



Breaking up the hold of the few to provide land for the many:

Land Watch Pakistan Monitoring Report 2018¹

An initiative of the Land Watch Asia Campaign

Agriculture plays a vital role in Pakistan's economy, employing 45 percent of its labor force, accounting for 21 percent of its Gross Domestic Product (GDP) and supporting 64 percent of its population in the rural areas (FAO, n.d.).

After going through three half-hearted and failed land reform attempts, i.e. the West Pakistan Land Reforms Regulation 1959, the Land Reform Regulation 1972, and the Land Reforms Act 1977 (SDPI, 2001), Pakistan is still waiting for a comprehensive and broad-based land and agrarian reform.


Under the UN's sustainable development goals (SDGs), land plays a central and vital role in the alleviation and eradication of poverty in rural areas. Monitoring the land rights of poor masses is therefore a major step toward achieving SDG Goal No. 1, which is poverty eradication.

Land is a critical asset in rural Pakistan and a symbol of social status. However, the weaker and poorer strata of society could not access land due to factors such as the absence of a proper land market, government policies about "land to tillers," cumbersome procedures for registration and transfer of land, and poor enforcement of contracts and agreements.

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It is getting even harder to access land because of pressures such as increasing population, intensive agriculture, overgrazing, high demand for housing, food production, and other land uses such as public infrastructure.

Land Rights and Land Access in Pakistan

Land rights refer to the right to possess, hold, use, transfer, or inherit land according to a country's legal or customary system.

The concept of land rights is also related to the concept of land tenure, which can be defined as “the relationship, whether legally or customarily defined, among individuals, groups of individuals or peoples with respect to land” (OHCHR, 2015).

In a broader sense, land tenure systems determine who can use what resources for how long and under what conditions. But all types of land tenure do not ensure land rights for people who live at the margins.²

RURAL POOR IN PAKISTAN

The Islamic Republic of Pakistan was founded in August 1947 as a result of the separation from British India. The civil war in 1971 ultimately led to the secession of East Pakistan and the birth of the independent State of Bangladesh.

According to the Pakistan Economic Survey (PES), Pakistan's poverty level has been consistently declining, from 50.4 percent in 2005 to 2006 to 24.3 percent in 2015 to 2016, although the drop is more pronounced in the urban areas than in rural areas (Government of Pakistan, 2018).

State-run social safety net programs such as the Benazir Income Support Programme (BISP), relative political stability, peace and tranquility, strong recovery from low GDP growth rate of 1.7 percent (in 2008 to 2009) to 4.5 percent (in 2015 to 2016), increased remittances especially from the Middle East that go to relatively poor families, and above all, a more inclusive economic growth, are some of the reasons behind the significant decline in the poverty level (*Ibid*).

² In fact, some form of land tenure restricts their land rights, some even rejects it totally. Following a genealogical method, tracing some of the forms' origin back in the Roman imperial period, the forms of land tenure can be categorized as follows: a) Owner cultivation of small, private lands, b) Squatting on public or private lands, c) Large estates or *latifundia*, d) