18 conflicts involving people against

⁶³ A state-owned plantation company and the largest sugar producer in Indonesia

Indonesian National Army/Indonesian National Police.

State and private corporation control and tenure over agrarian resources is seen to be the primary cause of agrarian conflicts. In the plantation sector, for instance, 26 agrarian conflicts were recorded of people vs. a state-owned enterprise plantation, and 85 conflicts of people against a private plantation corporation (majority in oil palm production). While in the

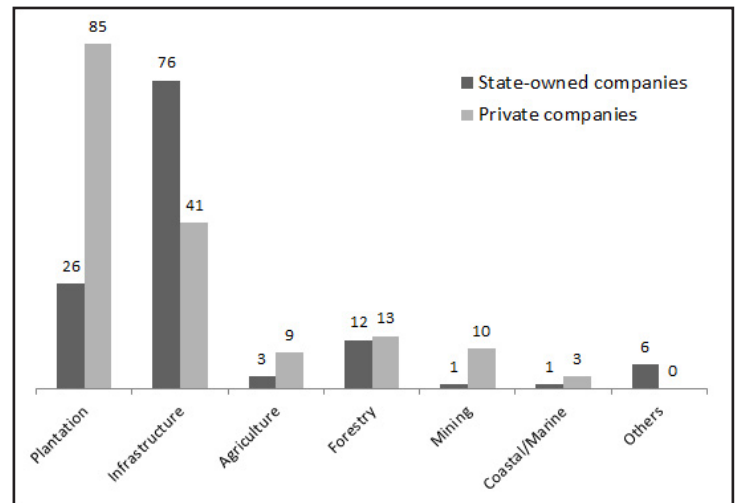


Figure 17. State and Private Corporations in Agrarian Conflicts, 2014

infrastructure sector, it was recorded that 76 state corporations and 41 private corporations had caused agrarian conflicts.

Perhutani Forest Area Monopoly - One case in particular is that of the state-owned enterprise in the forestry sector (Perhutani) which dominates agrarian conflicts with people, as a consequence of the Perhutani monopoly over Javan



forest governance. This has become a source of agrarian structure injustice⁶⁴ in the Javan forest area, as the Perhutani area is bordering at least 6,172 villages, and there are 366 villages within the forest area. This situation means that at least 21 million citizens live within or bordering the Perhutani area.

In 2014, nine locations of Perhutani claims were recorded as causing agrarian conflicts with local villagers. Furthermore, claim disputes and conflicts between local villagers' living area and the Perhutani area almost always ended in the arrest of villagers.

Perhutani claims that the boundaries of its management area had already been set since the Dutch colonial era (1865-1930s). However, its Minutes of the Boundaries (BATB) have never been transparent. That is why the 1960 Basic Agrarian Law clearly mandated that Western rights over land should be reverted to state control by 1980.

If Perhutani BATB asserts the establishment of state rights (*staatsdomein*) over the Java and Madura teak forest, the 1960 Basic Agrarian Law had already erased the effectivity of colonial agrarian legislations. Therefore, Perhutani's control over Java forest areas based on colonial BATB no longer applies in independent Indonesia and its monopoly should be dissolved.

⁶⁴ Conflicts caused by injustices in ownership, control, and management of agrarian resources (Komnas HAM, KPA, and WALHI, (2014). *Agrarian Conflicts Resolution Jokowi-JK Must Be Priority*. Retrieved from <http://www.kpa.or.id/news/blog/english-agrarian-conflicts-resolution-must-be-jokowi-jk-priority/>).

Recommendations and Next Steps


Documentation of land conflicts - KPA shall continue to document structural agrarian conflicts as reported by regional members of KPA, as well as those cases reported in mass media.

Discussion on Agrarian Conflict and Its Resolution - In collaboration with its legal aid team, KPA shall organize media briefings on the reported cases to increase public awareness on the impact of such land conflicts. KPA shall also formally submit or report such cases to the National Parliament, National Commission on Human Rights (Komnas HAM) and Ministry of ATR/BPN.

KPA has endorsed to Komnas HAM to continue its cooperation with KPA and civil society coalition in promoting the need and the urgency of establishing a special institution for conflict resolution under the President's authority.

Agrarian Reform Agenda

In regards to the 9 million hectares of agrarian reform program, KPA has proposed to the Ministry of ATR/BPN and the Ministry of Environment and Forestry to identify the object of land redistribution to the areas which inequality of agrarian structure and agrarian conflict existed, as well to identify the right beneficiaries for land redistribution by involving local communities (farmers' organization) along the process. KPA also propose to the Agriculture Ministry to actively involve in agrarian reform implementation



in providing supporting programs on post-land redistribution. These efforts are part of the commitment of Jokowi's governance to implement comprehensive and genuine agrarian reform.

Monitoring agrarian policies and advocacy on the Land Bill – KPA shall continue to monitor any land-related laws and regulations that are under deliberation or have been endorsed to Parliament. It shall likewise continue to form alliances with fellow advocates to strengthen its position against any such laws or regulations that undermine the land reform efforts, as it will also hold public discussions on the draft Land Bill. As for Joint Regulation of Four Ministries on Procedures for Settlement of Land Tenure Problem Inside Forest Areas, KPA encourages related ministries to formulate joint-technical guideline especially for the effectiveness implementation this regulation in the province, district and village level. The socialization process among government institution in the provincial and district level are necessary to conduct by related ministries. ■

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Nepal

2013/2014 CSO Land Reform Monitoring Report⁶⁵

By *Jagat Basnet*

Community Self-Reliance Centre (CSRC)

Introduction

As per the Population Census 2011, the total population of the country is 26,494,504—with 13,345,463 being women, meaning the women's population is 3% higher than the male population. Similarly, as per the Agriculture Census 2011, there are 5,423,297 households among which 3,831,093 are peasant families. The Agriculture Census also mentions that 65.6% of the total population is dependent on agriculture for their subsistence and livelihood. Therefore, development in agriculture is all about the development of all farmers in the country. As per the 2011 Census, 19.74% of the peasant families have women holding both land and housing. Compared with the previous ten years' data, the total number of peasant families in Nepal has increased by 467,000. The number of women farmers is also increasing accordingly. However, the cultivatable land occupied by these peasants has been decreased. For example, peasant households currently own 2,525,000 hectares (ha) of agricultural land, which is 129,000 ha less when compared to the holdings in 2001.

This report from the Community Self-Reliance Centre (CSRC) admits that, to date, there has been no independent study on the land reform process in Nepal and on the country's land and agrarian reform situation. Thus, this initial effort focuses on a review of the programs and policies of the Ministry of Land Reform and Management, as well as on two specific aspects: a) land rights violations, evictions, and harassments in 13 (out of 75) districts, and b) access to land and agrarian reform by marginalized people. The data was generated from field research and secondary sources.

Context

During the election of November 2013, Nepal's major political parties voiced their support for land and agrarian reform, in principle, through their election manifestos and in dialogues between land-poor and landless farmers and the leaders of the political parties. In the past, there had also

⁶⁵ For the full country report, please contact <jagatb@csrcnepal.org>.



been similar commitments made, but little was implemented due to lack of political will and commitment.

As a result, between July 2013 and June 2014, landless and tenant farmers organized over 40 major demonstrations across the country demanding comprehensive articulation of land reform/rights issues in political parties' manifestos, a commitment to have a land rights focus in the new Constitution, genuine land reform, and a stop to forced evictions. The same period also witnessed large numbers of landless farmers being forcibly evicted by forest authorities.

With no amendments in the Land Reform Act 1964 since 2008, over 40,000 tenant farmers who have filed cases and around 250,000 who have tenancy proofs have been waiting to receive the 50% of the land they have been tilling, to which they are entitled.

For its part, the Ministry of Land Reform and Management has introduced a land use policy and is drafting an umbrella National Land Policy with the collaboration of civil society organizations (CSOs) and farmers' organizations. It has also developed a 13-point action plan to implement scientific land reform as recommended by high-level commissions. But this has yet to be implemented.

A Landless Problem Solving Commission was formed in January 2012 to identify landless people and provide land in 25 districts. However, after a year-long effort, the Commission was unable to provide identity cards for the landless people and was therefore dissolved. Following the 2013 election, the new

government formed a new Landless Problem Solving Commission-- although the action of this Commission on behalf of landless people has yet to be seen.

A team of consultants has meanwhile submitted to the government of Nepal the Agriculture Development Strategy (ADS) 2015-2025, which has yet to be approved. But already, farmers and CSOs have misgivings about its contents and strategies.

Land grabbing by the elite is growing and agricultural land is being converted for non-agricultural uses, which is a major concern for the land rights movement. CSRC has undertaken research on these developments and their implications in a few selected pockets.

Purpose of this Report

The main purpose of CSO land reform monitoring is to generate the data to be analyzed for policy advocacy, policy change and implementation on behalf of landless and marginalized farmers. Within this, the specific purposes are as follows:

- Develop understanding on the CSO land monitoring system in Nepal.
- Collect, analyze and synthesize both qualitative and quantitative data. This can be generated on both sides: from government programs and from the field (primary data collected through direct discussion with the community and major stakeholders).



- Identify the policy issues and gaps in actual practice, based on the analysis of both qualitative and quantitative data generated.
- Initiate a dialogue with the Ministry of Land Reform and Management for policy changes and practices on behalf of landless and marginalized farmers.
- Carry out evidence-based policy advocacy, linking with land rights campaigns.

Process

The methodology and CSO Land Monitoring report were developed with the close consultation and support of Professors from the School of Arts, Kathmandu University (KU), the Anthropology Department of Trivuwun University (TU), and government and non-government representatives.

The following steps were taken to prepare this report:

- Compilation of the primary and secondary data which were generated from the field and from secondary sources. For this, two interns worked regularly with the support of CSRC's lead researcher.
- Conduct of a one-day workshop with the campaign officers and coordinators to present and validate the generated information, tables and sources.
- Requests sent to campaign officers and coordinators to forward further information and sources which

were felt to be lack at the validation workshop, in order to strengthen the report with authentic data and sources.

- Development of a draft report to be shared with the different team members, academicians and government officials for their input or comments to be incorporated in the final report.

Indicators Used

After consultations with the National Land Rights Forum (NLRF), strategic partners, concerned government officials, and academicians, CSRC developed two sets of CSO monitoring indicators: one focused on land rights violations, evictions, and harassment; and the other focused on access to land and relevant policies/programs. A one-day orientation program was then organized for District Land Rights Forum (DLRF) members, land rights activists, and land rights campaigners and coordinators regarding the collection of relevant data and information from the field.

Relevant data were likewise collected from various secondary sources, such as the District Land Revenue Office, the District Land Reform Office, the District Court and Police Offices, the Ministry of Land Reform and Management, the Ministry of Agriculture, and the Ministry of Finance.

Table 5: Budget of Land Reform Ministry from 2003/4 to 2013/14

S.N.	F/Y	Budget Allocation (In thousands: 000)			Source		
		Recurrent	Capital	Total	GoN	% of in-creasment	Foreign Aid
1	2003/04	558,152	74,318	632,470	632,470	-	0
2	2004/05	662,582	74,292	736,874	736,874		0
3	2005/06	699,690	102,707	802,397	802,397		0
4	2006/07	724,277	71,429	795,706	795,706		0
5	2007/08	810,721	162,330	978,051	978,051		0
6	2008/09	958,962	306,435	1,275,397	1,275,397		0
7	2009/10	1,234,564	255,910	1,490,474	1,490,474		0
8	2010/11	1,418,574	409,252	1,827,826	1,827,826		0
9	2011/12	1,476,947	506,705	1,983,652	1,983,652		0
10	2012/13	1,475,144	480,112	1,955,256	1,955,256	-0.01%	0
11	2013/14	2,557,268	547,325	3,104,593	3,104,593	37.00%	0

Source: Ministry of Finance, Government of Nepal, Budget speech book 2014

Findings and Analysis

Budget - In terms of the national budget share for land reform activities, only 0.55% of the national budget was allocated to the Ministry of Land Reform and Management for the period 2013/2014. Although this was a 37% increase from the previous fiscal year 2012/2013, no new policies and programs have been initiated by the Ministry as most of its allotment goes to administration costs.

Women and land - As per statistics from the Ministry of Agriculture (2012), 1,030,000 ha of agricultural land remain unused, while 3,091,000 ha are being utilized (registered/private and non-registered but agriculture land). Only 19.71% of women own a meagre piece of land. Although they are the main producers or workers of agriculture land, still 80% of women are deprived of land rights.

Table 7 shows that there are increasing foreign imports of agricultural products—from Rs. 99.35 billion to Rs.127 billion (17.6%) in 2013/2014 alone—which is not good for the economic development and prosperity of Nepal.

Land Cases Filed

The total number of land cases filed at the District Land Revenue Offices is 49,202—not yet including those filed at Land Reform Offices. Land Reform Offices handle cases of tenancy rights and land ceilings. This data shows that still large numbers of people are visiting District Land Revenue Offices rather than working their fields and being actively involved in agriculture production.

Table 6: Information on Land and Agriculture

S.N.	Description/Content	Area/Households
01	Total Households (Census 2011)	5,427,302
02	Agricultural Households	3,831,093
03.	Population Engaged in Agriculture in %	65.6%
03.	Land Owned by Agriculture Households in hectares	2,525,639.2
04.	Holding with Land in households	3,715,555
05.	Holding without land in households	115,538
06.	Total Numbers of Parcels	12,096,417
07.	Numbers of Women's Households Holding Land	704,185
08.	Numbers of Men's Households Holding Land	3,011,371
09.	Cultivated Agricultural Land (in Hectares)	3,091,000
10.	Uncultivated Agricultural Land in hectares	1,030,000
11.	Percentage of Land Owned by Government	72%
12.	Percentage of Land Owned by Private Individuals	28%
13.	Percentage of Women Land Holding	19.71%
14.	Percentage of Agriculture's Contribution to GDP	35%

Source: Ministry of Agriculture (2012). STATISTICAL INFORMATION ON NEPALESE AGRICULTURE 2012 (Page: Executive Summary), Agricultural Development Agri-Business Promotion and Statistics Division Statistics Section Singha Durbar, Kathmandu, Nepal

Table 7: Imports of Agriculture Products 2009/10-2013/2014

Fiscal Year	Agro Products imports	Total Imports	Share of Agro. products
2009/2010	Rs. 44.43 billion	Rs. 375.61 billion	11.8%
2010/2011	Rs. 54.77 billion	Rs. 397.54 billion	13.7%
2011/2012	Rs. 76.05 billion	Rs. 498.16 billion	15.3%
2012/2013	Rs. 99.35 billion	Rs. 601.2 billion	16.5%
2013/2014	Rs. 127.51 billion	Rs. 722.78 billion	17.6%

Source: Trade and Export Promotion Centre, 2014, Kathmandu Post Money Page I, Agro Imports Leap Join Rs 100 billion Club



Table 8: Case Details in Land Revenue Office

Cases	Land Registration (Jagga Darta)		Land Transfer (Namsari)		Amendment (Samshodhan)		Annulment (Kharej)		Pre-emption (Hakasaphi)	
	12/13	13/14	12/13	13/14	12/13	13/14	12/13	13/14	12/13	13/14
Year	12/13	13/14	12/13	13/14	12/13	13/14	12/13	13/14	12/13	13/14
Number	13,709	21,706	7,351	55,825	1,805	1,992	15,193	42,834	468	1,288
Additional	-	8,068	-	48,474	-	21,020	-	27,641	-	905
Clearance	-	5,669	-	51,045	-	22,774	-	36,673	-	742
Rest	-	16,037	-	5,817	-	20,635	-	6,161	-	552

Source: Department of Land Reform and Management (2014). Record of landowners, numbers of plots, record of land revenue, land cases etc. Planning Section, Ministry of Land Reform, Government of Nepal

The table below shows that there are 4,666 cases at the Supreme Court yet to be decided. Owing to Nepal's hilly terrain, it is difficult for farmers to visit the court every month and even more difficult and expensive in Kathmandu. They are thus unable to continue the lengthy legal process, and most simply abandon their cases midway. As a result, it is mostly the rich who benefit.

Table 9: Cases Filed in the Supreme Court (2013/14)

Details	Total	Percentage
Case filled	24,735	-
Cases in Land Issue	5,840	23.61 %
Decided cases	5,946	-
Decided Cases in Land issues	1,174	19.74 %

Source: Supreme Court 2014: Cases field at Supreme Court, Ministry of Justice, Government of Nepal

Land conflicts, harassment, and evictions - In the course of their land rights struggle, landless peasants, women, and smallholders have been detained, harassed, and evicted. They have also filed—and are themselves facing as well—cases involving land disputes. As per the field report from 13 out of 75 districts, 31 persons (21 male and 10 female) were detained due to land conflicts in 2013/2014. Similarly, 5,969 people (3,099 male and 2,870 female) were harassed during this same period; while 472 cases from landowners and 1,152 cases from tillers (a total of 1,624 cases) were filed at government offices. Out of those cases, 646 were investigated and 533 were adjudicated. Also in this period, 760 families were evicted and 40 households became totally homeless due to this eviction. As per the report of the Department of Land Reform and Management for 2014, a total of 49,202 cases at the Land Revenue Office have yet to be decided.

