MONITORING LAND
USING AN INDIGENOUS PEOPLES LENS AND EXPERIENCE

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PATTERNS OF SUBSISTENCE OF INDIGENOUS COMMUNITIES IN ASIA

➲ Most indigenous peoples (IPs) in Asia are **sedentary communities**—meaning they have defined territories. They can be huge or small, but they are *territories* all the same.

> A lowland farmer may survive with 7 hectares (ha) of land. But an IP community might need 10,000 ha. It is not their fault that they consider that their domain. They live in, and are part of, an ecosystem.

➲ **Pastoralists/nomadic communities** have no domain; rather they have a *range.* This makes the problem more challenging. They travel from country to country, without respecting boundaries. In India, for example, there are huge pastoralist communities.

➲ There are also **seafarers** in Asia, such as the Bajau Laut, who consider the ocean as their ancestral domain/territory.

LAND GOVERNANCE OF INDIGENOUS PEOPLES' AREAS

All indigenous communities consider landownership and land governance as **communal:**

➲ They have clearly defined common-use zones.

➲ They also have restricted or limited-use zones.

However, *individual or clan ownership is recognized within the territory.* The whole tribe will still respect inheritance from family to family, but will limit or will not allow transfer from an indigenous community to a non-indigenous community.

The concept of communal ownership is what drives land governance of IPs in Asia.

THREATS TO INDIGENOUS LANDS IN THE REGION

" *Indigenous peoples face multiple obstacles to maintaining secure rights to their lands, including: racism, social prejudices and entrenched forms of discrimination; inappropriate, assimilationist social policies towards indigenous peoples; lack of legal recognition of indigenous rights in national constitutions, laws and land tenure regimes; inflexible or deficient land administration services; and the lack of resources, capacity, political connections or awareness in indigenous communities to take advantage of existing legal opportunities.* **"**
M. Colchester

How a protected area can do harm to IPs: the Agtas of Talaytay, Philippines

Proclaiming the cutting and harvesting of forest products illegal in the Talaytay River Watershed Forest Reserve was the outcome policy of a P62-million project funded by the European Union. However, it seems no baseline study was done recognizing that the Agtas have inhabited the land. The Agta people's only existence is hunting and gathering—but they have become "criminals" since their land was declared a reserve.

Development aggression
▷ The intrusion of unregulated development projects and other interests continue to limit the access to and control by indigenous cultural communities (ICCs) of upland resources.
▷ Most of these initiatives bring alien value-systems with regard to the use of natural resources.

▷ Examples:

- ➲ **Mining operations.** In the Philippines, where every part of the country has mining operations, this is a big problem.

- ➲ **Oil palm plantations.** In Indonesia, lands devoted to palm oil cultivation are estimated at 9 million and growing, displacing IPs from their lands. **Conversion of tribal lands into special economic zones.** Vast tracts of land are being converted into industrial zones, **abetted by governments' neoliberal policies.**

- ➲ **Natural forest reserves, protected areas, and conservation projects.** These initiatives may seem positive or intrinsically good, but in reality they impose new governance structures over the community, destroy the relationship of the people with their own environment, and remove their governance rights.

  - ⊙ Such conservation projects include Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD+), and other reforestation programs.

  - ⊙ Greenwashing refers to the phenomenon of showcasing a program or product's eco-friendly characteristics but concealing its less than positive effects. Conservation projects may exhibit greenwashing.

The lack of recognition of indigenous peoples

- ➲ In Asia, many governments do not even recognize the existence of IPs, refusing to accept the reality that there are different peoples.

- ➲ They are subject to sub-standard living conditions: "Indigenous Peoples' human development indicators are lower and poverty indicators are higher than those of the rest of society" (Stavenhagen Report 2005). Unrecognized, they are not considered part of society.

- ➲ Indigenous peoples cannot secure their land rights.

