

Land Governance and the Challenge of Inclusive Development in Asia

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Asia is home to some 60 percent of the world's 7.5 billion people, yet occupies only 24 percent of the earth's land surface. It is the most densely populated continent in the world, four times greater than Europe. The challenge is to feed a burgeoning population given the high population pressures on land and limited resources. Asia has 34 percent of the world's arable land and only 15 percent of its forests.

Despite its immensities, Asia is perhaps better characterized through its remarkable diversity and resiliency. It has 75% of the world's farming households, 80% of whom are small-scale farmers and producers that depend largely on household labor and cultivate less than two hectares of crop land. However, majority of farmers are resource poor and lack security of tenure over productive land. (Quizon, 2011)

In most Asian countries, small farmers contribute significantly to total agricultural output. In India, smallholders contribute over 50% of the country's total farm output although they cultivate only 44% of the land. In many Asian countries, smallholders are the main producers of staples such as rice, corn, root crops and pulses, highlighting their important contributions to food security. (Thapa and Gaiha, 2011) In Indonesia, smallholders also dominate in certain tree crops such as rubber, coffee, coconut/copra, durian, cinnamon, rattan and resins through small farms and small agroforestry. (Contreras-Hermosilla and Fay, 2005)

Small farms also serve conservators as they also tend to grow a wider variety of crops and cultivars; these, in turn, serve to increase the resiliency of small farms against pests, diseases, droughts and



other stresses. They are characterized by higher use of labor and family-owned inputs; they have generally higher cropping intensity and are more diversified than large farms, with more productive per unit area than large farms. (Thapa and Gaiha, 2011) This has provided a compelling argument in favor of land reform, as land redistribution would increase productivity, efficiency and equity.

Past Land Reform Programs in Asia

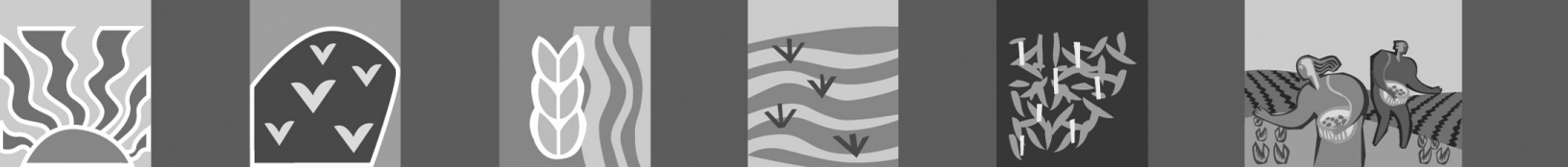
Historically, many countries of Asia were colonized by Western powers, each evolving different property systems and agrarian structures. Starting in the 16th century, colonial powers invaded Asia with a basic interest in trade which later evolved into territorial colonization, as local kingdoms and communities were increasingly incorporated into the world economy. Vast lands were brought under the Crowns or declared as “public domains” through processes that disenfranchised entire communities and local peoples. Landholdings were then carved out from these public domain areas then brought under state-controlled cultivation, or else were sold or leased out as state concessions to private entities. Colonial administrations also had another interest in land – as sources of revenue, which were collected through land sales, land rents,

taxes and concession fees – in order to support further colonial expansion and administration. (Quizon, 2011)

Many nation states in Asia emerged in the 1950s to the 1970s in the aftermath of World War II. Following their independence, these emergent nation-states sought to consolidate the powers of the central state, and to establish internal political stability. Nation-states thus became the “heir” of colonial legacies, including past land laws & central control over vast lands under the so-called “public domain”. (Quizon, 2011)

Faced with internal social unrest and agrarian revolts, many Asian countries instituted agrarian reforms. Land reforms played an important part in state-building characterized by inward-looking economic policies. Land reforms sought to address rural poverty, social exclusion and economic stagnation.