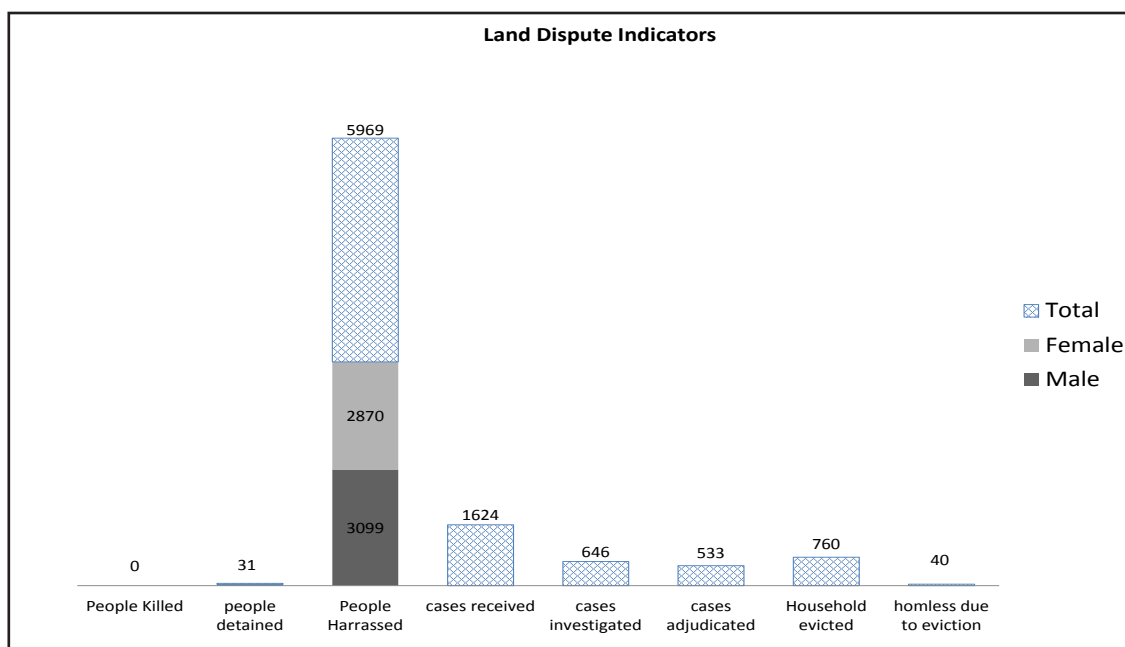


Figure 18. Land Disputes and Evictions

Source: Report from District Land Rights Forum December 2014. The data compiled for CSO Land Reform Monitoring by CSRC (details in Annex A of full country monitoring report)

Output indicators

The following table presents the increase in the number of landowners and the number of plots during the fiscal year 2013/2014.

Table 10. Land Owners and Number of Plots

Year	Land Owners			Plot numbers		
	Numbers	Additional	Dismissed	Numbers	Additional	Dismissed
2012/13	9,276,012	-	-	27,389,012	-	-
2013/14	10,002,261	726,249	258,317	28,865,268	1,051,981	315,910
Total		9,743,944			28,549,358	

Source: Department of Land Reform and Management (2014). Record of landowners, numbers of plots, record of land revenue, land cases etc. Planning Section, Ministry of Land Reform, Government of Nepal

The table above shows that the number of landowners increased from 9,276,012 to 9,743,944 or by 467,932 (5.04%); and the plots of land increased from 27,389,012 to 28,549,358 or by 1,160,346 (4.23%).

Table 11. Registration Discount (2013/14)

Details	Rural	Urban	Total
Women	422,599,093	325,662,256	748,261,358
Dalits	11,454,309	5,222,041	16,676,350
Martyr family	11,172	24,500	35,672
Disabled	8,205	4,205	12,410
Others	2,206	561,415	563,621
Total	765,549,271		

Source: Department of Land Reform and Management (2014). Record of landowners, numbers of plots, record of land revenue, land cases. etc. Planning Section, Ministry of Land Reform, Government of Nepal

The table above shows that the Government of Nepal waived a total of Rs 765,549,271 in taxes to women, *Dalits*, martyrs' families, disabled and others, which is 9.13% of the total revenue generated by Land Revenue Offices in the fiscal year 2013/2014.

Table 12. Land Revenue Generated

SN	Fiscal years	Total Revenue in NPR	Increased (%)
1	2008/2009	3,952,237,859	-
2	2009/2010	7,049,227,607	78.36%
3	2010/2011	7,030,412,780	-0.26%
4	2011/2012	4,716,402,712	-32.91%
5	2012/2013	7,150,894,630	51.61%
6	2013/2014	8,379,195,630	17.18%

Source: Department of Land Reform and Management (2014). Record of landowners, numbers of plots, record of land revenue, land cases etc. Planning Section, Ministry of Land Reform, Government of Nepal

The total land revenue increased from Rs 7,150,894,630 to Rs 8,379,195,630—or by Rs 1,228,301,000 (17.18%)—within fiscal year 2013/2014.

Table 13. Commercial Banks' Investment in Agriculture

Year	Amount
2009/010	14,290,900,000
2010/011	14,191,600,000
2011/012	28,794,100,000
2012/013	39,783,800,000
2013/014	50,909,800,000

Source: Nepal National (Rastra) Bank, 2014/12/14



Investments in agriculture by commercial banks totaled NRS 14,290,900,000 in 2009/10. This increased to NRS 50,909,800,000 in the year 2013/14. But as per media reports, these investments are largely concentrated in Kathmandu and other urban centers, thus benefitting the rich class and not the marginalized and rural people.

Positive steps taken - The Government of Nepal has continued the waiving of taxes for women by 25% in urban areas, by 30% in hill areas, and by 40% in remote areas. The Government has also drafted an Agriculture Development Strategy and shared it to the general public for discussion. For its part, the Ministry of Land Reform and Management plans to develop a digital data base of land plots and land owners in the current fiscal year.

Conclusion

The Government of Nepal has no mechanism for independent monitoring and evaluation of land reform in the country. While they have been conducting some reviews within the Ministry of Land Reform and Management, these are not transparent nor do they involve the participation of CSOs and marginalized people. Reports which they have published are missing some of the district records and information. The Ministry itself admits that it does not have a realistic data base system.

Recommendations

For Government/Ministry of Land Reform and Management

- To ensure the land rights of marginalized farmers, form an independent land monitoring committee to review the Ministry's plans and progress, and make recommendations for the rights of marginalized people.
- Ensure the implementation of its recommendations by the proposed independent land monitoring committee.
- Undertake wider consultation and partnership with concerned stakeholders for greater transparency and accountability of its land reform efforts.
- Earmark a budget for independent land reform monitoring and review of policy gaps on land issues.
- Invest the total revenue which they generated from the land revenue or land reform offices.
- Support the land reform program from the Village Development Committee (VDC), Municipal Development Committee or District Development Committee (DDC) and develop the policy and mechanism for this.

For CSOs

- Form a common platform among all the CSOs working on land reform issues, particularly the development of a CSO monitoring mechanism.



- Generate evidence-based cases and support for the policy formulation process.
- Generate, disseminate, and use relevant information and data to inform the land reform advocacy campaign.
- Coordinate with other stakeholders for policy development and implementation, and for greater support for land reform from below.

For Donors

- Continue and increase funding support to develop land reform monitoring systems, capacity building activities for CSOs, and further research activities.
- Support collective efforts on land reform, such as participation and ownership by marginalized people, CSOs, and government institutions.

For the Land Rights Movement

- Mobilize its members for land reform from below and pressure political parties and stakeholders to support land reform at different levels. ■

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Pakistan

2014 Country Land Reforms Monitoring Report⁶⁶

Society for Conservation and Protection of Environment (SCOPE)

Pakistan is an agrarian economy, with agriculture playing a vital role in the economy as a whole and in the livelihood of its people by providing employment to 45% of its labor force, contributing 21% to its GDP and extending livelihood support for 64% of its population that resides in rural areas (GoP, 2010). Pakistan is facing a serious threat of food insecurity, as about 49% of its population is not getting enough nutrition-value food (GoP 2012).

Context

This Land Reform Monitoring Report by the Society for Conservation and Protection of Environment (SCOPE) indicates that there has not been much change in the situation in Pakistan since the last report in 2013. After going through three incomplete, weak 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—Pakistan is still waiting for comprehensive and broad-based land and agrarian reform.

Under the land reform program in the current 2013-2018 term of the Pakistan Muslim League-Nawaz (PLMN), the ruling party of current Prime Minister Nawaz Sharif pledged in its election manifesto that it would reclaim and irrigate additional state land for allotment to landless *haris* (peasants, sharecroppers) and tenants. It will also undertake a land consolidation program to create viable units for modern agriculture. This manifesto, however, fails to take into consideration the broader context of agrarian reforms that enable efficient joint cultivation, extension support, and most important, a fair contractual relationship to the tenants and sharecroppers of large landlords.

More recently, the Supreme Court of Pakistan heard a petition filed in 2011 pleading the Court to set aside the 1990 judgment by the Sharia Court declaring land reforms ‘un-Islamic.’

⁶⁶ For the full country report, please contact <scope@scope.org.pk>.



CSO alliances in Pakistan

The CSO-led monitoring initiative spearheaded by the Land Watch Asia (LWA) campaign is seen as a positive step towards determining the current status of the land reform process in Pakistan and furthering the capacity development of civil society in campaigning for a comprehensive land reform process. SCOPE has long been actively involved in policy advocacy primarily on environmental and sustainable development issues. SCOPE oversees and manages two broad national networks with diverse membership including peasant groups, civil society organizations, subject specialists/experts, etc. The National Peasant Coalition of Pakistan (NPCP) works on issues related to land rights, land governance, capacity development of peasant groups and land reform in Pakistan. The other network is involved in alliance building against hunger and malnutrition through the Alliance against Hunger and Malnutrition (AAHM), which is a national chapter of the global AAHM.

These two national networks have been organizing events at both the national and provincial levels, which would provide an opportunity to share findings of this report and make coordinated efforts to build momentum for effective and meaningful land reform in Pakistan. Without proper knowledge and information, the members of these networks belonging to grassroots groups—despite their experience working with peasants and their organizations and despite familiarity with the situation on the ground—would be unable to support

their arguments without hard evidence and data.