- ➲ Assimilationist policies inappropriately assume that by applying dominant models or standards to IPs—such as giving them houses with tin roofs or making them literate according to the Western or academic model—IPs are being done a service.

Land, territories and resources

We have a unique historical collective connection with, and ownership of, a territory over which we maintain complex and diverse customary systems of land and resource use.

We have lived in our territores prior to the arrival of other, now dominant people, and before the formation of modern nation states. Some of us, however, may reside in new lands as a result of forced displacement or other circumstances.

Our livelihoods strongly depend on natural resources and as such we have a close spiritual relationship with, and rich traditional knowledge of, our environment.

Our indigenous systems and practices are not static but flexible and dynamic; and our land and resource use systems show a high degree of adaptivity.

We are experiencing continuing non-recognition of our rights over territory and of our customary land ownership and use systems leading to dispossession and exploitation of our land and resources.

The imposition of land and forest laws leads, to loss of our traditional lands to state forests, protected areas, commercial plantations and other uses outside our control.

As a result, we are experiencing increasing economic marginalization and poverty.

> Taken from the statement "Indigenous Peoples in Asia: Common Experiences and Issues" from the Workshop on the Concept of Indigenous Peoples in Asia, held in Chiang Mai, Thailand on 1–3 March 2006.

This statement provides the IP lens to understanding the problem in Asia, including what outcomes and impacts to monitor. It is very important for IPs to maintain control, access to, and governance of the land; and at the end, the impact they desire is the alleviation of their poverty. Remember this —this is how indigenous peoples themselves see the land problem.

" *The functioning of indigenous collective
land tenure systems is directly affected by the
extent to which they are given legal recognition,
the extent to which indigenous knowledge is
respected and the extent to which customary law
is allowed to operate.* "
M. Colchester

MONITORING FRAMEWORK:
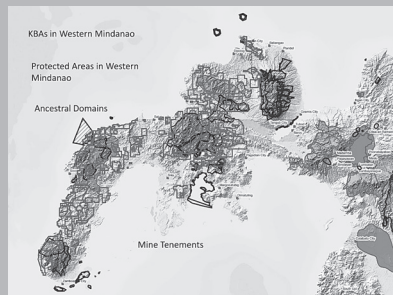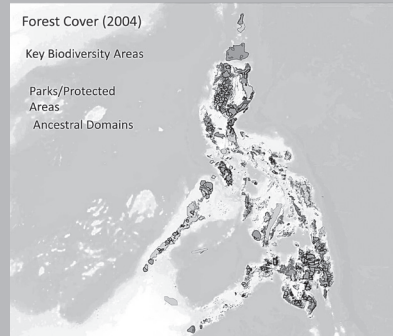## INPUTS, OUTCOMES, AND IMPACTS

How do we begin?

1. Determine coverage of traditional territories and ancestral
domains

➲ This is important, although challenging. If we really want to
monitor impacts on IP lands, we must understand where
these are, and how big these are.

➲ Use units like hectares and acres consistently—do not mix.

➲ Indonesia has fairly advanced work, with good baseline data
on indigenous peoples—because maps are used.

2. Determine coverage of conflicting claims and threats:

➲ These can usually be found where there are:

⊙ Mining operations/applications

⊙ Parks, protected areas

⊙ Other large-scale operations

⊙ Land conversions

➲ If we know where ancestral territories are (including their
size and in which provinces they are situated) then we should
know also the coverage of the conflicting claims, and how
big is the area with overlapping claims.

" *You cannot monitor impacts unless you know what is happening with the other threats to indigenous lands.* "

The Philippines' forest cover in 2004 includes conservation zones, declared parks, and protected areas. The plan of the government is to declare all of the amber-colored areas as national parks.

Through mapping, we can know exactly which ancestral domains are overlapping with parks and mining areas. Furthermore, at the provincial level, you can see the parks and ancestral domains, and the mining tenements all over the area. One can surmise this community will encounter problems in governance. For example, can the communities still govern? Who is the boss—the park superintendent or the chieftain? What will be followed—traditional governance or multi-stakeholder arrangements? There are mining tenements all over the area.

Forest Cover (2004)

Key Biodiversity Areas

Parks/Protected Areas
Ancestral Domains

Forest Cover

Key Biodiversity Areas (KBAs)

Protected Areas & Parks

Mining Tenements (Existing and Applications)

KBAs in Western Mindanao

Protected Areas in Western Mindanao

Ancestral Domains

Mine Tenements

" *We not only monitor the existence of a
policy, but its* **implementation.** *While the existence
of laws and policies is not enough, in any event, you
have something to start with.* "

MONITORING INPUTS

Policies (ratified/signed/adopted)

International Covenants, Treaties, Agreements

- ⮑ Monitor how many international covenants your country has ratified.
- ⮑ A word of warning—Cambodia has ratified many agreements, and yet has not produced a law that truly recognizes traditional forest ownership.
- ⮑ But these help—because they provide the community enough ammunition to pressure government.
- ⮑ Important international instruments include:
  - ⊙ ILO 169 International Labour Organization (ILO) Convention No. 169
  - ⊙ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
  - ⊙ Convention on Biological Diversity Sec.8j
- ⮑ Important international instruments include:
  - ⊙ Food and Agriculture Organization (FAO) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security
  - ⊙ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

National policies

➲ Monitor the existence, as well as the efficient implementation of IP land rights policy.

➲ Not all countries have national policies on IPs' landownership, and will therefore have to focus advocacy efforts on the drafting and passage of such laws and policies.

➲ National policies relating to indigenous peoples' land rights:
- ⊙ Indigenous Peoples Rights Act (Philippines)
- ⊙ Land Law of 2001, Art. 26 (Cambodia)
- ⊙ Constitutional Guarantees—Fifth and Sixth Schedules (India)
- ⊙ Provision for Free Prior Informed Consent (FPIC)
- ⊙ Law 32/2009 & Law 27/2007 (protection and management of the environment, coasts and islands; Indonesia)

➲ If FPIC is required in your country, then at least something positive is being measured.

Budgets

➲ For policies to be implemented, government needs to allocate resources.

➲ Look at the total amount of resources the government has allocated to implement land initiatives.

➲ Indicators include:
- ⊙ Budget for indigenous peoples as a percentage (%) of the total national budget
- ⊙ Resources allotted to IPs compared to the population of IPs

$$= \frac{\text{Budget for IPs}}{\text{Total number of IPs}}$$

- ⊙ Percentage of the budget for indigenous peoples allocated to actual operations

➲ To illustrate, in the Philippines, IPs comprise an estimated 14% of the total population. However, the budget is only P46 million—P0.03 per indigenous person. Worse, of this amount, 80% is allotted for salaries of government personnel, and only 20% for operations.

MONITORING "OUTCOMES"

Access to land[1]

▷ The ability to utilize and benefit from natural resources within territories

❝ *This is our territory. We are part of this. We should be able to benefit from this, without external controls. We have our own traditional controls.* **❞**

▷ Capacity to sustain cultural practices

❝ *If indigenous peoples have access to land, they should be able to continue what they are doing.* **❞**

▷ Conduct and exercise of particular cultural practices
  ➲ Traditional farming/agricultural methodologies (swidden, *jhumka,* etc.)

Indigenous communities of the Garo Hills in India

Are they still able to sustain and practice their *jhumka* farms? This is supposed to be an autonomous zone, but the national government still dictates land use. The area devoted to *jhum* cultivation is limited, and many tea plantations are now being forced upon the community.

  ➲ Practice of and maintenance of burial sites
      Many governments centralize burial sites or declare burial sites as illegal or tourist spots
  ➲ Control of sacred forests
      Sacred forests can be taken over by government entities, such as the forest bureau, as was the experience of the Tamangs in Nepal.
  ➲ Control of ritual/sacred sites
      Many communities' sacred sites have been declared tourist sites, UNESCO world heritage sites, national parks.

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[1] From the Asia Indigenous Peoples Pact

" *Community members have become part of tourist sites, even dancing in front of people in a 'cultural' spot.* "

> Mt. Kimangkil in Bukidnon, Philippines is a sacred site to the Higanunon. Their oral history speaks of their appointment as the caretakers of the mountain. The dense forest canopy has been preserved mainly due to the traditional resource management arrangements and belief that it is the home of the Diwata. This is a powerful reminder of how indigenous peoples want to exercise their authority over the land.

Land tenure
Governance of Ancestral Domains, Territories

▷ Capacity /authority to facilitate or mediate conflict resolution
- ➲ If you govern, you should be able to resolve. How can you govern without the right to settle disputes? IPs want this capacity intact—that they are the authority.

▷ Capacity to enforce entry and to egress from the territory
- ➲ Can they prevent mining companies from coming in? Can they restrict oil palm plantations to a certain point?

▷ Ability to enforce collective arrangements in land use
- ➲ Closed or No-Go zones
- ➲ Multiple use and open access areas
- ➲ Harvest/hunting limits
- ➲ Indigenous Conservation zones

This map done in 1994 shows a community in the Philippines that already had its own system of governance in place. They had their *sagradong lugar* (sacred zones) i.e., no-go zones. Also, the *pangasuhan* (hunting area) meant no other activity was possible except hunting, and that was only for two months a year. The community was able to maintain this in 1994. This is the baseline. If one were to return now, what will be in their domain? Is their governance system, including zoning no-go and hunting areas, still respected today by local government?
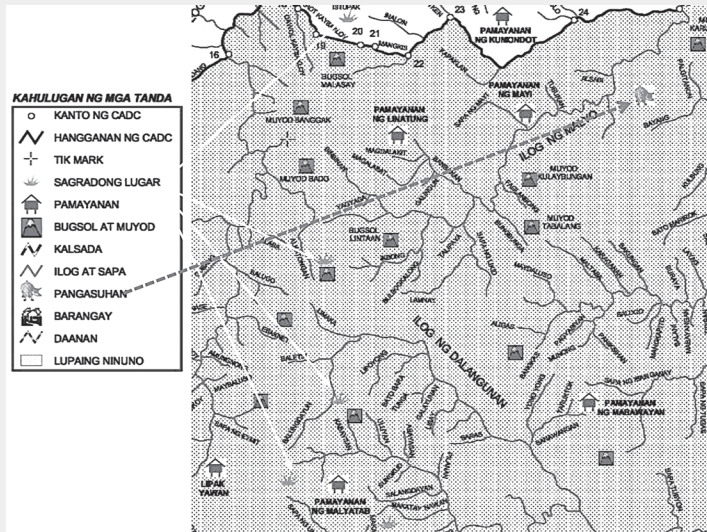
Indigenous peoples govern according to a collective land use management plan. They should have the ability and the authority to enforce collective arrangements in land use, such as no-go zones. Even for IPs, no-go zones cannot be touched, respecting the collective decision. Can they still say an area is a multiple-use zone, where timber for houses can be collected, and plants can be harvested for medicines? Can they still impose hunting and harvest limits, such as when elders say pigs can only be hunted from September to November and rattan harvested only from April to June?

   If IPs are still able to do these—that is the substance of governance.

Measuring outcome indicators

The following table is an example of measuring outcomes for indigenous peoples, taking the case of the Philippines, where there are many conflicts among indigenous peoples. The government respects communities' governance to handle conflict resolution, as evidenced in the agreements they sign. In monitoring, the baseline is of utmost importance, and indicators must be objectively verifiable.

Outcome	Indicator	Baseline	Means of verification
Land tenure	Increased ability to resolve internal conflicts	Number of conflicting areas 15 communities trying to kill each other	# of traditional agreements signed and adopted, conflicts resolved.

MONITORING IMPACTS

❝ *We want to secure our existence.* **❞**

Food security

They don't want to buy McDonald's or get relief goods. They want sustained food security they control. That is the most important impact.

Poverty alleviation

All of these changes have impoverished them. They no longer have control over their lands.

Self-determination (including self-governance)

Self-determination is the most important impact for an indigenous community. Self-governance is only part and parcel of self-determination, which does not only mean "governance" in the standard sense—but also the right to decide on their future with no interference. They may listen, allow you to talk to them, but at the end of the day, they want respect for their right to determine their own future, from their own point of view.

PARTICIPATORY RESEARCH TOOLS AND METHODS

The following are strategies for gathering information about the concerns of indigenous communities:

- ➲ Brainstorming sessions
- ➲ Examination of current land tenure documents (maps, field reports, community activity reports, petitions, reports, etc.)
- ➲ Interviews
- ➲ Focus Group Discussions
- ➲ Talks with key informants
- ➲ Surveys
- ➲ Community mapping

Do your work thoroughly. You have to understand, conduct "deep" research using available materials.

Community mapping: Participatory 3D models

- ➲ Community mapping critical—*when you talk about indigenous peoples' lands, you are concerned with spatial information.*
- ➲ With participatory 3-D mapping, local people can visualize and measure pressure or stress, and extent of resource utilization in their particular resource management areas.
- ➲ It establishes a baseline.
- ➲ Participatory 3D mapping does not require computers; manual computations will suffice. However, maps can be digitized. With just a 3D model, you can already make computations when it is to scale.
- ➲ In monitoring, mapping helps us easily see and understand relationships.
- ➲ Having 3-D data has enormous potential in understanding indigenous peoples in relation to tenure, governance, and access to land.

Establishing a baseline of the land tenure situation of the Garo community in Meghalaya

In Meghalaya, part of the domain was totally overrun by migrants and is now grassland. The Garo community here pulled out of a huge donor project that tried to change their farming systems. The map did not show the *junkha* of the people; the community insisted that the baseline should include their farms. PAFID worked with the community, and from one model, 67 other communities have finished drawing up their own maps. Finally, Meghalaya accepted the existence of traditional farms in the domain.

LAND, LAND POLITICS AND LAND REFORM:
A GENDER AND WOMEN'S RIGHTS PERSPECTIVE

Julia Chitrakar

This thought piece strongly advocates for maintaining a strong women's rights perspective in our advocacy on land. This means recognizing the role of women in agriculture, and their right to land. It also provides thoughtful questions to consider as we challenge patriarchy towards a more gender-sensitive land reform.

AN OVERVIEW OF THE POLITICS OF LAND IN THE 21ST CENTURY

Land is still the most crucial resource or wealth, whereby having access to land means having a quality livelihood. In contrast, being **landless** means being poor or marginalized.

"Land grabbing" has become a burning issue—with land grabbing activities done by private companies, governments, and multinational companies across the world. In fact, land grabbing is a new war being waged against poor families, poor communities, and poor countries. At the same time, a huge resistance is building against such land grabbing, with the development of a new land movement.

At the same time, "land reform" is not neutral. We must ask—*who* benefits from it? Is land reform for capitalist development? Does it merely serve the interests of powerful elites, dominant groups, and male farmers? How can we do just and progressive land reform? And what do we mean by "just and progressive"?

PATRIARCHAL VS. GENDER-SENSITIVE LAND REFORM

Patriarchy refers to institutional discriminations against women on the basis of sex, which is a sad reality in today's world. Patriarchal values and practices are unjust, oppressive and inhumane. Oppressive or "negatively discriminatory relationship" between man and woman is problematic—whether such takes place in a family, in a neighborhood or community, whether through a STATE policy or in the name of "tradition or culture."

Experience shows that land reform can be carried out in two ways—either in a patriarchal style, or in a gender-sensitive manner. Patriarchal land reform will benefit only the men, while gender-sensitive land reform gives justice to women while benefiting men at the same time.

We are all here to strategize, plan and achieve gender-sensitive land reform in our respective societies. However, the road is strewn with challenges...

PRESENT CONTEXT—THE PROBLEMATIC PARTS

- ⮑ Women contribute hugely to agricultural production; however, women are not even regarded as "farmers" in some Asian societies.

- ⮑ Women are deprived of true or genuine land ownership—either there is very little or there is none at all.

- ⮑ Most land policies are "gender-blind" or "gender-insensitive" (see opposite page **"GENDER BLINDNESS AND GENDER SENSITIVITY: SOME DEFINITIONS"**).

- ⮑ The State policy-makers' mindset has been "typically" patriarchal—even "revolutionary" or "progressive" parties have been found to be "gender-insensitive."

- ⮑ Not all land rights movements are gender-sensitive.

Gender blindness and gender sensitivity: Some definitions

➲ **Gender-blind**

Gender blindness is the failure to recognize that gender is an essential determinant of social outcomes impacting on projects and policies. A gender blind approach assumes that a policy or programme does not have unequal (even if unintended) outcomes on women and men.

➲ **Gender-sensitivity**

Gender sensitivity encompasses the ability to acknowledge and highlight existing gender differences, issues and inequalities and incorporate these into strategies and actions.

Source

"Gender-blind" and "Gender-sensitivity". n.d. *Gender equality—glossary.* European Commission. Retrieved from: **http://ec.europa.eu/justice/ gender-equality/glossary/index_en.htm.**

BASIC PRINCIPLES

➲ Women engaged in agriculture need to be recognized as full human beings, as producers, as farmers, and also as farm managers.

➲ The political slogan "Land to the tillers" must include all women tillers and female farmers.

➲ If both men and women in the family are engaged in agriculture, there must be joint ownership over land.

➲ If only the women are engaged in farming, they must have sole ownership over the land.

➲ If the policy prevents this, there should be policy reform; if given cultural values prevent equality, there is need for civic education campaign in favor of women's land rights.

➲ Gender-sensitive or women's rights-friendly land reform contributes to the overall upliftment of the whole society.

BUILDING THE LAND RIGHTS MOVEMENT IN A GENDER-SENSITIVE WAY

- ➲ Ensure that the movement is aimed not only at "land reform" but also a "gender-sensitive" land reform.
- ➲ Ensure that each and every layer or structure of land movement organization is gender-inclusive; that at least half of the leaders at each level, from community to national level, are women
- ➲ Ensure that women representatives are there at each negotiation level with policy makers.
- ➲ Organize civic and popular education campaigns in favor of women rights-friendly land reform.
- ➲ Educate the concerned families, communities, peoples' organizations, government officials and political parties on how society can develop progressively with gender-sensitive land reform.

SOME CONSIDERATIONS FOR GENDER SENSITIVITY IN OUR WORK

- ➲ Are we or our land rights movements politically committed to gender-sensitive land reform?
- ➲ Does our context analysis framework include gender indicators?
- ➲ Do the people's organizations and civil society networks we belong to include women [50%] at each level?
- ➲ Are we investing in women's leadership development at each level? What is the quality of women's leadership?
- ➲ Do we have a gender-sensitive monitoring framework?

MAJOR CHALLENGES TO WOMEN'S ACCESS TO AND CONTROL OF LAND

Land ownership

Either there is very little ownership or there is no ownership at all. Even when there is some ownership, in the form of land titles, it is not genuine or true ownership.

Women may hold land certificates merely for tax evasion purposes—as a result of men not wanting to pay more taxes to the government. In some countries like Nepal, women have become nominal land owners to circumvent land ceilings. Some owners from rich families with large tracts of land transferred their titles to their wives and other relatives.

In Nepal, women own only about 10% of the land. The landholders are not the actual farmers, and are mostly from the middle and upper classes. The women who are the farmers themselves have no land ownership.