Land reforms in Asia from 1945 to the 1980s however brought highly-uneven results across countries. Land reforms brought about complete agrarian transformation in China, Vietnam, Taiwan, South Korea and Japan through a highly egalitarian distribution of land and the development of rural institutions. Although



these countries took on contrasting (capitalist vs socialist) paths towards reform, they eventually converged on the strengthening of small family-run farms of less than three hectares. In most countries (i.e., Philippines, Thailand, India, Sri Lanka and Bangladesh), land reforms contributed to increased tenure security and social inclusion for sections of the rural poor, yet there was little transformation of agrarian structures as large landholdings remained untouched. In other countries (i.e., Pakistan, Indonesia) land reforms had little or no impact at all, as these reforms were stopped in their tracks by military regimes, and their gains later reversed by anti-reform policies. The Cambodian case stands on its own as a country in turmoil that underwent four property regimes within a single generation, spanning about 40 years. (Quizon, 2011)

And although many land reforms were not fully implemented, there are past laws on land ceilings that until today remain legal and valid. (See Annex on Land Ceilings on Agrarian Land)

New Increasing Pressures on Land

Many Asian countries have experienced increasing pressures on land, brought about by population growth and increasing consumption

and consumerism. Yet, over the past decade or so, there has been an unprecedented large-scale acquisition of lands, as wealthy food-importing countries and private investors have begun acquiring farmlands overseas for the large-scale production of food, biofuel, livestock & other products.

In 2010, a World Bank report found the demand for land to be “enormous” and identified large-scale farmland deals covering 56 million hectares worldwide in less than a year. Yet the actual figures seem much larger than earlier estimates. A 2012 publication by the International Land Coalition reported that some 203 million hectares have been acquired in the period 2000-2010. Of these, 71 million hectares were reportedly cross-checked and verified. But because there are no central databases or detailed statistics, and many of the transactions are shrouded in secrecy, it has been difficult to gauge exactly how big the problem is.

One attempt to monitor transnational land transactions has been the ongoing Land Matrix initiative (see landmatrix.org). As of 2016, the Land Matrix has documented 1,004 transnational land acquisitions covering 26.7 million hectares, of which 4.9 million hectares are in Asia. as shown in Table 1.

Table 1. Global Status of Land Acquisitions

| Region | Number of concluded land deals | Total size of concluded land deals (million hectares) |
|----------------|--------------------------------|---|
| Africa | 422 | 10.0 |
| Eastern Europe | 96 | 5.1 |
| Asia | 305 | 4.9 |
| Latin America | 146 | 4.5 |
| Oceania | 35 | 2.2 |
| Total | 1,004 | 26.7 |

Source: Land Matrix, 2016



Most of the lands are acquired for agricultural uses as outlined in Table 2.

Drivers. What factors drive this new global rush for land acquisition?

The first driver has been rising world food prices that started in the 1990s and peaked in 2006-2008, causing a global food crisis. In 2008, the top food-exporting nations withdrew their food exports from the world market to protect their

world energy consumption, rising conflicts in the Middle East, and China’s rapid industrial growth. Biofuels production grew from 1M hectares in 2001 to 25 million hectares in 2008. (FAO, 2008); the industry was expected to more than double between 2007 and 2017. The common crops used for biofuel are palm oil, sugarcane, maize, soy and jatropha. This affects agricultural production as it shifts land use from production of food to large-scale biofuel crops.

Table 2. Agricultural Intentions of Global Land Acquisitions

| Purposes | Asia | Global |
|-----------------------------------|------|--------|
| Agro-fuels | 16% | 21% |
| Food crops | 21% | 38% |
| Livestock | 1% | 8% |
| Non-food agricultural commodities | 29% | 9% |
| Agriculture (unspecified) | 33% | 23% |

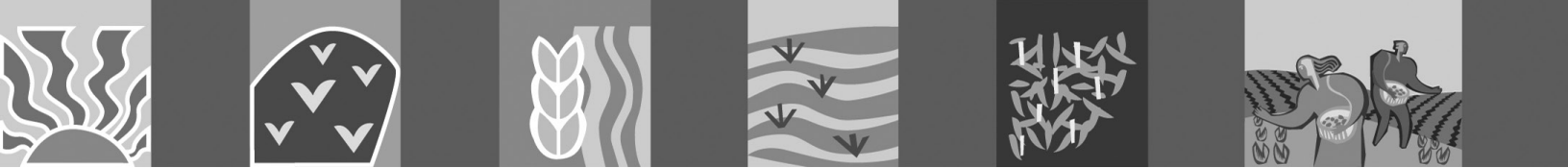
Source: Land Matrix, 2016

own consumers and to prevent unrest at home, thus exacerbating the food insecurity of food-importing nations. In response, wealthy import-dependent countries (such as Japan and Middle East countries) decided to acquire farmlands overseas to directly produce their own food needs, and to avoid the risks associated with dependence on world markets for their food supply. This drive to acquire land overseas continued even after global food prices had moderated. (Quizon, 2012) Wealthy food-importers are no longer fully depending on global trade.

The second driver comes from the growth of the biofuel industry, which became competitive due to the sudden rise in global oil prices and Western governments’ support for renewable fuels. Contributing to rising oil prices are increasing

Finally, large scale land acquisitions is also driven by mining, logging, real estate tourism, and the creation of special economic zones and enclaves. An estimated 22 percent of all transnational land acquisitions are driven by extractive industries, livestock and tourism.

Meanwhile, host governments have welcomed the new land investments as a means to offset declining public investments in agriculture. With dwindling ODA and national budget deficits, many cash-strapped governments have to increasingly rely on the private sector or foreign direct investments (FDIs). In many Asian countries, agriculture’s share in public spending has been declining, similar to the reduction of ODA for agriculture. (Ravanera, 2010). And to lure foreign investments, governments offer tax holidays,



Mulbog indigenous people in Balabac, Palawan, Philippines doing land use domain coding identifying the sacred zones of their ancestral domain.
Photo by Dave de Vera of the Philippine Association for Intercultural Development (PAFID), Philippines

repatriation of profits, subsidies and exemptions, state company investments, and other incentives. Moreover, many new deals contain promises of financial investment, infrastructure, access to research and technology, and employment, yet there remains little evidence of these being fulfilled.

Impacts. The new land acquisitions has been labeled as the “new colonialism”. This new wave differs from usual foreign investments: it seeks resources (land, water) rather than commodities and markets; it seeks production for repatriation rather than for commercial export; and it involves actual production rather than joint ventures or contract farming with local farmers. Also, the investments are much larger in scale, and are spearheaded by more government-led investment than in the past. Also, while foreign investors are typically large, wealthy transnational firms or rich governments, host countries are poor or embroiled in political conflict – thus raising questions about the terms and impacts of such

acquisitions. (Quizon, 2012) As stated by the World Bank in its 2010 report: “investors are targeting countries with weak laws, buying arable land on the cheap, and failing to deliver promises on jobs and investments...”

Moreover, many of the deals are carried out outside of public knowledge and scrutiny. With little prior information or consultation, local communities are caught unaware until the moment when they are evicted or land clearing operations begin. And as the new

land deals are not transparent, this also creates opportunities for corruption.

There have been large-scale displacements of small farmers and settlers from their lands, even when government officials claim that so called “public”, “surplus” or “unused” lands such as forests and pastures are leased to foreign ventures. In the provinces of Koh Kong and Kampong Speu in Cambodia, more than 500 farmers and indigenous families were evicted from their lands in May 2006 when 23,000 hectares were awarded by the government for a sugarcane plantation under a joint venture among a Thai company, a Taiwanese company and a Cambodian official. In Banggai Regency, Central Sulawesi, Indonesia, the lands of local indigenous peoples and farmers were encroached upon in August 2009 with the use of army and police forces to make way for a 17,500-hectare palm oil plantation under a Malaysian company. (ANGOC and Land Watch Asia, 2014)



There have been numerous written accounts of small landowners being pressured and intimidated into involuntarily leasing their lands. The intense competition for land can lead to conflict and abuses of human rights by the forces that seek to gain entry into private and public lands. Social conflicts also arise within and among communities especially when companies make payments and bribes to some local leaders and representatives.¹

Moreover, the new land deals tend to reverse the gains of agrarian reforms, as they involve the large-scale re-consolidation of landholdings. Also there have been attempts to curb existing land laws. In Pakistan, in an attempt to lure investors, officials tried to amend the 1977 Land Reforms Act that fixed a land ceiling of 100 acres (40 hectares) for individual ownership. This attempt was later aborted for fear of a public outcry and political backlash.

Despite the rhetoric that only marginal or unused forest lands are being leased out to foreign corporations, the reality is that land deals often involve the most fertile lands (with water or rainfall, and public access). Also, contrary to official claims, the common notion of “empty forests” is no longer valid.