In addition, these two networks could complement and support land monitoring activities while SCOPE, being a focal point, could collate and analyze the information at a national level—as the Asian CSO land reform monitoring initiative recognizes that “monitoring matters most at the national level” (ANGOC, 2013, p. 159).


Following the 18th constitutional amendment, the provincial governments are considering to work on land rights issues. Hence, this report could be extremely helpful for this purpose.

LAND REFORM MONITORING REPORT, 2014

Indicators Used

SCOPE, NPCP, and AAHM organized a number of consultations all over Pakistan, where the participants provided updates on the land situation at the provincial and local levels. The process included consultation with stakeholders, analysis of their feedback, and desk studies.

In Pakistan, credible and consistent data for a comparative analysis to measure progress year by year is almost non-existent. Thus, SCOPE has taken this as a challenge to carry out an in-depth situation analysis in the near future to develop innovative ways and mechanisms that could ensure availability of reliable, consistent and timely data. For 2014, this CSO Land



Reform Monitoring report for Pakistan is largely based on secondary sources and data collected anecdotally.

Key Findings and Analysis

Budget

Agriculture Budget⁶⁷

For the year 2013-14, the Punjab government allocated Rs92 billion to agriculture out of an estimated budget of Rs871 billion, Sindh earmarked Rs6.167 billion out of Rs617 billion, KP had Rs2.913 billion out of Rs344 billion budget, and Baluchistan had Rs7.87 billion out of Rs199 billion. In terms of budget percentage, Punjab appears to have done better by allocating approximately 10% of its budget for agriculture, while the other provinces allocated a negligible proportion.

R&D expenditure on agriculture

It is alarming to note that Pakistan spends only 0.21% of its agriculture GDP on agriculture R&D. More alarming is the trend that, in the past two decades, this proportion went down by 0.22% between 1991 and 2009. “Despite being an agrarian economy, Pakistan sets aside one of the lowest allocations to the research and development (R&D) of agriculture sector in the entire developing world” (Flaherty, Sharif & Spielman, 2012).

Recently, a Ministry of National Food Security and Research has been set up at the federal level to address food security concerns, and to coordinate food production and R&D of food-

and agriculture-related issues in the country.


Policies

Land use planning

For centuries, land use in Pakistan has been delineated by family/tribal arrangements and access to land based on size of the household and kinship. Despite initiating a two-phase National Land Use Plan between 1998 and 2001, a comprehensive policy to regulate agricultural land use is long awaited. The project summary document reviewed for the National Land Use Plan outlined the procedure to establish GIS-based land administration systems (LAS). At present, all four provincial governments are implementing separate land administration systems (LAS) in terms of automation and computerization of land records. In KPK, land record automation is underway by the Revenue and Estate Department and contracts were awarded and pilot phases launched in nine districts (GoKPK, 2013).

In Baluchistan, a Land Record Computerisation System (LRCS) is ongoing under the Department of Revenue, Land Utilisation, Settlement and Relief (GoB, 2013); while in Sindh, a Land Administration and Revenue Management Information System (LARMIS) is being implemented (GoS

⁶⁷ The ‘budget’ indicator is taken as budget allocated to the agriculture sector as a whole in Pakistan and not only towards land reform, as prescribed in the monitoring framework. A budget allocation specifically for land and agrarian reform is not available at present.



2013). In Punjab, a Land Revenue Management Information System (LRMIS) has started functioning in some of the pilot districts (BoR, 2013).

Women's access to land

Most of the political parties—including the ruling PMLN—are quite open to protecting the rights of women, as well as addressing the need to distribute state land among landless farmers including women.

A recent report from National Commission on the Status of Women (NCSW) notes:

“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.” (NCSW, 2005, p.1)

Land rights in Pakistan are regulated by an intricate combination of civil, Islamic, and customary laws. Ownership and transfer of property are gender neutral. However, inheritance rights are subject to Muslim Personal Laws enforced under Sharia law. There is no direct provision in the Constitution on women's right to inheritance but it

does provide guarantees and principles of policy to ensure justice without discrimination.


In 2008, the PPP-led government envisioned redistributing state land to landless farmers, largely women. Approximately 41,000 acres of land were distributed among 2,845 women and 1,184 men recipients.

In 2012, Pakistan's Khyber Pakhtunkhwa province passed a bill on Enforcement of Women Ownership Rights. This bill makes it a punishable offence to deprive women of owning property by any means including inheritance, gift, purchase, *mehr*⁶⁸ or acquired by lawful means.

Foreign investment

In Pakistan, the first investment policy in 1997 paved the way for foreign and local investors to invest in several areas including agriculture. In addition, the promulgation of the Corporate Farming Ordinance (CFO) 2001 further allowed listed corporations to lease land in the country. In 2009, the Government of Pakistan in its agriculture policy announced its plans to offer one million acres of land to private investors under its corporate agriculture farming (CAF) initiative, potentially to Saudi or UAE private investment companies. There are different numbers quoted for land (i.e., up to 6 million acres) that the government is planning to make

⁶⁸ In Islam, a mandatory payment by the groom (or the groom's father) to his bride at the time of marriage in the form of cash or possessions, which then becomes her legal property.



available to private investors. However, negotiations with Middle Eastern funds have been widely reported in the national and international press.

Outcome Indicators

Land Tenure - Land in Pakistan is classified as state land, privately owned land, and land with communal rights under customary law. Land for which there is no rightful owner comes under the jurisdiction and ownership of either the provincial government or the federal government.

The major land tenure types in Pakistan are: 1) ownership, 2) term lease, and 3) sharecropping. Under ownership, private individuals and entities can obtain freehold rights to land, and communal ownership rights are recognized under customary law. Term leases, which are common for parcels of agricultural land over 30 ha, are for fixed rates, may run for single or multi-year terms, and may be written or oral agreements. While sharecropping arrangements are common for land less than 30 ha—with roughly 67% of Pakistan's tenant-operated land under sharecropping in 2000, and 48% of sharecropper households falling below the national poverty line.

Disputes - A highly ineffective, duplicative and inadequate land administration system in Pakistan gives way to rural communities to subscribe the customary system for land transfer and land dispute resolution, creating insecurity of land tenure and providing cover for practices against women's right to access land.

Land disputes are the most common form of dispute filed with the formal court system. Between 50% and 75% of cases brought before lower-level civil courts and the high courts are land-related disputes and around a million cases are pending in various courts countrywide. The Human Rights Commission of Pakistan (HRCP) also documented several cases or murders as a result of land disputes.

A recent development in KPK province was the introduction of mobile courts, intended to provide relief to the complainants and provide justice at their door steps. Recently, a mobile court decided 31 cases, 8 were land disputes and some had been in courts for the past 10 years.

It is expected that the initiative from provincial governments in terms of automation and computerization of land record would help reducing the land disputes in rural Pakistan.

Access to Land

Ownership - An increase in the number of very small and small farms (i.e., up to 5 acres) is observed, while medium-size farms are decreasing. Surprisingly, the number of large and very large farms (i.e., 25 to 150 acres) is falling but at a very slow pace. One possible explanation could be the natural process of inheritance or distribution of land among family members, which consequently reduces the farm size. The sharpest increase among small farms is noticed in the categories 'under 1 acre' and '1 to 2.5 acres.'



The data from the Pakistan Bureau of Statistics (PBS) shows that approximately 5% of agriculture farms are spread over 36% of Pakistan's cultivable land. However this shows a highly unequal land ownership which ultimately dictates economic and political order in rural Pakistan.

Based on PBS data, the 'farm area by farm size' statistics have changed in the past five decades, but there is still a long way to go. Large and very large farms (50 acres and above) still account for 35% of the total cultivated land in Pakistan. It is interesting to note that, between 2000 and 2010, there was an increase of 3% in farms 150 acres and above—possibly due to accumulation of large plots of land by corporate investors.

Tenancy Rights - Despite working on the land for generations under various arrangements, tenants' rights are routinely violated and the legal framework provides very little protection in the event of dispute and eviction.

The Pakistani state does not have the capacity to intervene to regulate the terms of contracts between large landowners and tenants. Presuming that legislated measures would be automatically complied with, despite existing administrative mechanisms being biased towards large landowners, was thus a faulty assumption.

The landlord and tenants' rights and responsibilities of agricultural land in rural Pakistan are predominately regulated by four Provincial Tenancy Acts: Punjab Tenancy Act, 1887; Sindh Tenancy Act, 1950; NFWP Tenancy Act;

and Baluchistan Tenancy Ordinance, 1979. The features of each Act are summarized by Alam (2011):

Punjab Tenancy Act, 1887

- Occupancy tenants (OTs) can only be ejected if they (i) render the land unfit; (ii) have not paid rent; or (iii) if there is a decree for ejection against them.
- Occupancy tenants (OTs) can alienate/sub-let right to occupy, but the landlord (LL) has right of first refusal.
- Islamic law of succession operates on Muslim OTs and the procedure for devolution of non-Muslim OTs given.
- Fixed term tenants (FTTs) can be ejected on the same grounds as Occupancy tenants (OTs).
- Tenants at Will (year to year tenants) may be ejected at the end of the year.
- Succession of non-Occupancy tenants (OTs) is also given (to preferred heir or eldest male child).
- Note that there is a procedure for ejection.

