



# Land and Water Governance in Asia: Resource Sharing and Cooperation



**Association for Land Reform and Development (ALRD)** was established in January 1991 as single-focused rights based national networking organization, mandated to facilitate the land and agrarian reform advocacy, mobilization and capacity building of its partners and allies in enabling access to and control over natural resources of the poor, landless and marginalized communities in Bangladesh. Over the past decades, ALRD has emerged as a professionally trained knowledge network in the land sector that amplifies the collective voice of marginalized communities in Bangladesh. Currently, ALRD has a network of 200+ NGOs and civil society organizations all across the country.

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Founded in 1979, the **Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)** is a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC member networks and partners work in 10 Asian countries together with some 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

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This publication summarizes the discussions and key recommendations of the region forum on “Land and Water Governance in Asia: Resource Sharing and Cooperation” held on 29-30 November 2018, at the BRAC Centre Inn in Dhaka, Bangladesh.

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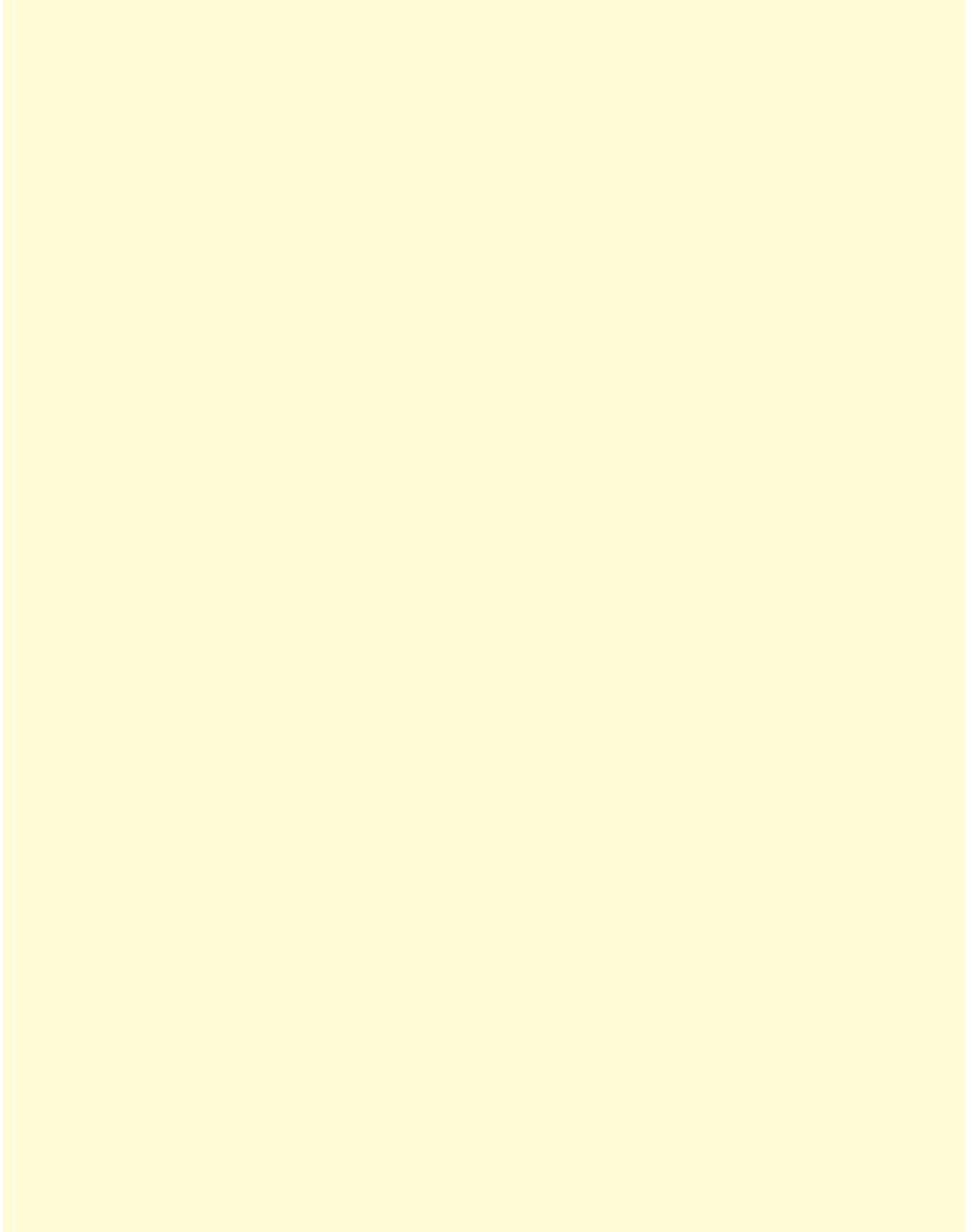
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## BACKGROUND

The Association for Land Reform and Development (ALRD), a well-known network of more than 200 civil society organizations (CSOs) in Bangladesh, together with the Asian NGO Coalition for Agrarian Reform and Rural Development, organized a regional forum entitled Land and Water Governance in Asia: Resource Sharing and Cooperation on 29-30 November 2018, at the BRAC Centre Inn in Dhaka.

This gathering provided an overview of the current status and emerging issues on land and water governance in Asia, uncovering the factors that contribute to either the responsiveness or ineffectiveness of governance measures. Through the discussions, valuable learnings and recommendations to address the issues raised were identified.

A report from a two-day field visit to Cox's Bazar was also shared during a media briefing conducted on the first day of the forum. The report entitled, "Rohingya Refugee Situation and Its Effects on Local Host Communities: A Civil Society Report on the Field Visit in Ukhiya, Bangladesh" contains findings gathered by a five-member CSO delegation on the socio-economic impacts of the Rakhine crisis from the perspective of the host communities. Recommendations for governments and calls to action for the international community are likewise included in the release.



The forum brought together 65 (39 men and 26 women) civil society representatives, government officials, land rights activists, media professionals, experts, and academics, from across Bangladesh, as well as from South and Southeast Asia. By the end of the forum, participants signed the Dhaka Declaration on Land and Water Governance in Asia, solidifying commitment among CSOs to pursue and monitor reforms on land and water resource governance.



## The Issues in Brief

### Landless and Smallholder Farmers<sup>1</sup>

It is estimated that around 75 percent of the world's farming households live in Asia. Among them, 80 percent households are involved in small-scale farming; and this figure varies from country to country. The general trend indicates that most of these rural small-scale family farmer do not have their own land or have to live with very small plots of land, thus leading to hunger and poverty. Countries' macro and micro economic policies and land governance systems hardly favor these small producers. Moreover, on many occasions, the poorest of the poor – the landless, small-scale marginal farmers, and tenants, adivasis or indigenous peoples, and minority castes – are dispossessed from their own land to make way for industrial or commercial projects.

### Trans-boundary Water Conflicts

Rural communities depend largely on bodies of water for their lives and livelihood. They are vital for human consumption, irrigation and fisheries, transportation, and conservation of biodiversity. For water bodies with shared boundaries however, conflicts have either erupted or are brewing, owing to the unilateral distribution, use, and management of these resources by individual countries. This situation has been exacerbating political, social, and economic tensions in the region. In order to maintain GDP growth, the nations of the regions are also using water for hydropower and industrial purposes. Coupled with inefficient water management, the situation has resulted to the worsening of water pollution, which in turn poses serious threats to human health.

### Women in Agriculture

In developing countries, women are significantly contributing in the agricultural workforce, but they hardly have secure land tenure and property rights. Over the last one and half decades, women's participation in agriculture has increased



significantly for various reasons, such as rural out migration of the male counterpart to the city and abroad, or men's seasonal migration to engage in non-farming activities. In rural settings, women are actively engaged in post- as well as pre-harvesting agricultural work that men used to do. However, women's contribution in agriculture sector in many

countries of Asia has not been recognized formally. Due to women's non-recognition as farmers, they are deprived of their right to access government subsidies and credit from public finance institutions. Wage discrimination is also widely practiced. Moreover, women in rural areas rarely have direct access to markets for their

<sup>1</sup>Small-Scale family farmers

produce. This unequal access to opportunities and services has been contributing to the widening gender gap that not only has adverse socio-economic impacts on women, but also on food security for their families and communities.

### **Indigenous Peoples**

Around two thirds of the world's indigenous peoples live in Asia. Their relationships to ancestral lands are the source of their cultural, spiritual, and social identity. However, their rights to lands, territories, and resources are at the heart of indigenous peoples' struggles around the world. Indigenous peoples across the region are facing multiple forms of discrimination and are being forced to vacate their traditional territories to allow for public and private business operations. They are also being caught in the crossfire of armed groups. Indigenous leaders and environmental activists are being killed for opposing projects that impinge on indigenous land rights. For indigenous women and girls, the burden is doubled, as land conflicts make them more susceptible to gender-based violence such as rape. In some cases, State agencies are accused of employing violent tactics to drive indigenous peoples away. Yet with the prevailing culture of impunity, perpetrators have continued their oppression of indigenous people.