Customary rights of indigenous peoples, including indigenous women's land rights

Policy makers and decision makers should recognise indigenous women's issues on land rights and improve their understanding of indigenous cultures and values.

Policy gaps and poor implementation

With regard to land policies, programs are gender-blind. Even when there are positive provisions in relation to land rights, including land rights for women, law enforcement remains weak. Most governments are signatories of international commitments, but such commitments go unfulfilled.

Patriarchal structure

In South Asian as well as Southeast Asian countries, the patriarchal structure of societies is arguably the biggest challenge to advancing women's land rights. Patriarchal values and attitudes, not only among men, but also women—permeating through society and bureaucracies—are dominant. Changing mindsets is an enormous challenge.

Women should be recognised as farmers, and as human beings—rather than as second-class citizens. Women are always good daughters and good sisters, not claiming their rights.

MAJOR CHALLENGES TO WOMEN'S ACCESS TO AND CONTROL OF LAND (con't.)

Lack of capacity of organizations trying to address the issue

Capacity building is needed for farmers, including women farmers, particularly in terms of legal literacy, policy advocacy, and leadership. Civil society organizations and people's organizations alike are working to advance farmers' rights, in a gender-sensitive manner. But these organisations also need to develop the leadership capacity of women, for women to occupy leadership and decision-making positions within their organisations and in the bureaucracy. In countries like Nepal, there is not a single woman in the land bureaucracy or in the land administration, making it more difficult to promote women's land rights.

Research

There is a need to conduct more studies and research work on women's land rights in various countries, to be able to truly understand exactly what takes place where women's rights are concerned. But specific local contexts must be taken into consideration, since situations are different depending on the region. For example, in Nepal, there are different tenure systems for different regions.

Documentation needs to be improved, but more importantly, the lessons should be shared among countries, highlighting the positive stories.

Source

Based on the summary of Ms. Julia Chitrakar, with inputs from workshop discussions. Taken from *Asian Regional Workshop on Women and Land Rights: Workshop Proceedings*. (2011). Asian NGO Coalition from Agrarian Reform and Rural Development (ANGOC) and Association for Land Reform and Development (ALRD).

MONITORING LAND REFORM WITH A GENDER LENS

Antonio Quizon and Catherine Liamzon

There are generally two ways we can improve the gender sensitivity in our land rights monitoring and advocacy.

First, we can ensure gender-disaggregated data in existing monitoring framework. This means that to the extent possible, we should look for gender-disaggregated data under the land reform monitoring indicators. For example, in looking at land disputes, we would like to know what percentage of women were killed, harassed, or detained. In our indicators on land ownership, it would be useful to find out how many women are landowners, tenants, and sharecroppers. Equally important, in our own field research, we should produce gender-disaggregated data.

Second, we can review or add to existing indicators.

For monitoring **inputs,** we can look at:

⮑ International agreements that are ratified and signed in support of women's land rights, such as the Convention to End All Forms of Discrimination Against Women (CEDAW).

⮑ Existing policies that may enable or impede women's land rights, such as land laws, civil laws, inheritance laws.

Land access for women is not only in land law, but also in inheritance law, civil law—culture is involved. Look into other discriminatory laws as well. Moreover, we can also study programs and government resources (i.e. budget).

Monitoring **processes,** including the participation of women in the change process, would focus on women's representation, their role in land rights institutions at different levels, and their role in the land administration system.

In terms of monitoring **outputs** and **outcomes,** we can examine:

⮑ Formal entitlements for women, such as land titles;

⮑ Actual land access and the exercise of women's rights to land.

Land titles are outputs. But we are especially concerned with outcomes. At the end of the day, we would like to know if, given the policies and resources (inputs) and land titles (outputs), do the women now actually enjoy their rights to the land? Do they effectively own the land? We return to the question of enforcement and implementation of the law. How do we measure such outcomes? #