Sindh Tenancy Act, 1950

- Permanent tenants (PTs) cannot be terminated unless acquired by the government or unless conditions in Section 13 are met (even then, ejection cannot take place without an order of the Tribunal).



- Tenants at Will are entitled to acquire permanent rights if, after 1950, they annually cultivate at least 4 acres for a continuous period of 3 years.
- Tenants at Will shall not be liable to eviction before the end of the cropping season.
- A dispute resolution procedure (before a Tribunal) is provided for.
- Ejectment actions against Occupancy tenants (OTs) and Lath/bund tenants must be preceded by applications to the Revenue Court.
- Occupancy tenants (OTs) may alienate their right of occupancy, but the landlord (LL) has right of first refusal. Occupancy tenants (OTs) may also sub-let, but with the approval of the landlord (LL).
- Succession for Muslim and non-Muslim Occupancy tenants (OTs) and Lath/bund tenants is provided for.

NWFP Tenancy Act

- Occupancy tenants (OTs) are granted proprietary rights.
- Fixed term tenants (FTTs) can only be ejected if grounds in Section 23 are met.
- Tenants at Will may be ejected on the third year from the commencement of their tenancy if grounds in Section 24 are met.
- Ejectments are restricted to cases where (i) a decree passed against the tenant remains unsatisfied and (ii) the tenant does not hold a contract, order or decree.

Baluchistan Tenancy Ordinance, 1979

- Occupancy tenants (OTs) can be ejected if grounds mentioned in section 31 are met.
- Lath/bund tenants can be ejected if grounds mentioned in section 32 are met.
- Tenants at Will can be ejected if grounds mentioned in section 44 are met.

Landlessness - It is estimated that between 20% and 40% of rural households in Pakistan are landless or near-landless and access to agricultural land is decreasing, forcing them to either lease or sharecrop land when they can or to work as laborers on and off farms. Some authors and institutions even estimate that 60% of rural households in Pakistan are landless, thus pointing towards highly skewed landownership.

The GINI coefficient measure is commonly used to estimate equality in income as well as other social indicators such as land ownership. A score of 0 indicates perfect equality, while a score of 1 indicates perfect inequality. In 2000, the GINI coefficient in Pakistan—including landless households—was 0.86 (World Bank 2007).



Conclusions

The CSO land monitoring initiative is a step in the right direction in the Pakistani context where land ownership is unequal and skewed. The failure to implement land reform effectively has caused severe concentration of land in the hands of a small proportion of big landlords. Women, religious minorities, and indigenous groups are in a further disadvantageous position.


The more worrying development is the Pakistan government's ill-planned Corporate Agriculture Farming (CAF) policy. This policy promotes and invites commercial entities to acquire agricultural land in Pakistan, thereby threatening the survival and food security of local inhabitants. ■

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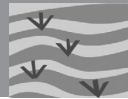
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Philippines

2014 Philippine Land Reform Monitoring Report⁶⁹

By The Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). In partnership with the College of Social Work and Community Development, University of the Philippines (UP-CSWCD) and Xavier Science Foundation, Xavier University (XU-XSF)

Since its conception in 2010, the CSO Land Reform Monitoring Initiative in the Philippines has been describing and analyzing people's access to land and resources by keeping track of the government's accomplishments in these areas. In the agrarian sector, it was done mostly by determining the number of hectares (ha) of agricultural land acquired and distributed under the Comprehensive Agrarian Reform Program (CARP). In the aquatic reform sector, the number of Fishpond Lease Agreements (FLAs) issued was tracked, while for the indigenous community sector, the number of Certificates of Ancestral Domain Title (CADTs) awarded was the determinant of progress. While it is important to keep track of the accomplishment of targets set by these reform programs, it is as equally vital for CSOs to monitor what the government usually overlooks.

To formulate effective measures in protecting the rights of farmers, fishers and indigenous communities, understanding the magnitude of tenurial insecurity by meticulously

monitoring tenure rights violations would be a good start. After all, the protection of rights and lives of beneficiaries is as important as giving them the right to access and control resources.

Objectives of the Study

This 2014 land monitoring report aims to contribute to this pool of knowledge through the following objectives:

1. Identify the nature of resource conflicts occurring in the Philippines among agrarian lands, municipal waters and ancestral domains through case reports, specifically focusing on: a) conflict actors, b) causes of resource conflicts, c) intensity of resource conflicts, d) impacts of resource conflicts and e) conflict resolution strategies.
2. Describe what human rights violations were committed that have resulted to resource conflicts.
3. Formulate recommendations to contribute in the process of managing and resolving resource conflicts.

⁶⁹ For the full country report, please contact <angoc@angoc.org>



Methodology

To fulfil its objectives, this study collected studies and other secondary materials generated by CSOs and government agencies on cases of land conflicts in the Philippines—both resolved and ongoing—over resource use, access and control involving farmers, coastal municipalities and indigenous communities.

The study underwent four phases to fulfill its objectives: i) face-to-face and electronic consultations were conducted with the Research and Extension Development Office of the College of Social Work and Community Development in the University of the Philippines Diliman (UP-CSWCD) as well as the Xavier Science Foundation of Xavier University (XU-XSF); ii) data were gathered through key informant interviews and a review of literature of reports and case studies prepared by government agencies and CSOs; iii) a joint consultation workshop was organized to provide an opportunity for other CSOs to share their feedback on the preliminary methodology, recommendations and conclusions of the monitoring report for improvement; and iv) the final draft was presented and discussed in a workshop jointly organized by ANGOC, UP-CSWCD and XU-XSF, and participated in by government agencies and CSOs.

Findings

A. Conflicts on Access to and Control of Agricultural Lands

In a desk research conducted by Global Witness in 2012, it was found that 711 individuals were killed worldwide from 2002-2011, defending human rights related to environment, specifically land and forests (Global Witness, 2012). The study found that, in many countries, systematic information on killings are deficient, as is specialized monitoring at the international level. On a more significant note, the study found that the Philippines is one of the countries with the highest reports of killings. From 2002-2011, the Philippines accounted for 50 cases (7.03%) of the total number of killings recorded in 26 countries worldwide, followed by Colombia with 70 cases (9.84%), Peru with 123 cases (17.30%) and Brazil with 365 cases (51.33%) (Global Witness, 2012).

In an extension of Global Witness's study, a total of 197 cases of deaths from 2012-2013 was reported, placing the Philippines third among countries with the highest cases of deaths among land and environment defenders (Global Witness, 2014). The prevalence of land conflicts in the Philippines and the intensity of its repercussions can also be seen in the cases of agrarian conflicts filed at the Commission on Human Rights (CHR) and the accomplishment report on agrarian legal services of the Department of Agrarian Reform (DAR).

In 2014 alone, a total of 77 cases of agrarian/ land-related conflicts have been recorded by the CHR (see Table 1) (CHR, 2015). The highest number of conflicts filed was in Northern Mindanao with 14 cases, followed by CARAGA and Zamboanga peninsula with 13 and 10 cases, respectively. Moreover, eight cases of eviction/ forced eviction (CHR, 2015) and one case of harassment (CHR, 2015) in CARAGA were filed with the CHR.

Table 14. Breakdown of Number of Agrarian/ Land Related Cases of Conflicts Filed with the Commission on Human Rights in 2014 (CHR, 2015).

Region	Total number of complaints filed
Ilocos	8
Central Luzon	4
CALABARZON	7
Western Visayas	4
Zamboanga Peninsula	10
Northern Mindanao	14
Davao	9
SOCKSARGEN	8
CARAGA	13
TOTAL	77

Source: Commission on Human Rights. (2015). *Breakdown of Number of Victims of Killed on Agrarian/Land Conflict Related Complaints/Cases Filed with the CHR*. Quezon City.

On the other hand, the agrarian legal service of DAR is categorized into two forms: i) agrarian legal assistance and ii) adjudication of cases. The first provides assistance in amicably mediating disputes through alternative strategies for speedy resolution to avoid conflicts proceeding to the courts. It also provides agrarian reform beneficiaries (ARBs) with DAR lawyers to represent them before

judicial and quasi-judicial bodies, and facilitates resolution of agrarian law implementation cases. The second, adjudication of cases, involves resolving cases of agrarian-related conflicts by the DAR Adjudication Board.

On average, DAR has processed and resolved 51,127 agrarian law implementation cases every year in the last five years; represented 1,642 and 16,568 ARBs in judicial courts and quasi-judicial courts, respectively, since 2011; mediated and reconciled 47,870 agrarian disputes via alternative strategies since 2012; and settled 21,060 cases through the DAR Adjudication Board. Although these accomplishments of DAR are commendable, the volume of conflicts they settle each year is alarming and ambiguous. Thus, a more detailed report of these numbers must be sought to know the magnitude of the disputes.

With this end in view, this monitoring report includes five actual narratives of the experiences of farmers and agrarian reform beneficiaries struggling to acquire their land or secure their right to tenure.⁷⁰

- Farmers reclaiming their land in San Francisco, Agusan Del Sur from the Filipinas Palm Oil Plantation Inc. (FPPI), the biggest palm oil operator in Mindanao
- Human Rights Violations against Farmers in Hacienda Dolores, Porac, Pampanga by Leonardo-

⁷⁰ For the complete accounts, please refer to the full Report at <http://www.angoc.org/portal/>.

