

WORKING SESSION | 1

Land Rights and Land Governance in Asia

Land Rights and Land Governance in Asia: Historical Perspective and Current Issues

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Historical Underpinnings and Agrarian Reform Experiences

Asia is the most populated continent in the world, with high population density and increasing urbanization. Countries in Asia are also referred to as transforming economies, with poverty largely stemming from rural areas, but with agriculture not being the main driver of growth. Agriculture's contribution to the gross domestic product (GDP) is also declining. Nonetheless, agriculture remains the major source of livelihood and a key to reducing poverty.

From 1498 to 1945, Asia was dominated by Western maritime powers. A commercial economy based on international trade was imposed, and goods from Asia fueled developments in Europe such as the Industrial Revolution. Western colonizers also left legacies in terms of land tenure systems and policies, which included the establishment of the public domain (crown lands), rise of plantations and agribusiness, creation of State-run land registries, dominance of individual property systems, and non-recognition of communal or indigenous lands.



Most Asian countries eventually gained their independence after World War II, and inherited the colonial land regimes. Land reforms were then implemented as part of State-building, driven by peasant-led uprisings and liberation movements. The East Asian countries (Japan, Taiwan, and South Korea), implemented short, miracle land reforms with the help of accurate land records and a good bureaucracy, but with

conditions that were not replicable. Other countries implemented land reforms through the provision of user rights (China and Vietnam), tenancy reforms and land ceilings (South Asia), and decollectivization (Central Asia).

For the rural family farmers who do not have the capacity to acquire land through inheritance or land sales, redistributive land reforms offer another path to use and/or own land. At one end of the spectrum, these reforms led to significant land redistribution and rural poverty reduction (East Asia), some had moderate and uneven results (South and Southeast Asia), while on the other end of the spectrum are failed agrarian reforms or reversals in gains. Asian experiences with agrarian reform bore diverse results, but revealed that models may either be socialist or capitalist, but they must be rooted in family farms to be successful.

Issues in Land Governance on Tenure Rights and Reforms

Nine thematic issues in land governance persist in the context of contemporary agrarian reforms:

❖ *Unfinished agendas of land reform.* Many land reforms across Asia are still not complete due to a lack of political will and/or funding. In many countries, there is also a re-concentration of land into the hands of a few. Questions also arise on the capacity of the State to implement land reforms while encouraging investments. Policymakers are concerned over how small farms, fragmented lands, and land ceilings affect the economy and viability of investments.



❖ *Land administration reform to promote land markets.* Collaborations between donor organizations and governments enable reform initiatives to facilitate land markets, prompting a question of whether land markets can work for the poor. Such initiatives include privatization of land, titling, and registration; developing

land markets and land administration systems; and creating access to credit to promote land as a collateral or transactable commodity.

❖ *Market-assisted land reforms.* In 2001, the World Bank introduced the “Market Assisted Land Reform” based on the concept of “willing buyer, willing seller.” However, there has been debate on the use of market prices for reforms. Further, the poor often end up as the “seller” of lands rather than “buyers” of land, due in part to their low bargaining position.

❖ *Women’s land rights and equal access.* There has been a growing feminization of agriculture in Asia (except in the Philippines and Japan) due to the out-migration

of men from rural areas, yet women still have less access to land. Previous land reforms were not able to address women's interests. Women's rights are further affected by discriminatory inheritance systems, religious and cultural practices, social restrictions, and disadvantaged situation in patriarchal society (less education, access to information, etc.).

- ❖ *Indigenous peoples' rights: land, territory, and culture.* Asia is home to 70 percent of the world's 370 million indigenous peoples. For IPs, land is seen in connection with their identity, faith, culture, and livelihood, and is not a mere economic asset. In many cases, the State is a "conflicting claimant" of IP lands. Many land reform programs either do not cover IPs, or result to threats to IPs' rights to ancestral lands.
- ❖ *Ownership and tenure on forest land and the commons.* Around 75 percent of the world's lands are under the State. The large sum of valuable lands under central State control make the situation conducive to mismanagement, poor resource mobilization, and corruption. At present, large populations continue to live in forests and public lands without tenure security.
- ❖ *Large-scale land acquisitions.* There is need to protect small farmers and settlers from large-scale acquisition of lands for production of food and biofuel. Many governments promote land investments without public disclosure, while wealthy countries and private investors have gone to acquire overseas farmlands.
- ❖ *Addressing the challenges of climate change and tenure rights.* Sectors without tenure rights are the most vulnerable to the effects of climate change. Climate change affects land availability, use, and tenure. Adaptation to climate change is largely local, while climate change mitigation is driven nationally or globally.
- ❖ *Additionally, people have to also look into growing urbanization brought on by limited resources, and the linkages between rural and urban poverty.* Agriculture is not the most profitable form of livelihood in many cases, and its insufficiency spurs urban poverty. In countries such as India, farmers may have abundance produce and still suffer from starvation.

While good laws and frameworks are in place, systems have to be revisited, restructured, and rebuilt. Political will to continue implementing agrarian reforms has to be reinforced, and the governance over land has to be centered on people, and not on elites and business. Reforms need to be aimed at empowering local communities. Whenever States fail to create an environment wherein land access is fair, it continues to breed injustices.

In recent years, the global development agenda embraced the resurgence of land rights concerns. The challenge that advocates face now is how land rights may be bumped to the top of national and international priorities. It is important for CSOs from different sectors and different parts of the world to come together, to pursue common advocacies and encourage dialogues that will help address issues (on land, water, investment, climate change, refugees) that are becoming increasingly cross-border and international.