### **Rohingya Refugee Crisis**

It is estimated that more than 1 million Rohingya refugees from the Rakhine state of Myanmar have fled to Cox's Bazar, to escape the killings, torture, arson, and sexual violence by security forces in Burma. This sudden influx of people has put immense pressure on resources such as land, forests, and water. A joint study on Environmental Impact of Rohingya Influx, conducted by the United Nations Development Programme (UNDP) and UN Women, reported that a total of 4,300 acres (1,740 hectares) of hills and forests have been cut down to make temporary shelters, facilities, and cooking fuel in Ukhia and Teknaf of Cox's Bazar. Around 3,000 to 4,000 acres (1,200–1,600 hectares) of hilly lands in the Teknaf-Ukhia-Himchari watershed area have been cleared of vegetation. The report cited that each Rohingya family uses an average of 60 culms of bamboo to construct temporary shelters, and that nearly 6,800 tonnes of fuel-wood are collected each month. The crisis has also affected the everyday lives of local communities near and around the camp sites, with locals expressing that they feel marginalized within their own community, and that they even have to compete with the refugees for local employment.



# Dhaka Declaration on Land and Water Governance in Asia

## WHO WE ARE



Over 65 civil society and land rights activists from six Asian countries, together with representatives of media and the academe from Bangladesh, gathered in Dhaka this 29 to 30 November 2018 at the “Regional Workshop on Land and Water Governance in Asia: Resource Sharing and Cooperation,” organized by ALRD in collaboration with ANGOC. Discussions revolved around emerging issues of land and water governance in Asia in light of large development projects and increasing commercial pressures that compete for land, forests, and water resources on which people’s livelihoods depend.

The workshop also discussed the field report of a civil society mission that examined the socio-economic and environmental impacts to local host communities brought about by cross-border Rohingya influx to Bangladesh.

This important workshop has provided the platform for collective engagement among CSOs, academics, and activists, from Bangladesh, Cambodia, India, Indonesia, Nepal, Philippines, towards more effective communication of these cross-border issues, and for collective actions to protect people’s rights to land and water resources.

## OUR CALL

Participants in this meeting hereby put forward the following observations and recommendations:

1. We express our deepest concern over the continued violations of human rights, as poor, indigenous, marginalized communities, and religious and ethnic minorities (Haor dwellers), especially women and children, continue to be denied access to land, water, and forests on which their livelihoods, shelter, health and sense of security depend. This is shown in the increasing evictions, displacement, unemployment, and food insecurity across the region – caused by commercial aggression and development projects in the name of growth and industrialization. The weak implementation or absence of pro-people agrarian reforms has further deepened this crisis. Rural women, landless and small-scale farmers, rural youth, and tenants, tea laborers, fisherfolk, migrants, indigenous peoples, dalits and discriminated castes are the most affected. This results in inequitable growth that deepens divide and discrimination.
2. We call on the states to fully ratify and implement UN declarations that safeguard the rights of the women, children, workers, indigenous peoples, Dalits, tea laborers, displaced populations, refugees and the marginalized people with respect to rights to land, forests and water, in relation to livelihood and food sovereignty.
3. Growth and investment must not be achieved at the cost of forcible displacement and encroachment of poor and marginalized people of rural and urban origins. Rather, investment needs to promote social justice and equity.
4. At the same time, international guidelines (such as the VGGT) and principles (UNGP-BHR, rai) should be used to broaden the dialogue and engagement processes at the country level, to elevate the discourse on land governance towards formulation of policies and programs benefitting the marginalized. Meanwhile, we voice our shared concern over the shrinking democratic space which civil society is facing in each country.
5. Transboundary water issues are emerging sources of conflict that directly affect community lives and livelihoods. The unilateral diversion, control, and allocation of water through dams and large-scale projects have exacerbated political, social, and economic tensions with enormous environmental and ecological impacts on millions of people that depend on water. We call for a negotiated settlement based on dialogues, where the voices of affected people are heard and addressed, and principles of international law are respected.
6. We call on governments to take effective steps to stop all forms of land-grabbing. We denounce cases of land-grabbing where government plays a broker role in land acquisitions and concessions, with no transparency, no independent Environmental Impact Assessment (EIA) and Social Impact Assessment (SIA), and without the Free, Prior, and Informed Consent (FPIC) of communities.
7. In the context of the growing role of women in agriculture and food security, there should be formal recognition of women as farmers, with equal status to land in inheritance, land access and allocation, support services, participation in land

and resource governance, and effective control over resources. There is a need for enabling women to raise their voice and be active in independent decision-making processes from grassroots to policy level.



8. Governments should legally recognize the traditional ownership, customary rights, and community ownership of indigenous peoples over land. We reaffirm our commitment to stand by indigenous peoples in their struggles to safeguard their rights and interests. We call upon governments to protect indigenous communities against continuous encroachment of their lands and resources by State and commercial interests.
9. The cultural and livelihood rights of forest people should be recognized and respected in laws, policies, and programs regarding forests.
10. We urge the full and effective implementation of pro-poor agrarian reforms that secure land rights for smallholders, tenants, landless and marginal farmers, indigenous peoples, agricultural laborers, and rural women.
11. Rohingyas are evicted from Myanmar amidst reports of massive Chinese and Indian investments in the Rakhine State. Meanwhile, Rohingya refugees face potential conflicts with host communities while common resources are being depleted. We demand the safe and dignified repatriation of the Rohingya people to their homeland. We call upon the international community to exert effective pressure on the government of Myanmar to stop persecution and to respect the citizenship rights of Rohingya people.

#### **OUR SHARED COMMITMENT**

We echo the call of the Sustainable Development Goals that no one should be left behind. We will continue to raise the issues and concerns regarding the Rohingya people in our respective countries and in regional and international forums, towards a lasting solution to the conflict. All the participating organizations and civil society delegates commit to uphold the Dhaka Declaration on Land and Water Governance in Asia to frame country specific actions and keep each other informed and engaged across Asia to put people first in land and agrarian reforms.

**Adopted this 30th of November 2018, in Dhaka, Bangladesh.**

ACDF, ActonAid, Bangladesh, ARBAN, ASOD, Association for Land Reform and Development (ALRD), Bejoyee Nari O Sheshu Unnyan Shangstha, BELA, BFF, BNKS, Caritas Bangladesh, CCDB, DUS, HDRC, HEAD, IDEA, INCIDIN Bangladesh, Kapaeeng Foundation (KF), Karmojibi Nari, LRC, Nagorik Uddyog (NU), NDF, Nijera Kori, Poribesh O Haor Unnyan Sangstha, PROCHESTA, RULFAO, RUN, SAMS, Speed Trust, Transparency International Bangladesh and UDPS

Asian NGOs Coalition for Agrarian Reform and Rural Development (ANGOC), Community Self-reliance Centre (CSRC), Nepal, Institute for Motivating Self-Employment (IMSE), India, International Land Coalition (ILC), Asia, Konsorsium Pembaruan Agraria (KPA), Indonesia and STAR Kampuchea, Cambodia

## INAUGURAL SESSION

### OPENING MESSAGES

**Khushi Kabir**, Chairperson, ALRD

**Shamsul Huda**, Executive Director, ALRD

**Nathaniel Don Marquez**, Executive Director, ANGOC

In Asian countries, poor land governance has resulted in the deprivation of legal and basic rights of agricultural producers. This situation has led passionate activists, such as the late Biplab Halim of India, to dedicate their lives to the cause of farmers and other small producers. The land rights movement grieved the passing of Shri Halim in 2017, but his legacy lives on, and the cause he championed carries on.

There is a growing understanding that land rights concerns go beyond territorial jurisdiction. With corporate-led globalization, these issues require the attention of the international community at large. Concerns over access to, governance and control of, and policies over resources come into play. In a liberalized economy, commercial interests such as mining, real estate development, and industrial investments, that compete for the same land and water resources, put farmers' lives and livelihood at risk. Thus, civil society has to band collectively, against anti-poor, anti-women, and anti-indigenous policies and practices, toward attaining equal opportunities for all.



Hence, the two-day workshop was convened for CSOs and activists to reach a common understanding on the pressing land and water governance issues in Asia, to discuss challenges and opportunities, and to build a relevant regional action network. The organizers hoped to strengthen cooperation between and among CSOs in Asia involved in land rights, food security issues, and sustainable livelihood for smallholders in agriculture.

Even with the establishment of legal and institutional frameworks on agrarian reform in most countries in Asia, the implementation of existing laws and policies have to closely be monitored. This has been made more challenging by the

unwillingness of some institutions to implement agrarian reform, and by the continued pressure on land from both man-made and natural causes. Lack of government support to land reform due to inadequate budget further constrain implementation.