Table 15. Agrarian Legal Services Accomplishment of DAR from 2010 to 2014.

Agrarian Legal Services	2010	2011	2012	2013	2014
Agrarian Legal Assistance	67,894				
Resolution of Agrarian Law Implementation	52,075	56,338	37,790	56,428	53,005
ARB Representation in the Judicial Courts		4,203	1,078	648	639
ARB Representation in Quasi-Judicial Courts		14,787	16,930	18,674	15,884
Mediation of Agrarian Disputes			44,704	45,258	54,646
Adjudication of Cases	19,409	19,006	23,432	21,640	21,816

Source: Accomplishment Reports of the Department of Agrarian Reform from 2010 to 2014.

Lachenal-Leoncio Holdings (LLL) and FL Property Management Corp. (FL), partner corporations of Ayala Land, Inc.

- Conversion of Farmlands into Real Estate Properties in Gimalas, Balayan, Batangas by Empire East Land Holdings, Inc. (EELHI), a company of Megaworld (CARRD, 2014)
- Land grabbing through Agribusiness Venture Agreements with Agrarian Reform Beneficiaries in Tagum, Davao del Norte by HARBCO and LAPANDAY (AR Now!, 2014)
- Victory of CARPER in the Bondoc Peninsula, Quezon Province

Land rights do not end with giving out titles to peasants, continuous protection of their rights should be ensured as well. It also demonstrates that if government institutions would coordinate and perform their responsibilities, law enforcement and the protection of peoples' land rights are possible.

Conflicts on Access to and Control of Ancestral Domains

From 2009-2012, the National Commission on Indigenous Peoples (NCIP) recorded seven clusters of IP rights violations (IPRVs) (as shown in figure 1 below). Civil and political rights include IPRVs involving extra-judicial killings, enforced disappearances, tortures, murders and homicides. Complaints on ancestral domain rights are IPRVs related to encroachments, displacement due to conflicts with settlers, development activities, and demolitions. It also includes violation of rights to clean environment. IPRVs on militarization and private armed groups refer displacement and/or harassment due to operations of the military, paramilitary groups and private armed groups. Benefit sharing includes unfair distribution and misappropriation of royalties, complaints on the implementation of agreements, and complaints related to misunderstandings in MOAs. Notice that the second most prevalent complaints recorded by NCIP IPRVs are those related to ancestral domain rights.

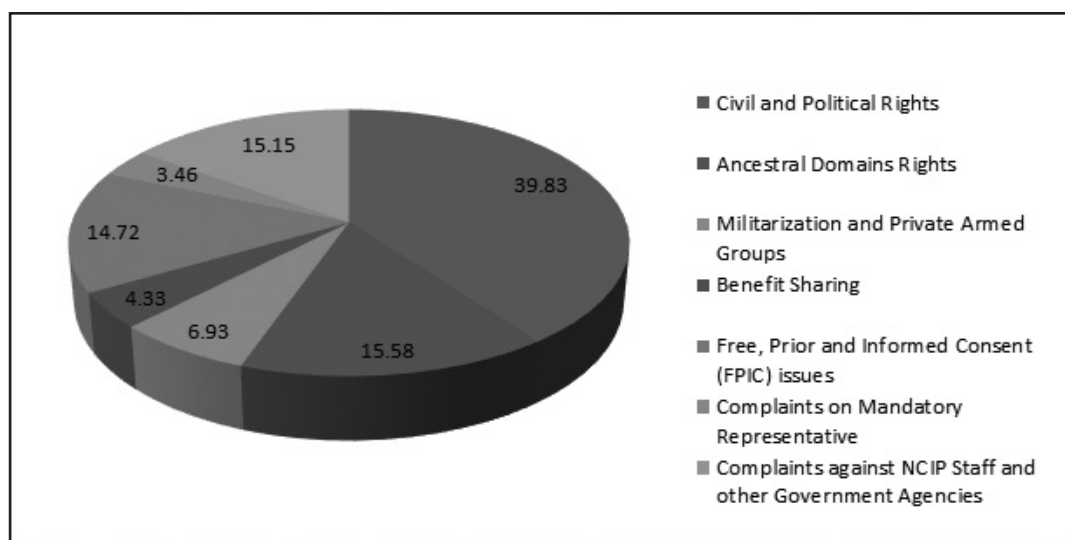


Figure 19. Indigenous People's Rights Violations Complaints per Cluster (2009-2012).


Source: "Indigenous Peoples Rights in Practice and Quick Response for IP Rights Violations: A Human Rights Report of the 5th NCIP-CEB" (2012)

Table 16 shows a detailed version of NCIP's data on IPRVs, indicating the number of complaints recorded per region. It can be gleaned that Region X has the greatest number of complaints, while Regions V and VIII have no record at all. More significantly, from 2009-2012, NCIP has recorded 68 cases of ancestral domain rights violations. This cluster accounts for 15.58% of the total number of complaints related to IPRVs recorded. It also indicates that Region XIII accounts for majority of the complaints related to ancestral domain rights violations recorded.

Table 16. Number of Indigenous People's Rights Violations Complaints per Region from 2009-2012.

Type of Complaint	Number of Complaints Per Region														Total
	CAR	I	II	III	IV	V	VI & VII	VIII	IX	X	XI	XII	XIII		
Civil and political Rights	1		4	6	1				9	23	10	19	19	92	
Ancestral Domains Rights	1		3	6	6		2		2	6	1	5	36	68	
Militarization and Private Armed Groups	1		1						2		5		8	17	
Benefit Sharing	1		2		2				1			2	3	11	
FPIC Issues	3				3				7	10	5		4	32	
Complaints on Mandatory Representative									1	2			5	8	
Complaints against NCIP staff and other Government Agencies				1	1				9	10		6	14	41	
Total	7		10	13	13		2		31	51	21	32	89	269	

Source: "Indigenous Peoples Rights in Practice and Quick Response for IP Rights Violations: A Human Rights Report of the 5th NCIP-CEB" (2012)



In addition to the above data, this monitoring report presents the following documented case studies of conflicts involving ancestral domain lands.⁷¹

- Special Economic Zone APECO and the Agta/Dumagat Ancestral Domain Chain (De Vera and Libre, 2015)
- Mamanwa in Barangay San Pablo, Jabonga, Agusan del Norte and Mindoro Resources Ltd. (MRL), a Canadian mining company exploring nickel, copper and gold in the Philippines (De Vera in ANGO, 2014)
- Copper and Gold Mining in Tampakan, South Cotabato by Filipino-owned Alsons Prime Investment Corporation, operated by a local subsidiary, Sagittarius Mines Inc. (SMI) (UNHRC General Assembly, 2014)
- Corporate Social Responsibility Accomplished in Ambuklao and Binga Dams by SN Aboitiz Power Benguet, Inc. in a mediated dialogue overseen by the Compliance Advisor/Ombudsman (CAO) of the World Bank Group and the Conflict Resolution Group Foundation, Inc. (CoRe Group)

Resource Conflict Involving Municipal Waters


In 2014, the Bureau of Fisheries and Aquatic Resources (BFAR) rendered

120 legal and advisory services under the fisheries and aquatic resources regulation services (DA, 2014). Although it did not mention the specifics of the cause or the need to render such services, this number gives us an idea of the frequency of conflicts involving the use of and access to municipal waters. In a separate data set requested from BFAR, the Law Enforcement Quick Response Team (LE-QRT) enumerated the number of maritime incidents and issues involving commercial fishing vessels per region in 2014. From this information, it is seen that such conflicts include poaching, illegal fishing, and commercial fishing vessels violating RA 8550 or the Philippine Fisheries Code.⁷²

Municipal fishers - as compared to commercial fishers - value water resources not only for the income they produce but also for their long-term productivity to ensure the sustenance of their family and future generations, and as a basis of identity. Thus, they are more inclined to protect such resources, whereas commercial fishers seek to increase production to meet international and domestic demands for fish products as well as to have better wages. Furthermore, to meet such demand, commercial fishers resort to destructive fishing methods and highly inefficient fishing practices which result to overfishing. As aquaculture requires large areas of coverage, mangrove areas are converted into fishponds and sections near the bays are fenced, thereby reducing municipal

⁷¹ For the complete case study summaries, please refer to the full Report at <http://www.angoc.org/portal/>.

⁷² For the breakdown of conflicts, please refer to the full Report at <http://www.angoc.org/portal/>.



and commercial fishers' access to their fishing grounds. At the same time, the conversion of mangrove areas, which are the breeding ground of various marine species, contributes to the depletion of fish stocks, consequently decrease in fish caught by municipal and commercial fishers.

- **Illegal, Unregulated and Unreported (IUU) Fishing in the Philippines**

In June 2014, the European Union (EU) issued a “yellow card” warning to the Philippines due to its failure to regulate illegal fishing activities, based on the EU’s Illegal, Unregulated and Unreported (IUU) Regulation of 2010. In this regard, the country was given six months to take action and improve its legal and monitoring system concerning aquatic resources.