Women's Land Rights and Agriculture

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Status of women's rights and contributions to agriculture

Current global and local situations regarding land and agricultural rights for women indicate that there is a deprivation of what should be considered as basic rights. The need to address this deprivation is all the more urgent when considering the positive impact that women in agricultural input and production, have had, and how much more they can contribute with proper access and rights.

Globally, agricultural land is around 75 percent family-operated with 43 percent of the labor force involving women. Inequality in the level of access to resources and opportunities for women exists in Asia and the rest of the world. For example, in Africa, 70 percent of food production is handled by women, yet their land rights are less recognized. Addressing this gender gap in agricultural input could alleviate hunger for 100 to 150 million people.

There are international frameworks recognizing equal opportunity and treatment which have been ratified by many countries, including Bangladesh: the United Nations (UN) Charter of 1945, Universal Declaration of Human Rights of 1948, United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Beijing Platform for Action (BPfA), International Covenant on Economic, Social, and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), and the Universal



Periodic Review (UPR) of the UN, to name a few. It must be noted although that Bangladesh ratified the CEDAW with reservations on Articles 2 and 16 (1c).

It is also evident in several of the articles in the Constitution of the People's Republic of Bangladesh (1972), the protection of the rights of women is an important matter. Articles 7, 10, 16, 19, 27, 28, and 29 establish equality of rights and opportunity regardless of sex, as well as prohibit discrimination and inequality. However, in

family and personal affairs, laws established by religion take precedence, and these may be discriminatory against women.

Constitutionally, there are three recognized types of land ownership in Bangladesh, among which, cooperative ownership is considered as non-functioning and thus, unimpactful. Private ownership, which accounts for 80 percent of all land, is 96 percent male-owned via inheritance or purchase, leaving only four percent for women. Despite the existence of laws in opposition of such, discrimination is perpetuated by personal agendas. In the Garo community, for example, women that own land are only recognized as custodians, and therefore cannot sell land, at the behest and exploitation of their families.

The remaining 20 percent of land in Bangladesh is under public ownership, most of which is government-owned and regulated khas land. Over 50 percent of individuals that work on but do not own public land is comprised of landless farmers and producers. Discriminatory practices against women exist in public ownership as well.

A gradual decrease in agriculture's contribution to Bangladesh's Gross Domestic Product (GDP) has been a trend that the State has not addressed, declining from 29.2 percent in the 1990s, down to 18.7 percent in the 2013-2104 fiscal year, and 14.10 percent in the 2016-2017 fiscal year.

The percentage of the population engaged in agriculture is also decreasing. In 2010, 47.56 percent of the working population was engaged in agriculture, yet seven years later, that number would be reduced to 40.6 percent. Yet within the same time span, an eight percent increase in women's involvement in agricultural production, from 64.4 to 72.6 percent, was also seen. During harvest seasons in rural areas, women are more active in the agricultural production as men either emigrate or leave the area to seek employment elsewhere.

Cambodia's agricultural sector also relies heavily on women, with 75 percent of the female population employed in that field and playing vital roles in rice cultivation, non-timber forest products, and fishing. However, of that percentage, 52.6 percent (as of 2016) of women live under insecure land tenure. Laws such as the Land Law of 2001, the Marriage and Family Law of 1989, and the Code of Civilization (Unit 1270), aim to ensure equality and equity, but are still not enough to do so effectively; gender inequality in access to land and other natural resources still exists.

The situation for women farmers in Nepal, on the other hand, is a tricky one. Although women's land and housing rights have grown from 19 to 30 percent from 2011 to 2018, the underlying reality is not as positive. Land is not registered in women's names, and the data that indicates a rise in women land-ownership, is from their husbands merely transferring their excess land to them. The land market of Nepal is also strong-armed by land mafias, meaning government is powerless against them. Furthermore, the provincial government has also increased taxes, thus raising land registration fees from \$1 to \$5, burdening the impoverished in general.

Recommendations to enhance women's land rights

Given that women play an important role in the agricultural sector, hindrances such as wage gaps, limited access, and less tenure security must be dealt with in order to enhance agricultural involvement. Access to agricultural lands and inputs such as seeds, irrigation, fertilizers, and technology, as well as public financial credit without collateral, secure markets, and support for collective and family farming, are all necessary for the improvement of women's land rights. Gender inequality must also be addressed in order to empower women in entirety.

Policy issues in Bangladesh that need to be addressed include enacting a khas land recovery and distribution act or law. Cooperative law must also be revised to truly



benefit women and the impoverished. Significant recognition as farmers and landowners, as well as budget allocation for women in agriculture are also crucial. Perhaps the mentioned issues may be remedied by having the names of both husband and wife on Land Title Certificates, and by allocating funds for the Commune Committee for

Women and Children. Adequate representation is also essential, and this may be enhanced by increasing the number of women involved in the Agricultural Development Planning Processes.

The reality of the situation women face must be acknowledged: that despite having multiple articles in the Bangladesh Constitution that protect and promote gender equality and women's rights, along with a multitude of ratified international commitments to empower women, these efforts are off-set by traditional or religious practices that discriminate against them. This predicament only solidifies the need for women to be recognized as farmers, and to enable equal exercise of women's land rights. Doing so, in fact, would not only empower women as they deserve, but would benefit the millions that rely on their agricultural efforts, globally.