In Indonesia and the Philippines, as much as 30 percent of the total populations live in classified forestlands, often without legal tenure. And when lands are leased out, the land deals result in the creation of “production enclaves” that supplant or operate in isolation from indigenous, smallholder

systems. Land converted from smallholder production to plantation agriculture will not likely revert to its original users, and traditional farming skills may be lost within a single generation.

Moreover, there are environmental and social implications as forests are converted to monoculture plantations. These include water shortages resulting from forest clearance, the building of canal networks, water runoffs and evaporation, and the closing of small streams. In palm oil plantations, there are reported cases of water pollution associated with mills, and chemical residues from heavy pesticide and fertilizer use.

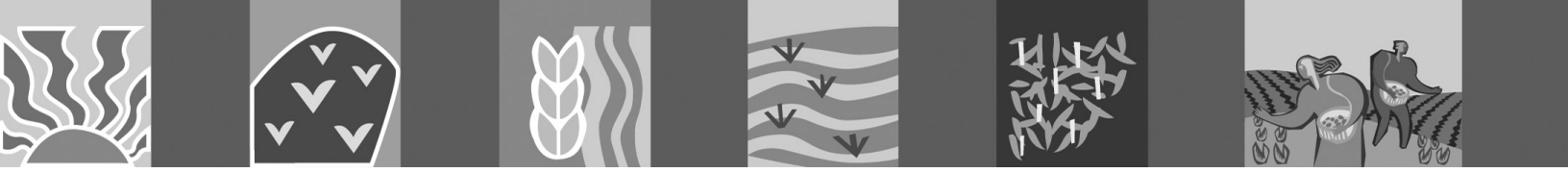
There are also questions raised about one-sided contracts, such as when long-term lease agreements exempt investors from any liability in case the venture prematurely fold-up. Some of the companies are said to have very poor social policies, with flagrant disregard for communal forest rights or the rule of law.

The new land acquisitions feature weak governance and a failure to recognise, protect, or properly compensate local communities’ land rights. As declared by the 2014 Asian Land Rights Tribunal Panel:

“Transgressions involve corporations and other business enterprises in which powerful local and foreign interests have intertwined in such a manner that the activities complained against need to be exposed, denounced and corrected as violations of human rights. Otherwise, disregarding human rights could very well become the new normal in welcoming investments indiscriminately in developing countries.”

“... (there is) the urgent need to adopt social safeguards in the face of modern

¹ These documented cases include: “The Blood Sugar Case in Koh Kong, Cambodia,” and “Land Grab Case vs. Indigenous Peoples in Benggai, Central Sulawesi, Indonesia for Palm Oil Plantation” In ANGOC, LWA, OXFAM East Grow Campaign, UP College of Law, and PILG. (2014). Asian people’s land rights tribunal: Land rights as human rights. 16-17 January 2016, Quezon City, Philippines. [Proceedings]. Quezon City: Authors.



Status of Land Investments

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Source: Land Matrix, 2016

economic integration mechanisms that are advanced in many nooks and corners of the globe. Land rights of smallholder producers, especially, should have adequate protections amidst the growing land investments in the region.”

Facing up to Land Issues in a Changing Regional Context

It should be noted that the task of protecting the land rights of smallholder producers should now take place in the context of a changing Asian regional environment.

First is rapid economic growth in the region. Asia posted a remarkable growth in GDP in recent decades, with a real GDP growth of 4.8 percent in 1991-2000, and 6.1 percent in 2001-2010. (Tani, 2016)

Second is the growing trend towards economic regional integration primarily through SAARC (South Asia) and ASEAN (Southeast Asia), and also APEC (Pacific rim countries). This poses a greater need to focus on social protection of workers

and small producers in the face of growing investments and capital transfers.

Third is the overall decline in the poverty levels. The overall poverty rate in developing countries fell from about 71 percent in 1981 to 15 percent in 2011, and malnourishment from 91 percent in 1981 to 40 percent in 2011 (FAO RDR 2016). The rapid decline in the proportion of the hungry was estimated to have fallen by more than 0.5 percent annually (FAO, IFAD and WFP, 2015).

Fourth is that although overall poverty has declined, Asia still accounts for 55 percent of global poverty, with 560 million people living below the USD 1.25/day poverty line in 2011. Over three-fourths (76%) of those in poverty live in the rural areas. (IFAD, 2016)

Fifth is the context of growing land competition and resource conflicts. In Indonesia, the KPA land coalition recorded 369 agrarian conflicts for 2013 alone, covering an area of some 1.28 million hectares, and involving 139,874 households. Almost half (48.78%) or 180 of these conflicts originated from plantations, while 31 (8.4%) were from forestry. It estimated that on a daily average, more than one conflict takes place in Indonesia, affecting 383 households (1,532 people) with about 3,512 hectares of conflict areas. (KPA, 2014) In Cambodia (between 2000 and 2013), the government has granted Economic Land Concessions (ELCs) to numerous enterprises covering an aggregate area of more than three million hectares, or some 16.6 percent of the country’s total land area. (CCHR, 2013a) There have been at least 223 land conflicts since 2007, and this is just a fraction of the total since many conflicts go un-reported. It is estimated that at least 5 percent of the country’s total land area is conflict-affected. (CCHR, 2013b)



These factors highlight the fact that land remains (and will continue to be) central to addressing poverty, hunger and conflict in much of rural Asia.

Assessment and Recommendations

Under the new emerging competition for land, it is the rural poor and smallholders that tend to lose out. Thus, the new phenomenon of large-scale land acquisitions highlights several issues in governance:

- Weak democratic governance: the lack of transparency, accountability & popular empowerment that leads to “elite capture” of land and resources;
- Land governance that fails the rural poor: national legal systems that centralize control over lands, and do not provide legal recognition of land rights of local users;
- Economic governance that fails the rural poor: protection and incentives are given to investors in ways and systems that sideline the legitimate interests and rights of the rural poor; and,
- The sidelining of smallholder production: a mind-set by government officials and planners that undervalues the contribution of smallholders and small family farmers (Anseeuw, Wily, Cotula and Taylor, 2012).

In order to halt the continuing disenfranchisement of smallholders and rural producers, six policy considerations have been proposed:

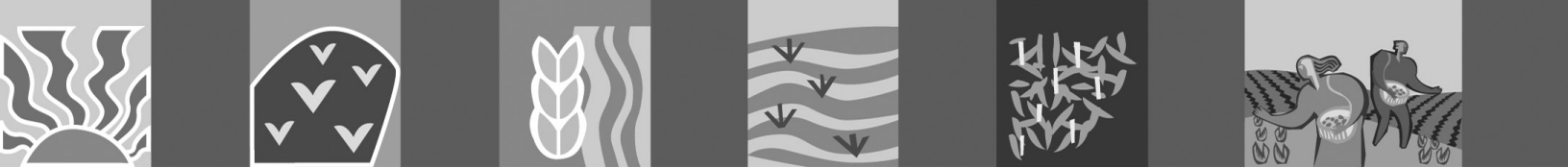
1. Acknowledge & respect the resource rights of rural people in large-scale land transactions;
2. Legally recognize the land rights of the rural poor, including their rights over the commons;
3. Put smallholder production at the center of strategies and policies for agricultural development;

4. Make international human rights law work for the rural poor. The guiding principles of the United Nations and international agreements that bind peoples and nations should also be applied to cases where international investments corporations are involved.
5. Make decision-making on land inclusive, transparent & accountable; and,
6. Ensure environmental sustainability in land & water-based acquisitions and investments

Also, while it is the primarily role of the state to ensure the welfare of all, the state is also tasked with the primary duty to ensure that whenever rights and corresponding obligations are breached, effective and appropriate remedies should be made available to aggrieved parties.

Finally, for civil society groups and human rights workers, there are three strategic action areas to pursue:

- Influencing policy frameworks towards a more people-centered land governance where land rights of vulnerable and minority groups are enhanced and protected, and where administrative processes are fair, transparent and supported by reliable data.
- Stopping the dislocation of farmers, displacement of indigenous peoples and discrimination of women brought about by the growing land investments and other developmental aggression.
- Mobilizing farmers, indigenous communities and landless workers together with CSOs and development partners towards protection of land rights and promotion of smallholder agriculture. ■



Annex: Table 3. Land ceilings on agrarian lands

| Country | Current rules on land ceilings |
|--------------------|--|
| Bangladesh | The Land Reform Ordinance of 1984 limits per family land ownership to 8.5 hectares ¹ |
| Cambodia | For lands awarded for the productive use or benefit of the poor, the Sub Decree on Social Land Concessions (SLC) of 2003 stipulates a land ceiling of two hectares which may be increased up to 5 hectares based on the characteristics and potential of the land or the type of crop, and labor ² . On the other hand, the Sub-Decree on Economic Land Concessions (ELC) of 2005 stipulates a land ceiling of 10,000 hectares for investments and job-creation purposes. However, the government continues to grant ELCs beyond the maximum allowable size. ³ |
| Indonesia | The Basic Agrarian Law of 1960 regulates private land ownership; it imposes a land ceiling of 5-15 hectares for irrigated land, and 6-20 hectares for upland. ⁴ |
| Nepal | The Land Act of 1964 imposes ceilings on agricultural land at 6.7 ha in the Terai, 3.5 ha in the foothills and mountains, and 1.27 ha in Kathmandu Valley. ⁵ |
| Pakistan | The Land Reforms Act of 1977 established a ceiling of 100 acres of irrigated land and 200 acres of unirrigated land. However, the Supreme Court in 1979 declared key provisions of the 1972 Land Reforms Regulations and the 1977 Act as unconstitutional and as being against Islamic injunctions. ⁶ |
| Philippines | The Comprehensive Agrarian Reform Law of 1988 imposes a land ownership ceiling of 5 hectares for agricultural lands. Meanwhile, agrarian reform beneficiaries are awarded up to a maximum of 3 hectares under the same law. |
| India | Tamil Nadu: Anyone can purchase land up to 60 acres (24.26 hectares) ⁷ |
| | Karnataka: Only an “agriculturist” can purchase agricultural lands. An agriculturist is defined as one who personally engages in the occupation of tilling the soil and derives his livelihood from that occupation. |
| | Kerala: anyone can purchase land at maximum ceiling limits: 3.04 ha for an adult unmarried person 6.07 ha for a family five or less 8.09 ha for a family of more than five 6.07 ha for any other person other than a joint family |
| | Madhya Pradesh and Rajasthan: no restrictions in these States |
| | Himachal Pradesh: “Agriculturists” can purchase agricultural land up to 32 acres (12.95 hectares). |

Source: Table prepared by the Asian NGO Coalition (ANGOC) as a part of the ongoing Land Watch Asia (LWA) campaign.

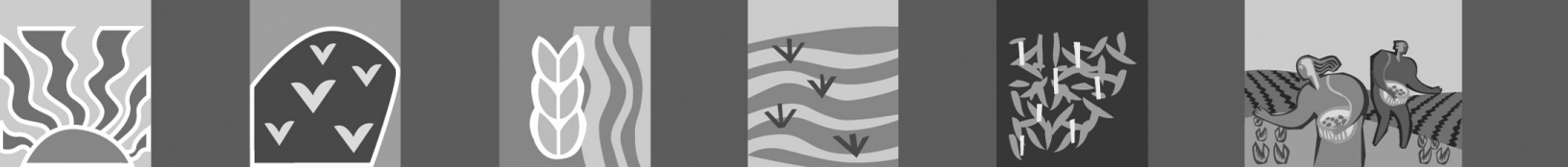


Footnotes of Table 3

- ¹ CARE Rural Livelihoods Programme (2003). Land policy and administration in Bangladesh: A Literature review. Accessed from http://www.carebangladesh.org/publication/Publication_7013284.pdf.
- ² The Royal Government of Cambodia. Social Land Concessions. No. 19 ANK/BK/March 19, 2003.
- ³ STAR Kampuchea (2011). "Overcoming a Failure of Law and Political Will". in ANGOC and Land Watch Asia (2012), Securing the Right to Land: An Overview on Access to Land in Asia. Quezon City: ANGOC. (Second Edition)
- ⁴ GRAIN. (2015). Asia's agrarian reform in reverse: Laws taking land out of small farmers' hands. Barcelona: GRAIN.
- ⁵ Community Self-Reliance Centre (CSRC). (2014). CSO land reform monitoring indicators, Nepal. Land Watch Asia. [Unpublished].
- ⁶ DAWN. (2010). Land reforms in Pakistan. In DAWN. Accessed from <http://www.dawn.com/news/570487/land-reforms-in-pakistan-by-afan-khan>.
- ⁷ Sundar, G. S. (2016). Land laws across India. In The Hindu. Accessed from <http://www.thehindu.com/features/homes-and-gardens/land-laws-across-india/article8713981.ece>.

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