In April 2015, this warning was revoked as EU acknowledged the Philippines’ efforts to improve its fisheries governance, addressing IUU fishing practices. Republic Act 10654, which amends the Philippine Fisheries Code, was passed into law on February 27, 2015 and a 41-member technical working group (TWG) was formed to draft the implementing rules and regulations to be finished by September 2015.

- **Impacts of Aquaculture and Tourism in Calatagan, Batangas by the Juan Lorenzo Vergara (JLV) Shrimp Farm and Various Reports⁷³**

⁷³ For further details of these cases, please refer to the full Report at <http://www.angoc.org/portal/>

Analysis

A. Nature of conflicts involving agrarian lands

Using the United States Institute for Peace’s framework on the types of actors that could initiate or aggravate conflicts, it was found that in the five cases of agrarian conflict included in this report: (1) *local community* actors are comprised of (a) farmers or farmers’ in an organized group and their families struggling to acquire rights to access and control agricultural lands, (b) agrarian reform beneficiaries trying to secure or gain back control of their lands, (c) landowners resisting the installation of ARBs in their acquired land, and (d) farmers in disagreement with other local farmers concerning land management; (2) *government* actors include the Department of Agrarian Reform being responsible for the overall implementation of laws on the Agrarian Reform Program as well as the local government unit in each community; and (3) *outside actors* are comprised of (a) agribusinesses and (b) real estate developers.

In most cases, local communities are the victims of conflict. Being the group with less influence and power, they are usually the ones displaced, manipulated or barred from their rights. For example, the farmers of Hacienda Dolores in Porac, Pampanga, having less economic and social status compared to the large corporations who took over their land, ended up being displaced, marginalized, intimidated and, in some instances, killed.



Local community actors can also be an origin of conflict. As seen in the case of Tagum, Davao del Norte, because of a disagreement over entering into an agribusiness venture, the organized farmers group was divided into two factions, resulting to destruction of fields, harassments and killings. In the case of Bondoc Peninsula, landowners were able to resist the installation of ARBs, by hiring armed personnel and building fences to intimidate the ARBs.

Most frequently, however, outside actors are the perpetrators of conflict. Between the local community actors and outside actors, the latter have more power and influence to pursue their interests involving the control and management of resources. They enter local communities, assess the area's potential in producing profits, and entice residents with riches in exchange for allowing the industries and businesses to own, control or manage the resources. For example, in the case of Gimalas, Balayan, Batangas, the Empire East Land Holdings Inc. (EELHI) saw Gimalas' potential as a park and port. They successfully persuaded farmers to waive their rights and access to land in exchange for monetary compensation. In other cases, should the communities resist the industry's occupation, the locals are then intimidated by hired military or armed personnel resulting to displacement, violence and even death of victims.

Varying interests in using and managing agrarian lands is a cause of conflict in most cases. For the farmers of San Francisco, Agusan del Sur and Tagum, Davao del Norte, conflict

occurred because they no longer saw that their agreement with FPPI and HPI-LAPANDAY, respectively, in managing the land as just. Instead, they sought to gain back their right to control and manage the land as they deemed fit. Farmers of Hacienda Dolores in Porac, Pampanga wanted their land to remain agricultural under their management, while the LLL, FL Corp. and Ayala Land saw the area's potential for real estate and commercial use.

Institutional failure was seen as a cause of conflict in the agribusiness ventures as well. ARBs who entered into agreements with agribusiness industries failed to foresee the implications of these agreements. They were made to believe that such agreements would yield greater benefits than managing the land on their own, but instead these resulted in unjust treatment from their partners and loss of control over their land. Another example is the failure to implement CARP in Hacienda Dolores, Porac, Pampanga to allocate the land for acquisition and distribution, making way for real estate developers to claim the land and convert it to non-agricultural property.

These conflicts over agrarian lands resulted to (1) land use conversion, (2) land grabbing, (3) displacement of farmers and communities, and (4) human rights violations. Land use conversion from agricultural lands to real estate properties occurred in the 2,000 ha land in Hacienda Dolores, Porac, Pampanga and the 31 ha in Gimalas, Balayan Batangas as a result of varying interests in resource management.

Land grabbing—where the process of land acquisition involved violation of human rights, was not based on free, prior and informed consent of all the actors involved, was not based on a comprehensive assessment, disregarding the social, economic and environmental impacts, and was not based on inclusive participation—occurred as a result of the agrarian land conflicts in San Francisco, Agusan del Sur; Gimalas in Balayan, Batangas; Hacienda Dolores in Porac, Pampanga; and Tagum, Davao del Norte. Farmers of San Francisco and Tagum lost control of the land they collectively owned because of a decision by a minority in the past to lease the land to a corporation. They were deceived into entering a contract they thought would improve their lives but instead made them poorer and subject to oppression. These cases qualify as a form of land grabbing because the agreements were not based on a comprehensive assessment. The same was experienced by farmers of Gimalas,

Balayan, Batangas. Instead of pursuing the acquisition of their right to land, they waived their rights in exchange for financial compensation relative to their negotiating capacity. Instead of having access to secure annual income from farming had they pursued their tenurial rights, they were deceived into accepting a short-term solution incomparable to what they could have gained from the land. The farmers of Hacienda Dolores, meanwhile, experienced intimidation and threats in their attempt to claim their tenurial rights amidst the competition with big corporations claiming their land, just as their participation in land management was likewise disregarded.

Studying the intensity of conflicts involving agrarian lands, most of the cases reached the violent stage (see figure 20), meaning resource actors resorted to physically aggressive actions, such as intimidation, harassment, destruction of property and killings, to pursue their interests.

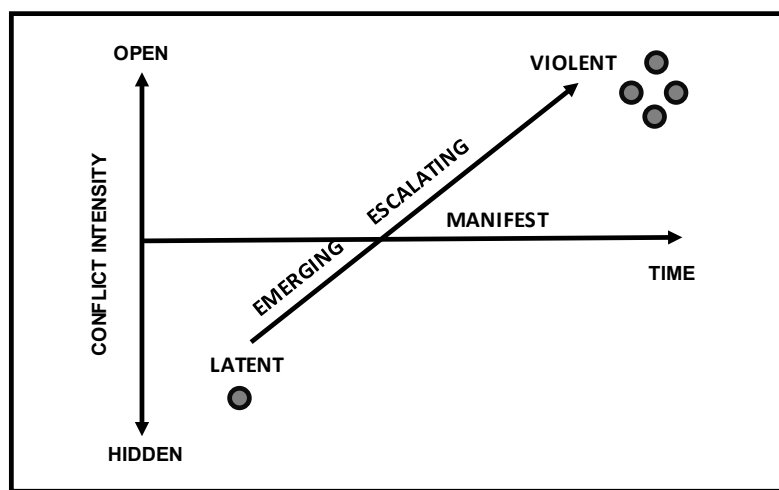


Figure 20. Intensity of conflicts involving agrarian lands.
Source: Engel and Korf (2005)

B. Nature of resource conflict involving ancestral domains

The actors involved in ancestral domain conflicts in these cases were comprised of: (1) *local community actors* such as the indigenous communities of Agta/Dumagat in Casiguran, Aurora, the Mamanwa of Jabonga, Agusan del Norte, the Bla'an of Tampakan, South Cotabato and the Ibaloi of Bokod, Benguet; (2) *government* institutions such as the National Commission on Indigenous Peoples, being the overall authority on the management of ancestral domains and protection of the rights of indigenous communities; and (3) *outside actors* from the extractive industries, state security personnel and non-government organizations.

In conflicts involving ancestral domains, just as in agrarian land conflicts, local communities are usually the victims, while both government institutions and outside actors are the conflict perpetrators. This is because outside actors and government institutions are usually the ones disrupting the peace among local communities through extractive activities, exploration or legislation done without considering the welfare of indigenous communities that may be affected. For example, MRL's exploration in the area of the Mamanwa of Jabonga, Agusan del Norte without FPIC threatens the conservation and protection of their 8,000 ha of ancestral land, including sacred, terrestrial and lakeshore areas. MRL's presence in the

indigenous communities causes social tension because, for IPs, their ancestral domains not only serve as shelter and a source of food, but their identity and history are embedded in these areas as well.

In terms of the causes of conflicts involving ancestral domains, just as in agrarian conflicts, these are brought on by: (1) varying interests in using and managing ancestral domains, (2) relative power of the conflict actors, (3) institutional failure, and (4) non-inclusive natural resource management. The indigenous communities want their ancestral domain respected, conserved and protected because it embodies their history and identity, while the conflict perpetrators see the area's potential for extractive industries and commercial use.

Conflicts involving ancestral domains have resulted to land conversion of settlements, farms, and conservation areas of indigenous communities. In the case of Bokod, Benguet, the conversion was for purposes of hydroelectric power plants.