Meanwhile, political space for civil society everywhere is shrinking. In many countries, human rights activists and land rights defenders are harassed and killed for voicing dissent. CSOs are either criminalized or forced to be silent. Due to limitations in democratic space, advocacy work is significantly curtailed. In this context, it is necessary to reform the institutional barriers, as well as the individual habits and behaviors of decision-makers. This requires developing new institutional arrangements and approaches even for CSOs and land rights activists. Efforts have to be coordinated and holistic, and diversified knowledge and capacities must be transformed into actions where a wide range of groups are engaged. CSOs must strive to solidify linkages with strategic partners. One potential partner in land rights advocacy is the National Human Rights Commission of Bangladesh, which was one of the signatories of the November 2018 Bangkok Declaration on Land Rights as Human Rights.

### **Resource-Grabbing, Trans-boundary Water-Sharing, and Rights of Riparian Communities**

**Syeda Rizwana Hasan**, *Chief Executive, BELA*  
With Inputs from  
**Minister Rashed Khan Menon**

#### **Land Grabbing in Asia**

Rights to land have been defined by various global institutions. Depending on the particular tenure system, groups and individuals have rights to allocate, delimit, transfer, and register land, as well as adjudicate disputes related to the land. Tenure is defined as the relationship, whether legally or customary defined, among individuals, groups of individuals, or peoples with respect to land.

States have enacted legislations that aim to secure tenure and other land rights. However, peoples' rights to land and resources are being threatened by the entry of investments which are also invited in or initiated by States. Land and resource grabbing that aims to make way for the establishment of plantations, economic zones, power plants, mining pits, etc., have persisted across Asia. These projects cause the mass displacement of families from





their land. In rural communities, proposed developments with a similar nature and potential for causing widespread dispossession have been met with heavy resistance, involving tens of thousands to millions of people.

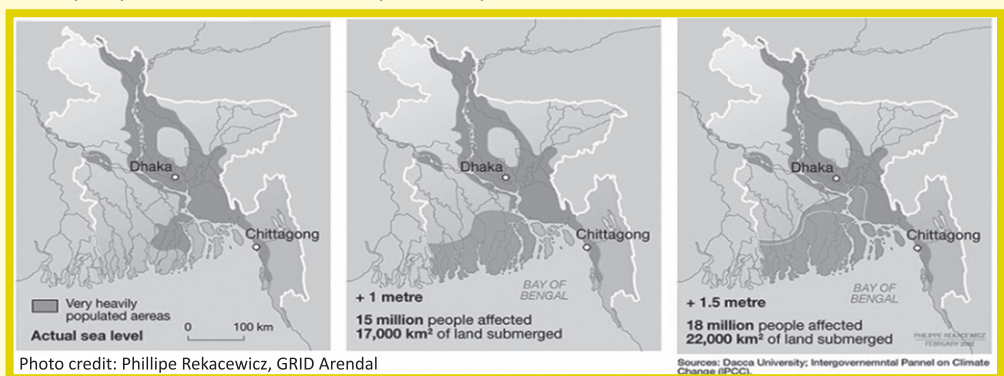
According to the European Coordination Via Campesina (ECVC), “land grabbing is the control – whether through ownership, lease, concession, contracts, quotas, or general power – of larger than locally-typical amounts of land by any persons or entities-public or private, foreign or domestic, via any means-‘legal’ or ‘illegal’- for purposes of speculation, extraction, resource control or commodification at the expense of peasant farmers, agroecology, land stewardship, food sovereignty and human rights.” Many forms of land grabbing take root in colonization and globalization.

**Several examples of land-grabbing and its dire effects include:**

- ❖ Government plans to acquire of 3,968,777 hectares of additional land in India in the next 15-20 years, potentially affecting land rights of peasant communities
- ❖ Five million hectares of land are allocated for oil palm plantations, 1.5 million hectares for mining, and 3.7 million hectares allocated for timber in West Kalimantan, Indonesia
- ❖ 22 percent of the Cambodian countryside has been allocated for large concessions, displacing 400,000 people since 2003
- ❖ In 2017, a tribal leader and seven others have been murdered in South Cotabato, Philippines, for resisting a coffee plantation that did not secure Free, Prior, and Informed Consent (FPIC)
- ❖ Millions of Rohingya Muslims have been displaced from the Rakhine State in Myanmar, allegedly to make way for investments in the area.

**Water, a Scarce Natural Resource**

Apart from land rights, peoples’ rights to other resources are also being challenged. The 4.5 billion people in Asia utilize around 65 percent of the world’s water supply, and around 30 percent of those people are already facing water scarcity. It is estimated that the percentage of the population experiencing water scarcity will increase by 38 to 68 percent in the coming decades. Moreover, river basins can hardly cope with the demands placed upon them.



By 2050s, water demand in Asia is projected to be larger than all the other continents of the world put together. As a result of socioeconomic development in Asia, industrial water demand will rise by at least 136 percent depending on the scenario, while municipal water demands will rise by a minimum of 176 up to 245 percent. Moreover, with the changing climate, sea levels are expected to rise. A rise in sea level by 1 to 1.5 meters could submerge a significant portion of Bangladesh underwater, as seen in the illustration below, potentially affecting tens of millions of people.

Many bodies of water are also common resources of different States. To name a few, the Jordan River is shared by Lebanon, Syria, Israel, and Jordan; the Mekong River runs through Vietnam, Cambodia, Laos, and Thailand; and the Ganges, Brahmaputra, Indus, Teesta, and Barak rivers flow within and across Bangladesh, India, Nepal, and Pakistan. Unfortunately, intra-country and cross-country conflicts over the use and management of these water bodies are also common.

In 1997, the United Nations adopted the UN Convention on the Law of the Non-Navigational Uses of International Watercourses, which is the only universally-applicable treaty which governs shared freshwater resources. The Convention contains provisions on sustainable utilization of resources, conservation, and proper management of water resources for future generations. Part II, Article 5, expressly calls on States to equitably and reasonably utilize water resources with regard to other States sharing it. States are instructed to take into account all relevant factors and circumstances for equitable and reasonable use of an international watercourse. Yet after more than two decades, States in South Asia have yet to ratify this important Convention.

### **Recommendations**

To protect land and water rights and prevent conflicts, localized international guidelines and laws must be able to provide information, redress, and relief; introduce effective dispute settlement; and implement sanctions for resource-grabbers. Policies must recognize both legal and customary rights, and other diverse forms of tenure. Moreover, decision-making and governance must be inclusive – free, prior, and informed consent (FPIC) of the communities and peoples to be affected must always be ensured before initiating changes to land and other resources.



Shared water resources should be managed using a basin-wide approach, which holistically considers effects to and effects of water quantity and quality, in all areas

where the water flows. Dialogues regarding management of shared bodies of water, for example, should involve regional and not just bilateral conversations. More importantly, people and stakeholders who depend on common resources must be at the center of these discussions. Negotiations between governments and authorities may only take place once well-informed and data-supported dialogues between stakeholders have been conducted. Management of resources must also have sustainability and the protection of ecosystems in mind. For Bangladesh and Bangladesh CSOs in particular, there is also a need to analyze the Delta Plan in terms of its implications to land and water resources in the country.

## WORKING SESSION | 1

# Land Rights and Land Governance in Asia

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

**Antonio B. Quizon**, *former Chairperson, ANGO*

With Inputs from:

**AKM Masud Ali**, *Executive Director, INCIDIN*

**Dr. Ujjaini Halim**, *Executive Director, Institute for Motivating Self-Employment (IMSE)*

**Shamsul Huda**, *Executive Director, ALRD*

### 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

**Rowshan Jahan Moni**, *Deputy Executive Director, ALRD*

With Inputs from:

**Dharm Raj Joshi**, *NES Coordinator, Community Self-reliance Centre (CSRC)*

**Te Sokkhoeun**, *Program Coordinator, STAR Kampuchea*

**Dr. Ainoon Naher**, *Professor, Jahangirnagar University*

### 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.

## WORKING SESSION | 2

# Self-esteem and Protection of Land Rights, UN Guidelines, and State Compliances: Effective Tools to Monitor

### An Overview of Selected International Guidelines and Agreements: Tools for Land Monitoring

**Nathaniel Don Marquez**, *Executive Director, ANGO*

With Inputs from:

**Dr. Ujjaini Halim**, *Executive Director, IMSE*

**Sayed Ahmad**, *Protection Coordinator (Asia), Front Line Defenders*

**Rowhsan Jahan Moni**, *Deputy Executive Director, ALRD*

#### Global Guidelines in Recent Years

There are several global guidelines and instruments which aim to secure land rights in the face of contemporary threats such as the increasing drive for investments and climate change. One of which is the United Nations Guiding Principles for Business and Human Rights (UNGP-BHR). The UNGP-BHR were authored by Professor John Ruggie, and were unanimously endorsed by the UN Human Rights Council in 2011. These guidelines offer the Protect, Respect, and Remedy framework for preventing and addressing businesses' negative impacts on human rights. In particular:



1. States have the primary duty to protect human rights which includes duties to prevent, investigate, punish, and redress abuses;
2. Businesses have a responsibility to respect human rights through their own efforts to prevent, mitigate, and remedy abuses; and,
3. Both States and businesses should contribute to providing remedy to human rights concerns by providing just judicial and non-judicial grievance mechanisms.