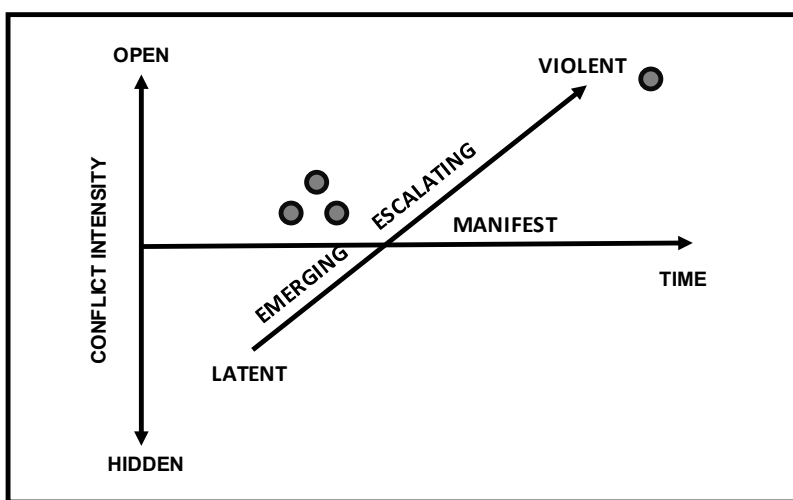


Figure 21. Intensity of conflicts involving ancestral domains
Source: Engel and Korf (2005)



With regard to the intensity of the conflicts involving ancestral domains in the cases included in this report, most only reached the manifest stage and did not escalate to the violent stage—except for the case of Tampakan, South Cotabato (see figure 21).

C. Nature of Resource Conflict Involving Municipal Waters

The nature of conflicts involving municipal waters differs from that of conflicts involving agrarian lands and ancestral domains because marine resources are communal, no one owns or controls them exclusively. Therefore, everyone can access marine resources. However, through the Philippine Fisheries Code of 1998 or RA 8550, local community fishers were given priority to access municipal waters and fish production became regulated.

Actors involved in municipal water conflicts are comprised of: (1) *local community actors* such as the municipal fishers, commercial fishers and aquaculture workers; (2) *government actors* such as local government units, the Bureau of Fisheries and Aquatic Resources (BFAR) and the Department of Environment and Natural Resources (DENR); and (3) *outside actors* such as the European Union, aquaculture farm owners, and beach resort owners. Local community actors, especially the municipal fishers, are usually the conflict victims. Because of unregulated and destructive fishing methods employed by commercial fishers to meet the global demand for marine products, municipal fishers have reduced fish catch for

the sustenance and income of their families. The expansion of resorts and the establishment of aquaculture farms have further restricted their access to and use of foreshores as boat docks and seaweed farms. The destruction of mangrove areas has also meant loss of marine products for household consumption of municipal fishers and their families. Government actors such as BFAR and DENR decide whether the livelihood of municipal farmers will be promoted and protected, or if aquaculture ventures and beach resorts will be allowed to deforest mangrove areas and operate within foreshores used by municipal fishers.

The causes of conflicts concerning marine resources are therefore seen as: (1) varying interests in using and managing marine resources; (2) relative power of the conflict actors; and (3) institutional failure. Municipal fishers see the importance of ensuring marine resources for food and livelihood of future generations, while commercial fishers and aquaculture owners pursue higher fish catch, sometimes using destructive and highly efficient methods, thus depleting the fish population. Because beach resort owners have more power to influence the management of foreshores, they are able to intimidate and marginalize the seaweed farmers in these areas, barring them from their livelihood. In addition, failure to implement regulatory instruments also contributes to conflicts because it allows the commercialization of foreshores and mangrove forests without following proper procedures, barring local communities from using the foreshores and harvesting mangrove forest products.



In terms of the intensity of conflicts involving municipal waters, the cases included in this report, were only in the manifest stage where the dispute had become a public issue. They did not escalate to the violent stage where actors with varying interests on the use and management of marine products would resort to violence to assert their stands.

Conclusion

Although international human rights instruments do not necessarily include a human right to land, except for indigenous people's right to land and territory, **“land rights stand as a key human right issue, as the fulfillment of many human rights depend directly on land, including the rights to adequate housing, food, health, or to self-determination”** (FIDH and OMCT, 2014 p.7 par 2). Security of access to and control over land and its resources is a key to people's survival. Thus, conflicts over access to and control over land are also a human rights issue. While development is a constant objective of the state, it can serve as a double-edged sword (FIDH and OMCT, 2014). Development projects can improve the lives and fulfill the human rights of people and communities, but it can also take away opportunities and hinder the fulfillment of human rights. Land grabbing and land conversion may generate jobs for people and make communities thrive economically but it will also displace people and take away opportunities for communities to thrive socially and culturally.

Human rights mainly protect individuals from actions that would threaten their civil, political, economic, social and cultural freedom. As mentioned earlier, for the indigenous communities, land and resources do not only mean income and shelter, but also history, culture and identity. As industries enter the territories of indigenous communities without going through appropriate procedures to obtain the consent of IPs, the lives and tenurial security of these communities are threatened. In the cases presented, aggressive and unlawful acts such as extra-judicial killings, harassments, intimidation and displacement are manifestations of the violation of indigenous communities' basic human right to enjoy their cultural heritage and identity which are embodied in their environment.

Recommendations

This section builds on the proposals forwarded and agreed upon in the two consultation workshops where the draft monitoring report was presented and discussed. The recommendations called on CSOs: (i) to document and effectively use land-conflict data to muster public support, (ii) to reframe the land monitoring process in the light of a rights-based approach, and (iii) to enhance the capacities of farmers and IPs to evaluate business contracts presented to them.

At the same time, the recommendations urged the government: (i) to officially recognize land rights as



basic human rights, (ii) to practice responsible land governance through proper enforcement of Free Prior and Informed Consent (FPIC) and Social and Environmental Impact Assessment (SEIA) not only for Economic Land Concessions (ELCs) but for all forms of land takeover, (iii) to establish monitoring systems and dispute resolution mechanisms in collaboration with the Commission on Human Rights (CHR) and all government agencies with a land-governance mandate and support one another in institutional building in line with a rights-based approach, and (iv) to institute accessible and affordable mechanisms at the local level for lodging of complaints and for dispute and conflict resolution—including traditional dispute management mechanisms in the communities.

Specifically, for CSOs:

Document and make public the voices of the people

Civil society organizations should document cases of conflict to hasten the conflict management and resolution process. Comprehensive fact-finding missions validating the series of events within a community afflicted by resource conflict can help in bolstering their claims. Avenues should then be organized to ensure that these cases are heard in order to generate public awareness and support.

Re-strategize the land rights campaign to link with the human rights movement

As the incidence of land conflicts continues to increase, human rights violations against farmers, indigenous

peoples and fishers likewise escalate, often to the violent stage. At the same time, the cases in this report reveal that conflicts involving ancestral domains mostly cover massive areas of public lands, where areas ranging from 4,000 to 13,000 ha are under threat of conversion for use by extractive industries. Given these realities, CSOs and fellow-advocates of land rights, IP rights, and environmental justice must now re-strategize their efforts as a fundamental fight for the basic human rights of the affected communities. With actual physical safety and lives clearly at stake, as well as the means to survive, not only policy intervention is called for, but the formation of a coalition of human rights defenders. Such a coalition should include partners in the academe and must now reframe land monitoring in the light of a rights-based approach and enhance the capacities of all rights defenders.

Enhance capacities of farmers and IPs in understanding business contracts

Capacities of farmers and ancestral domains should be enhanced to improve their ability to comprehend policies, raise their awareness of their tenurial rights and improve their negotiating skills in conversing with government institutions and business corporations in asserting their rights. This is to ensure that they are not deceived and manipulated by agreements with business corporations.



For the Government:

Recognize land rights as basic human rights

Given the overlapping land claims and weak governance in all lands but particularly in ancestral domain areas, the consensus is that land conflicts would progress from latent to manifest and become violent. Thus, the participants agreed it is imperative that the Philippine Government officially recognize land rights as human rights.

Implement responsible land governance

Agricultural investments should be regulated by responsible agencies. The consent process (FPIC) of affected communities should be ensured not only in the case of ancestral domain areas, but in all communities prior to the entry of investors. A rigid and participatory conduct of SEIAs should be enforced, just as there should be access to accurate and relevant information, establishment of mechanisms for dispute settlements, and regular monitoring of expired FLAs, among others. What is particularly lacking is the monitoring of agreements of government agencies, especially those directly entered into between the farmers, IPs and local communities and investors.

Establish monitoring systems and conflict resolution mechanisms

An effective monitoring system for compliance is needed to reduce or eliminate unfair treatment of farmers and IPs in the process of implementing

projects, and prevent conversion of lands to uses not agreed upon in the contracts. Government should also refrain from unhealthy practices like requiring investors to finance compliance monitoring. In essence, the CHR and CSOs have agreed to give special focus on land conflicts in three ways: (i) setting up of human rights desks in all government agencies having a mandate of governing land and other natural resources, (ii) assigning a Commissioner to look specifically into issues related to land rights, and (iii) assistance by CSOs to government agencies (such as DAR, DENR, NCIP, and BFAR) through providing venues for inputs and discussions and other needed support, such as training on human rights approaches as part of institutional building, and orientation of CHR on the various asset reform measures such as CARPER, IPRA, and the Fishery Code.

At the same time, informal, inexpensive and readily accessible dispute resolution mechanisms should be created at the local level to help facilitate the processes for resolving land-related complaints more efficiently. These mechanisms should not rely solely on legal edicts but must recognize the critical dynamics among land, property, culture and human rights. Moreover, such mechanisms should recognize and strengthen traditional and community-based institutions that have been successful in facilitating dialogue and management of conflicts in resource access.■



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