Another globally-recognized instrument is the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT). These guidelines are based on existing best practices and international obligations related to good governance over tenure.

These were passed by the Committee on World Food Security (CFS) in May 2012, after deliberations involving governments and CSOs. The VGGT came at a time when the competition for land and global land grabs reached its modern peak in 2010, and thus discusses how people can have secured access to land and natural resources such as fisheries and forests. Tenure is viewed as a right, but with accompanying responsibilities. The VGGT considers all types of tenure, may this be formal, informal, communal, customary, or indigenous, over both public and private lands. Come 2014, the Principles of Responsible Agricultural Investments (rai) were put together by CSOs to serve as a guide for agricultural investments to operate while safeguarding tenure, food security, and human rights. The rai principles were derived from inputs from grassroots stakeholders, globally-recognized standards for investments enshrined in the Voluntary Guidelines on Responsible Governance of Tenure (VGGT), Principles for Responsible Agricultural Investments (PRAI), and the Basic Principles on the Purchase and Leasing of Large Areas of Land. It aims to contribute to sustainable and inclusive economic development and the eradication of poverty, promote safe and healthy agriculture and food systems, and incorporate inclusive and transparent governance structures, processes, and grievance mechanisms, among others.



In 2015, the Sustainable Development Goals (SDGs) were adopted by world leaders. UN member-States agreed to pursue meeting the 17 SDGs and its 169 targets by 2030. For land rights movements, the SDGs signify the re-entry of land in the global development agenda. Land is essential to at least five SDGs (SDGs 1, 2, 5, 11, 15) and is included in eight targets and 12 indicators. Rights to land are considered crucial to eradicating poverty and ensuring equality among genders. Target 1.4 under the No Poverty SDG (SDG 1), specifically mentions that States must ensure that men, women, and vulnerable populations must have equal rights to own and control land and natural resources. Similarly, Target 5.a under the SDG on Gender Equality (SDG 5), calls for women's equal rights to economic resources, ownership, and control over land.

There are many other relevant declarations and guidelines on land rights. As of November 2018, it is also expected that UN Declarations on the Rights of Peasants and Rural Workers, and on Human Rights Defenders are set to be released.

**Points for Reflection:  
Challenges and Actions**

These international agreements establish good principles and are references of best practices. They are “aspired standards,” and are not mere “minimum obligations.” These instruments may thus be used to assess implementation of land policies and may support claims over land rights. The instruments also contribute to the development of political, legal, administrative, and institutional frameworks. While these are considered as soft laws, they take on a rights-based approach and elaborate on existing and legally-binding commitments of States, and thus can be used to advocate governments.

One challenge in implementing these guidelines and agreements is the need to popularize them and gather in-country support for their adoption. There exists a need to further understand these frameworks and their value added, to secure the help of champions in positions of power, and to develop and disseminate info-materials on the guidelines.

As negotiated documents, States and government institutions must take on the task of the localization and operationalization of these instruments, to fit country contexts and address unique issues. For the UNGP-BHR for example, States have to formulate a National Action Plan on the UNGP-BHR. In the case of SDGs, the responsibility of generating data on the indicators has been assigned to National Statistical Offices (NSOs). However, most NSOs are not familiar with the land governance contexts and issues in their countries.

For their part, CSOs may contribute to the monitoring of these frameworks. Civil society may undertake initiatives to establish baselines for monitoring and may prepare shadow reports on the implementation of the guidelines. Stakeholders must also come up with agreements on the coherence, efficiency, and cooperation in monitoring land-related targets and indicators. ANGOC in partnership with other CSOs in the region for example, have conducted a number of studies on the VGGT, monitoring global land commitments, the SDGs, and the UNGP-BHR.

The existence of these international agreements provides “space” for constrictive dialogue with governments, national human rights institutions, and other stakeholders, which CSOs must maximize. There are also institutions tasked to monitor international agreements with which civil society may engage. Guidelines may serve as starting points for multi-stakeholder discussions on land and resource tenure reforms at the country level. Present laws and policies may be mapped out in relation with international guidelines to uncover the gaps both in paper and in action. Government, in turn, must be equipped with the necessary political will to implement reforms that embody these guidelines.

## WORKING SESSION | 3

### People-Centered Land Governance: National Engagement Strategies and Commitment Based Initiatives

#### People-Centered Land Governance and the Ten Commitments of the International Land Coalition: CBIs and NESes in Asian Countries

**Saurlin Siagian**, *Asia Regional Coordinator, International Land Coalition (ILC)*

With Country Discussions from:

**Shankida Khan Ripa** and **AKM Bulbul Ahmed**, *ALRD (Bangladesh)*

**Te Sokkhoeun**, *Program Coordinator, STAR Kampuchea (Cambodia)*

**Dharm Raj Joshi**, *NES Coordinator, CSRC (Nepal)*

In the past ten years, global financial crises heavily impacted land in the Asian region. To cope with the growing need for capital, Asia became the factory of the world, supplying raw and assembled products for the consumption of the rest of the globe. Foreign-funded projects and industries are flocking to Asia, while the financial transactions are negotiated in developed countries. This has enabled the



continuation of the land rush, and hence allowed for massive land-grabbing in the resource-rich continent.

During the International Land Coalition's (ILC) Global Land Forum in September 2018 held in Bandung, Indonesia, ILC member-organizations came together to craft the Bandung Declaration. The Declaration

recognizes the existence of extreme socio-economic injustice because of unequal control over land by the wealthy, climate change, corruption, shrinking democratic space, and violations against land defenders' rights. The same document insists that land rights should remain at the center of development agendas and narratives, and that unequal and unjust systems ought to be transformed. ILC members put forward two main calls for global attention: (1) protect land and environmental defenders, and (2) bring agrarian reform back to national political agendas.

ILC acknowledges that achieving these would require unified action from global actors. For its part, ILC connects people and its members globally. Through its broad

membership of CSOs, intergovernmental organizations, and individuals, the coalition works on its 10 Commitments to achieve people-centered land governance. These commitments range from securing tenure rights, to enhancing small-scale farming, encouraging access to and transparency of information, to protection against land grabbing. All ten commitments are in line with the SDGs.

At the country level, ILC members work together to pursue common goals and activities under respective countries' National Engagement Strategies (NES). At present, there are eight operative NES platforms in Asia. Below are several examples of these national platforms.

In Bangladesh, the NES is composed of five ILC members and is coordinated by ALRD. Bangladesh's NES seeks to address issues related to IPs' land rights in the plains and CHT areas, land grabs, water rights, and women's land rights, among others. As with other CSO initiatives, the NES in Bangladesh is challenged by the drive to acquire more land, shrinking democratic space for CSOs, and the government's lack of political will to implement international treaties.



The NES in Nepal, on the other hand, is composed of six members, working in 17 to 18 districts in the country. Coordinated by CSRC, the Nepalese NES conducts evidence-based research studies, forms and strengthens people's organizations, supports land rights movements, and establishes multi-stakeholder platforms. One of its shared activities relates to lobbying for the passage of a Land Use Policy under the new federal government structure. Nepal is also one of the pilot countries for the ILC's Dashboard Initiative, which will allow for easier, accessible data-supported monitoring of the 10 commitments.

Finally, the NES in Cambodia, hosted by STAR Kampuchea, consists only of three organizations. Its activities are focused on land, forestry, fisheries, disaster risk reduction, and climate change adaptation. Though small, the NES in Cambodia has been able to reach significant achievements, such as the approval of several indigenous land titles, community forestry agreements, and community protected areas. In addition, the NES has contributed to the resolution of 90 land disputes.

ILC members employ connect-influence-mobilize strategies at country, regional, and

global levels to change policies, practices, and agendas. Apart from the NES, ILC Asia members are also engaged in inter-country activities in pursuit of the 10 ILC commitments. Both activity spheres engage with the government, intergovernmental organizations, as well as other stakeholders within and outside of the particular countries. ILC presently has 20 interconnected national and regional platforms in Asia.

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<sup>1</sup>*Detailed descriptions of the ten commitments may be viewed in the ILC website:  
<https://www.triennial.landcoalition.org/commitments-2>*

## WORKING SESSION | 4

### Country Experience Sharing on Commercialization, Land Grabbing, Eviction, and Displacement: Roles of Governments and CSOs

#### Commercialization, Land Grabbing, Eviction, and Displacement: Roles of GOs and NGOs

**Dr. Shapan Adnan**, *Professor of Economics and Member of CHT Commission*

With Inputs From:

**Dr. M. M. Akash**, *Professor of Economics, Dhaka University*

Landgrabs are unavoidable with capitalist development. Land is finite; it is a fixed stock, hence there are limited ways by which to acquire land. For capitalism to flourish, one can either negotiate, buy, lease through the market, or use force to acquire land. Negotiation through markets is difficult, especially in the case of indigenous peoples' lands. Thus, the modern role of the State comes in – whether through facilitating commerce, “green grabs,” or the use of force. Because of the eminent domain principle, the State may define what it can and cannot do. In the commercialization of land, we have also seen the role of the *jotedars* (“wealthy peasants”), as the high castes use their own force, and businesses collaborate with government officials to obtain land.

Neo-liberal globalization reinforced market control over resources, and established a regime that encourages commodification – everything is seen in terms of their financial value. Land used to be seen as a means of production (as in “land, labor, and capital”), but is now seen as a “store of value.” People gain more from land acquisition rather than from production,



hence the practice of land speculation, which in turn drives pushes the prices of land to sky-high. Financialization of land is what drives the prevalence of landgrabs today.

Landgrabs today are different from what they used to be 30 years ago. There is now the direct or indirect grabbing of land through the facilitation of the State. The State may, for one, support the discrimination and marginalization of the poor in order to drive them away from their lands. In Bangladesh, indigenous peoples in the



Chittagong Hill Tracts (CHT) are being displaced from their lands and crammed into smaller areas. They are then left with no other option – they are forced either to cross borders or to migrate to the cities. There is a continuous process of displacement and of being pushed away.

Private corporations also play a role in this narrative. The establishment of Special Economic Zones (SEZs) in many countries exemplify a process in which the State plays the role of a land broker, or agent, and makes the land available to corporations – both domestic and international. There have also been instances of State installation of individual companies. There have been some 200 to 300 corporate installations approved by the Ministry of Forest in Bangladesh, on areas including mangrove forests in the Sundarbans.

Those being dispossessed of what is viewed as a commodity also lose the non-economic, cultural, and emotional values that come with their land. Proper



financial compensation is difficult to assess. Under the financialization of land (including property development), farmland is treated simply as investment. The value of land, with speculation, becomes higher compared to when land is used as a form of direct capital. From financialization, there is today a securitization of land. Incomes are consolidated into

one security which can be divided into thousands of shares, then be sold and resold in the market. In fact, many of the large landgrabs today are financed by pension funds. Large tracts of land are bought and accumulated in different ways to secure wealth.

Landgrabs involve much more than just the seizing of char lands. There are “green grabs,” wherein lands in other areas are paid off and acquired to compensate for carbon emissions by businesses or other States. In the name of carbon sequestration and carbon trading, the State builds eco-parks, safari trails, and plantations. The South thus provides the carbon sinks for the North.

Landgrabs involve accumulation through dispossession, as David Harvey puts it. There are three different types of land grabs that persist in present times:

- ❖ First, primitive accumulation by force or market for capitalist production;
- ❖ Second, accumulation through dispossession for commercialization and financialization; and,
- ❖ Finally, centralization of capital, where one capitalist group takes over land of another capitalist group, differing greatly from landgrabs versus peasants.

In Bangladesh, the State may acquire lands whether for public purpose or public interest, and the difference between the two may not always be clear. To safeguard from different types of land grabbing, policies that provide protection for peoples' rights to lands must be enacted. Agricultural lands and common pool resources must be protected, and potential investments must always secure consent from communities to be affected. Comprehensive environmental and social impact assessments must be completed prior to the initiation of projects. Should land acquisition or expropriation commence, just compensation and rehabilitation should also be ensured.

Forms of present land grabbing are different from capitalism as we know it. In land grabbing, instead of capitalists going against trade unions, capitalists are being pitted against all who use land, including traders. It involves people of all classes and cannot be seen simply as a class war. Therefore, as evidenced by many successful movements, the unity of affected peoples is key to challenging vertical power relations and resisting land grabs.

### **Country Presentation:**

#### **Special Economic Zones and Land Acquisitions in India**

**Dr. Ujjaini Halim**, *Executive Director, IMSE*

Since 1947, more than 20 million hectares of land in India have been converted or acquired, disadvantaging more than 50 million people. In February 2006, the Special Economic Zones Act (SEZs) came into effect. It aimed for the generation of additional economic activity, promotion of exports of goods and services, promotion of investment from domestic and foreign sources, creation of employment opportunities, and the development of infrastructure facilities. However, not a single objective provided above was achieved.

Of the almost 5,000 hectares of land acquired for SEZs in the last five years, only 362 hectares have been used for their intended purpose. According to an independent study, 80 percent of land bought for SEZs in the past five years are left unused. Uncontrolled land grabbing by the State for use of SEZs became very prevalent. Although the State claims that the expropriation of land is for "public purpose," it is never clear what public purpose means or entails.



Farmers were found to be hit the hardest by the expropriation of their land for the sake of SEZs. SEZs have led to

displacement of local communities without their consent. In other cases, farmers did not just lose their land, but they were also denied alternative jobs as the promised industrialization was not able to take place. Employment within SEZs pander more to the middle class, as there are not too many opportunities available for small farmers. Further, a report by the Indian government's auditor revealed that SEZs generated less than eight percent of the jobs they forecasted. The report also found that in several SEZs, land has been denotified and sold to private developers for higher prices.

In a business sense, some corporations have received special privileges towards land acquisition, thus violating the principle of level playing ground. SEZ developers are privileged over the rights of their laborers, and they have violated international human rights standards which are otherwise guaranteed in State legalizations. Exploitation of women's labor within SEZs is extreme in terms of wages, working hours, working conditions, and other rights. The production process has to be "cheap," hence the concentration of female workforce is high. Studies also revealed that if there is an increased number of female operators; the cost of production is decreased. Moreover, trade unions are not allowed within SEZs.

The Land Acquisition, Rehabilitation, and Resettlement (LARR) Act has been introduced within India due to the impact of the successful Singur movement. The law has five important elements:

1. Increased compensation for farmers – market prices are doubled in urban and quadrupled in rural areas;
2. Expanded coverage of compensation – non-owners facing loss of livelihood are compensated;
3. Rehabilitation and resettlement of people evicted from their lands were made mandatory;
4. Taking informed consent of land-losers – using referendums, specifically when the acquisition has any private sector involvement; the consent of 70 percent of families is required where land is sought to be acquired for public-private partnership projects, and 80 percent for private projects;
5. Social impact assessments to determine a project's impact on people's lands and livelihoods; more specifically, to identify all affected peoples.

However, in 2017, the Narendra Modi-led Bharatiya Janata Party government passed an ordinance removing the "informed consent" and "social impact assessment" requirements for a range of projects, such as those for the purposes of defense and national security, rural infrastructure, affordable housing, and industrial corridors.

Many other peoples' movements have taken place against SEZs, and are still continuing. CSOs also have initiated monitoring initiatives such as the Land Conflict Watch (<https://www.landconflictwatch.org/>), which compiles available information on the area covered, cost, and people affected by land conflicts in India.

## Access to Forest and Forest Communities' Rights in Cambodia

**Te Sokkhoeun**, Program Coordinator, STAR Kampuchea

Tenure insecurity is a real problem in Cambodia, where majority of the population rely on agriculture, forestry, and fisheries as a means to live. It arises from having too few rights, insufficient duration of rights, and lack of assurance in the exercise of these rights. Ultimately, tenure insecurity results in the marginalization of farmers and in poverty (Chy, in ANGOC, 2017).

In 2002, the Forestry Law was enacted. The law grants community forestry (CF) members (forest users) rights to use and benefit from State-owned land, and also manage forests through a Community Forestry Agreement (CFA) (Chy, in ANGOC, 2017). Rights granted under a CFA will safeguard forest users' livelihood and ensure the sustainability of forest resources.

CF members' rights include Customary User Rights, and rights to barter, process, transport, and sell non-timber forest products (NTFPs) as prescribed in Article 40 of the Forestry Law. In line with this, CF members may continue using traditional agriculture within specific time periods established in the Community Forest Management Plan. The Forestry Law also provides forest users with the right to appeal decisions which impact on their rights.



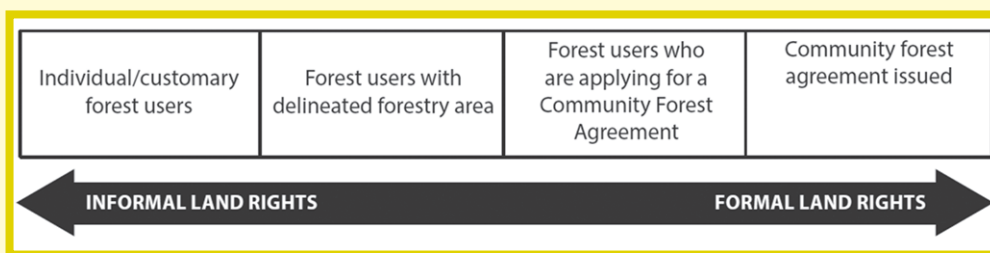
Harvesting, processing, transporting and selling of timber and NTFPs will be allowed on the condition that it will not be done within the first five years of approval of the Community Forest Management Plan. Forest users are also required to pay royalties and premiums on forest products, in accordance with Article 55 of the Forestry Law. Rights and conditions identified in the Community Forest Management Plan shall be in effect for a period not exceeding 15 years from date of the CFA's approval by the Forestry Administration Cantonment Chief.

Among forest users at large, there are four tenure groups:

- ❖ The first of which includes individual or customary forest users. This tenure type is for individuals or households that use forest products or land in State property, with usufruct rights as identified in the Forestry Law.
- ❖ The second tenure group is composed of forest users with delineated forestry area: they collectively have their forest area delineated and recognized by the

provincial governor. Forest users within this group may restrict and control access to the delineated forest area on their own initiative.

- ❖ Third are forest users who are applying for a Community Forest Agreement. They establish a Community Forest Committee and flesh out their structure, by-laws, members, and the latter's rights and responsibilities. These groups have exclusive rights to relate with authorities to develop their CFA.
- ❖ Last and the most secure forest users' tenure group, are users whose CFA has been issued. Their agreement defines the relationship and obligations between the Community Forest Committee and the Forest Administration Cantonment. This tenure group has formal rights to use and manage a forest area for a period of 15 years.



In order to maximize forest users' rights provided in law, a few recommendations are offered:

- ❖ Raising communities' awareness on their legal rights as forest users can very much help CF development in terms of recognition of their land tenure.
- ❖ The Royal Government of Cambodia must also provide funding to enable the community and local government staff to fully participate in producing and revising documents needed for approval of tenure rights and management plans.
- ❖ Finally, there is a need to improve the tenure security and recognition of rights for community people in formerly forested areas.

**State of Land and Agrarian Reform Program Implementation in the Philippines**

**Denise Musni**, *Project Officer, ANGO*

The Philippines is an archipelagic country comprised of over 7,000 islands. Similar to Bangladesh, it has a large, dense, population, with the majority of which residing in rural areas. Both the Philippines and Bangladesh have significant proportions of their population reliant on agriculture for their livelihood.

The Philippines experienced over 400 uprisings in history – many of which were led by peasants, and were rooted in the destitution of land. Agrarian conflicts have

occurred throughout history due to skewed land ownership and inequitable access to resources. Through three foreign occupation periods and several republics after independence, land remained in the control of the landed elite.

In 1987, agrarian reform was enshrined in the new Constitution as a State policy in light of the growing agrarian unrest. Peasant organizations successfully persuaded the Congress through intense lobbying and heated discussions regarding the urgency and necessity of a reformed agrarian law. The Comprehensive Agrarian Reform Program (CARP) was hence enacted in 1988. The CARP was estimated to be fully accomplished by 1998, but due to the unfinished land acquisition and distribution (LAD), the program was extended, and has been ongoing for 30 years.



The fundamental characteristics of the agrarian reform program is based on the “land-to-the-tiller” principle, which covers all private and public agricultural land for redistribution. The reformed law mandates the provision of support services to agrarian reform beneficiaries (ARBs), a five-hectare land ceiling per landowner, just compensation for landholdings covered by the program, and a three-hectare retention limit for landowners’ qualified heirs. Another feature the reformed law provided is the shift of all sharecropping arrangements to formal leasehold, and the prohibition of the conversion of irrigated and irrigable lands.

As of 2018, and after two extensions in the last 30 years, the agrarian reform program in private lands has accomplished 90 percent of its target. However, the remaining 10 percent that have yet to be distributed (561,131 hectares) are located in potential conflict areas, wherein 92.8 percent of these are large landholdings, and 70.2 percent are under landowner resistance. Even with the 90 percent completion rate, there are still many issues that are left unresolved such as the lack of tenure rights of ARBs, wherein over 1.26 million ARBs still do not have individual titles as of 2015, while around 200,000 ARBs are in danger of losing their lands due to debts which were caused by unfair business contracts.

Some ARBs whom are in possession of their land titles are still not able to occupy their awarded land due to competing land claims and overlapping rights with other sectors. Another issue is the additional 200,000 hectares of land that should have been included in the land distribution program, based on the testimony of the DAR in a Senate hearing in 2018 regarding this agenda.

Even in the age of modernity, women still lack equal rights to land. Based on the data provided, only 30 percent of the listed ARBs, and 30 percent of land title-holders are women, resulting in a staggering 7 to 3 ratio.

According to the impact study findings, agrarian reform has resulted in modest improvements in the productivity, incomes, and assets of ARBs. Despite all these improvements and although the agrarian reform program has contributed to poverty reduction, the changes the provision provided are still not bold enough to bring significant numbers of the rural marginalized communities out of poverty, a problem that is heavily attributed to the lack of support services from government.

The overall assessment of agrarian reform in public lands is much more successful than that of the private lands. Its accomplishments exceeded its target scope, wherein the issuance of land patents to tillers is at 101.4 percent, and the issuance of ISF/CBFM 25-year lease agreements is at 105.2 percent. Reasons for such high accomplishment rates may however be attributed to the low targets set by government or the attention provided to land registration without valuation. Moreover, problems such as leases that are not yet renewed in view of the moratorium since 2013, are still prominent.

Overall, in the past 30 years, asset reforms in the Philippines have brought about the transfer of ownership rights covering a total area of 12.74 million hectares, which is equivalent to 42.5 percent of the area of the entire country. The distribution of lands has directly benefited an estimated 5.5 million rural households, which is equivalent to 23.9 percent of all current households in the Philippines, based on the 2015 consensus on population.

However, as Antonio Quizon puts it, “Asset reforms should go beyond the issuance of titles and tenure instruments. There is need for the enforcement of land rights, an enabling environment and support services to help poor rural households make their lands productive and profitable, basic social services, and systems of land and resource governance where the voices of poor sectors are heard and addressed” (Quizon, 2018).

### **Land Alienation in Nepal – Declining Trend of Agricultural Practice**

**Dharma Raj Joshi**, *NES Coordinator, CSRC*



Land is, and has always been, an important matter in an agrarian society such as Nepal because it serves as a vital source of livelihood for many Nepalese. Though there have been many attempts to distribute ownership of arable land to the farmers with small land and the like, most of it is still owned and controlled by big landowners. This problem can be attributed to their deeply rooted caste system which gives preferential treatment to the rich elite over the poor laborers.

The issue of land reform has been raised in many forms and instances throughout Nepal’s history. In the 1940s,

democratic political parties rallied the people to fight to be able provide 'Land to the tillers,' and successfully overthrew the autocratic Rana regime. More recently, from 1996 to 2006, the Maoist Party of Nepal waged war for land reform. Though the Government of Nepal and the Maoist Party signed the Comprehensive Accord in 2006, no land was confiscated and redistributed. Even with the New Constitution which already provides many progressive provisions such as the Articles 25 and 36, allowing the landless and small farmers to access land is extremely difficult.

In 2011, a survey revealed that 76 percent of households in Nepal involve themselves in agriculture. Sadly, majority of these households are unable to provide

for themselves because of how disproportionately distributed the land in Nepal is. Small-scale family farmers, who compromise 53 percent of these households, operate only 18 percent of the total agricultural land. While large-scale farmers, who make up only four percent of the total households, own 22 percent of the land. 43 percent of households own only 0.5 to 2



hectares of land. To make matters worse, data shows that the land owned by small farmers have been steadily decreasing. Ergo, land is being transferred from small farming communities to larger farming families or others.

Though the agriculture sector employs 65 percent of the population, its contribution to the Gross Domestic Product is only around or below 27.7 percent. Its labor-intensive nature, coupled with only 54.4 percent irrigation facilities coverage and the rest dependent on monsoon rain, make Nepalese agriculture competitively and productively weak. Furthermore, rural agricultural practices are declining because of a trend in labor migration. Laborers in rural areas are compelled to work in urban areas or abroad for a subsistence. This enables large-scale farmers to acquire agricultural lands left by the small-scale and medium-scale family farmers. Insecure land tenure has also played a part in preventing the development of Nepalese agriculture. Indigenous peoples and other groups with unregistered and unrecognized tenure practices are in-danger of being evicted from their lands.

In 2006, Nepal has undergone paradigm-shifts in the three major areas of State Structure, System of Governance, and Legal Mechanism by introducing a federal structure and a new constitution. It is hoped that through these changes, access to land and livelihood may be improved. However, history has shown that reforms and new policies do not guarantee successful land reform. Each election, all major political parties would banner agendas of land reform but never provide and move forward with concrete strategies to address it. This is problematic as several articles (Art. 25, 37 and 51) and provisions from the Constitution of Nepal dictate the legal



bases for its citizens' right to land. Despite having these, Nepal is unable to fully-capture the essence of land and agrarian reform for the benefit of the poor, landless, small-scale family farmers, and agricultural communities.

Conceptually, all of these can be attributed to the realities that they face. The interplay of availability of, access to, utilization of, and sustainability of land resources affect the dynamics of Nepal's agriculture. Availability deals with the truth that land cannot be made and has a finite amount. With the population rising, agricultural land is being transferred to housing and commercial spaces to cater upper elite. Consequently, the upper elite has priority over the lower social classes in terms of access to land rights and ownership. The disproportionate distribution of land means that more people are unable to provide food for themselves.

Utilization takes into account that agricultural practices in many areas are inefficient and unstable. Only half of farming land is covered by irrigation services. Moreover, land is not being efficiently allocated to specific types of agriculture causing unnecessary wastage of land area. Lastly, sustainability talks about the lack of effort and policies to make sure the agriculture sector can prosper. Labor migration from rural to urban areas leave many lands idle or vulnerable to conversion to other uses.

In conclusion, the practice of land alienation be traced back to the early years of Nepal's history. Ownership of land is related to being powerful, influential, and having dominion over people. Government must take necessary steps to address this problem, including introducing transformative policy measures to prevent land alienation such as regulating land sale and redistributing land to small-scale family farmers. Moreover, political will must be strengthened within officials and government institutions to enact policies and strongly implement reforms.

## WORKING SESSION | 5

### Customary Land Rights of Indigenous Peoples and Minorities in Asia

#### Customary Land Rights of Indigenous Peoples and Minorities in Asia

**Barrister Raja Devasish Roy**, *Chakma Circle Chief, Former Member of the United Nations Permanent Forum on Indigenous Issues (UNPFII)*

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#### Distinguishing features of indigenous peoples and the concept of land

Indigenous peoples are vibrantly present across Asia. They may call themselves Adivasis, and have tribal or customary laws. IPs occupy land and water bodies with varying customary uses. These lands may be owned by individuals, but in most cases, these are collective and belong to the community. Indigenous territories with activities such as the construction of dams, mining, road building, agribusinesses, and logging are more vulnerable than others.

There is no formal definition of 'indigenous people' in international law, yet there are certain instruments, such as ILO Convention No. 169, and the 1986 report by U.N Special Rapporteur Jose Martinez Cobo, that offer subjective and objective criteria to help identify indigenous peoples. Self-Identification is included as a fundamental criterion.

According to Devasish Roy, another distinguishing feature of IPs is their spiritual pluralism. Unlike non-IPs, if they have adopted a mainstream religion (i.e., Christianity, Islam, Buddhism), they do so in their own way; they still preserve their indigenous gods. He also added that the exclusion from the process of formulating the existent constitutional framework can also be a defining characteristic of IPs.



The concept of land also plays a role in defining IPs. Indigenous land may be classified into two: collective and individual lands. There are different types of land that IPs utilize (khas, jhum, etc.), but all have economic, social, cultural, and spiritual connotations to indigenous communities. These aspects should not be unevenly considered, because those aspects are directly connected to their identities as IPs. In addition, the ILO Convention mentions that land should as well include the concept of territories which cover the total environment which IPs occupy or use. Lands, territories, water and coastal seas, and other resources are considered as part of their land, their ancestral domain.

### **State of customary land rights in Asia**

Governance systems within countries have a direct bearing on the status of the exercise of customary land laws. The ideal is for IPs to have the ability to exercise their autonomy, with States having a good justice system, strong human rights institutions, safeguards on investments and corporate activities, and legal safeguards for secure land rights.



Areas in Asia vary in terms of having indigenous-inclusive governance systems. Within these countries, situations also differ. For example, in Northeast India, IPs in Nagaland and Mizoram States possess their deserved autonomy. The Indian Parliament cannot even enact a land law without the IPs consent. However, it is not the same for IPs in Peninsular India. In Madhya Pradesh, Jharkand, Telangana, and Rajasthan, many IPs lost their lands despite having Panchayati Raj or the system of local government. In Sabah and Sarawak States in Malaysia, there are constitutional safeguards for customary laws of indigenous peoples, which recognize their land rights and native courts. Peninsular Malaysia on the other hand, is considered to have a weak and non-inclusive governance system. In the Philippines, where the Indigenous Peoples Rights Act (IPRA) and National Commission on Indigenous Peoples (NCIP) exist, there can be considerable good examples. However, the Mining Act seems to trump the IPRA in some cases.

Another critical variable for recognition of customary land rights, is the strength of National Human Rights Institutions (NHRIs). The Philippines has a relatively strong NHRI, while Bangladesh's NHRI is only a step ahead of the weakest, which is

Myanmar's. Cambodia is in the process of creating an NHRI, but Laos and Vietnam donot even have one.

Weak governance systems manifest in unorganized land exclusions and allocations. In Cambodia, foreign rubber companies and gold mining companies have been operating in IP territories, affecting communities there in various ways. Despite their small population and disadvantaged positions, Cambodian IPs rallied together and challenged the foreign companies. Several laws in Cambodia enable this legal resistance. IPs in Cambodia have formed their own political party, and although still vulnerable, are now more united than before to defend their rights.

Several other States may serve as examples of weak governance systems. In Vietnam and Lao PDR, neo-liberal policies in a "one-party" State are adversely affecting its IPs and enabling the inflow of investments with little to no oversight. Thailand, like Bangladesh, questions the rights of IPs to dwell in reserve forests, yet allows the entry of agribusinesses and mining. Nevertheless, the Thai IPs, and their partners have gradually become more assertive in resisting violation of their customary and other rights.

Despite the strong Marxist rhetoric, the overthrow of the monarchy, and a new constitution, Nepal's land and agrarian regime is still largely feudal-monarchical. Indigenous autonomy is yet to assert itself in the special systems but indigenous voices at provincial levels are getting stronger. Indonesia on the other hand, has a weak to moderate case of customary law. It has a serious oil palm plantation problem, but IPs are becoming stronger and more represented in Indonesia. They are able to speak at mobilizations and international conferences alike, and there has been cooperation between IPs and mainstream Indonesia. Some progress has been made with regard to declaration of indigenous customary forests as "not state forests," but several challenges on customary lands remain.

### **Gaps and opportunities in laws**

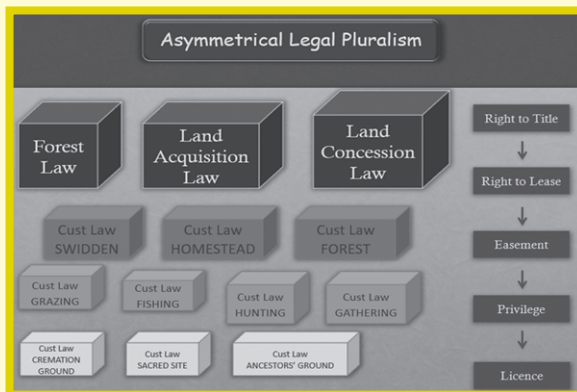
Except for India, most forest-related regimes in Asia are colonialist. Land laws in general may have remnants of a country's occupied past, as is the case of Bangladesh's Vested Property Act, which now is being used as a means to deprive minorities of their land rights. The State, since colonial times, has used the principle of eminent domain to trample upon rights of citizens during land acquisition and distribution. States may easily take land away, sometimes without compensation.

Yet there are good legislations, such as the Forest Dwellers Rights Act and the newly-amended Acquisition and Rehabilitation Rights Act in India, as well as the CHT Land Dispute Resolution Commission Act in Bangladesh. Constitutional recognition of IPs also exists in India, Philippines, and Malaysia. Whereas Nepal, Bangladesh, and Myanmar have sub-constitutional laws that may be exercised further.

Unfortunately, in Bangladesh, collective ownership and indigenous land rights are not recognized in the Constitution. Aside from conscious refusal of the government to recognize IPs, the State fails to ensure minority and IP rights, as manifested

concretely by the heavily militarized CHT. Meanwhile, there are opportunities, but the atmosphere is more challenging in Thailand, Cambodia, Laos, and Vietnam.

Land laws also tend to overlap with one another. Implementation of laws is already a challenge and is further burdened by the lack of coordination between agencies. When responsive laws are in place, at times people do not know how to benefit from them.



In conclusion, the presenter invoked a challenge to the people involved to address the asymmetrical relationship of customary laws and State laws. The perception in which one is inferior (customary laws) to the other (State laws) is a major problem for the IPs. Laws that depend on the military arm of the State and bring in capital are implemented strongly, while

customary laws which have to do with little money are not. Strategic alliances among stakeholders and advocates are key to overcoming challenges in recognition of customary land rights.

## Field Visit Report on the Rohingya Refugee Influx in Bangladesh

A team of civil society members from Asian countries visited refugee camps in Cox's Bazar and the nearby villages, to observe the socioeconomic and environmental impacts of the Rakhine crisis on the area from the perspective of local host communities. The team members committed to bring their observations to appropriate platforms back in their respective countries, and ALRD expressed plans to submit the report to the government of Bangladesh. CSOs present called for the international community, including CSOs, National Human Rights Institutions, the Association of Southeast Asian Nations, the South Asia Association for Regional Cooperation, governments, and even individuals, to be more involved in efforts to address the root causes of this complex crisis. These groups and individuals must also work towards the safe repatriation of the Rohingya refugees.



Media professionals from Dhaka were invited to listen to the report and to raise their inquiries to the field team and ALRD. Shamsul Huda, Executive Director of ALRD, chaired the media report-sharing panel.

## The Rohingya Refugee Situation and Its Effects on Local Host Communities: A Civil Society Report on the Field Visit in Ukhiya, Bangladesh

### Introduction

The Rakhine refugee situation is considered to be one of the world's worst humanitarian crises. More than 12 lakh Rohingya fled State-sponsored persecution and violence in Myanmar last year, and hundreds more are crossing borders to escape horrific conditions in their home country every day. It is clear that addressing this gargantuan issue should be the concern of the international community, particularly the Asian region.

In this context, a group of concerned civil society organizations working on land rights and human rights in Asia<sup>2</sup> organized a two-day field visit to Ukhiya and Cox's Bazar on November 26 and 27, 2018. The visit aimed to acquire first-hand information on the situation on the ground and the effects of the crisis, from the perspective of local host communities.

Interviews were conducted with human rights officers from the UN Office of the High Commissioner for Human Rights Regional Office for Southeast Asia; Ruapantar, an NGO working on outreach and protection programs with host communities in



Ukhiya Upazila including women Muslim group in Ukhiya-Foliapara; and men Buddhist group in Shailerdeba. The team also visited the Modhuchara refugee camp and had informal discussions with the Rohingyas living in the said camp.

Given the above limitations, the team can only echo what has been heard from the affected communities and share what has been observed during the two days.

### Findings from the field visit

The people and the government of Bangladesh have opened their hearts and borders to these refugees. In addition, the communities the team interacted confirmed that the government had also exerted adequate efforts to defuse potential tensions that the influx of refugees might have caused. More than 12 lakh Rohingyas have now found shelter and safety in Cox's Bazar, where aid from all over the world sustains their everyday needs.

<sup>2</sup>The field visit team is composed of Ms. Rowshan Jahan Moni and Mr. A. K. M. Bulbul Ahmed from Association for Land Reform and Development (ALRD), Bangladesh; Ms. Ujjaini Halim from Institute for Motivating Self-Employment (IMSE), India; Mr. Nathaniel Don Marquez and Ms. Denise Hyacinth Joy Musni from Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Philippines/Asia.

More than a year after the camps were set up, and after unsuccessful repatriation efforts, the situation on the ground becomes more pressing and increasingly complex. The host communities are well-informed about the situation in Myanmar. They are empathetic to the plight of the Rohingyas. For these communities, religion and race are secondary issues – to be concerned about the welfare of others is simply human. They do not want Rohingyas to return to Myanmar without guarantees of their citizenship and safety.

While Rohingya refugees continue to live in crowded camps, the communities adjacent to the areas have also been facing difficult situations. The surge of aid is understandably concentrated on the refugees. However, due to complications brought on by this crisis, host communities are now demanding for aid for them as well. They cannot help but feel marginalized in their own communities.

Most of the people in host communities are living with modest incomes from informal agricultural and non-agricultural work. Yet because of the sudden surge of people into Ukhiya, prices of basic commodities such as fish have soared. Their purchasing power has gone down.

Moreover, wages have plummeted. From earning 500 BDT a day, an agricultural laborer is now taking home just 300 BDT. As per the members of the female Muslim community, they now have to compete with Rohingyas in the labor market. Though it is illegal to employ the Rohingyas, communities claim that the practice has been rampant, without the regulation of the local government. Refugees are being illegally hired and paid with half the local wage.



School-age minors from the host communities have been reported to be working at the camps to provide additional income for their families.

Access to other resources has also been affected. Members of the community are accustomed to foraging in nearby forests for firewood and crops. Unfortunately, the greeneries have now been ravaged because of the sheer number of people extracting resources to meet basic cooking needs. According to news reports, some 4,000 acres (1,619 hectares) of forestland in and around the refugee camps have been destroyed for the construction of shelter and for firewood.

Water is becoming a scarcer resource. Deep wells have been set up inside the camps for the refugees. As an effect, however, groundwater levels have gone down.

The crisis has negatively affected families, women, and children both within and outside of the camps. As reported by some women from a host community, married



and unmarried Bangladeshi men have been going into the camps to be with young Rohingya women, with some of the women being minors.

To avoid the possibility of having Rohingya newborns be registered as Bangladeshi citizens, the local government has also temporarily stopped birth registration



altogether. This has caused concern among the locals, as their children are being deprived of their right to citizenship.

Community members also express that the Rohingyas are prioritized in health centers.

Among host communities, there are heightened security concerns brought on by the crisis. According to community

members, several Rohingyas have been involved in looting cows and other personal belongings. They have also expressed fear over Rohingyas establishing connections with crooks and criminals outside of the camps.

All these highlight the multiple facets of deprivation among Rohingyas and host communities brought on by this crisis, but we have only just begun scratching the surface. Illicit activities are on the rise and show no signs of being quelled any time soon. Perceived competition over resources may spark conflicts between host communities and refugees.

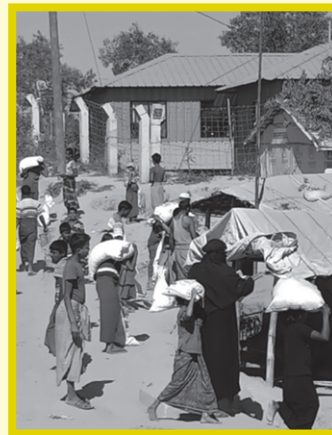
### **Calls to action**

The oppression of one marginalized group causes disenfranchisement of other groups, and this crisis should not be shouldered by one country alone. With this, the team calls on the international community to be in solidarity with Bangladesh in finding solutions for the Rakhine refugee crisis in both the short-term and in the long run. In particular:

- ❖ We applaud all contributions to relief efforts for the refugees, and urge the continuation of sustained and concerted efforts towards providing aid. For agencies involved in service-delivery, closer coordination is needed to optimize resources and avoid the exclusion of stakeholders. More efforts should be exerted on consulting the affected local communities in developing support programs.
- ❖ We call on government agencies and aid-providing organizations to attend to the needs of host communities as well. We recognize the nutrition assistance provided by the World Food Programme through Resource Integration Centre (RIC, a Bangladeshi CSO) to some 22 women in Ukhiya-Foliapara. However, more livelihood support is needed for these communities to cope with the economic effects of the crisis.

- ❖ We call on media and CSOs to keep producing reports on the effects of this crisis, for continued understanding on the issue and for it to remain in the public consciousness. As the truth is unveiled, increasing pressure from the international community to the government of Myanmar is expected.
- ❖ The Rohingya people deserve to live in peace in their homeland, without fear of persecution and oppression. Recognizing this, we demand that the government of Myanmar facilitate voluntary, safe, and dignified repatriation, through responding to the demands of Rohingyas. Amidst news sources revealing massive Chinese and Indian investments on the Rakhine State, we call on the government of Myanmar to give utmost priority to protecting the rights of its people.
- ❖ We call on States, especially those in Asia, the ASEAN, and SAARC, to exert more pressure on the government of Myanmar to recognize and respect the rights of the Rohingyas.

From our end, we have recognized the need for CSOs from Asia to be more involved in this situation. We have already discussed these issues during regional forums and international gatherings. We intend to shed more light on the refugee crisis, and its enduring effects on the people and the environment. We will carry the results of and recommendations from this short mission back to our own countries, and will engage with National Human Rights Institutions and Commissions (NHRI/Cs), the ASEAN Intergovernmental Commission on Human Rights (AICHR), and the Southeast Asia National Human Rights Institution Forum (SEANF), and South Asia Association for Regional Cooperation (SAARC), to raise the discourse at national and regional levels.



This publication summarizes the discussions and key recommendations of the region forum on **“Land and Water Governance in Asia: Resource Sharing and Cooperation”** held on 29-30 November 2018, at the BRAC Centre Inn in Dhaka, **Bangladesh.**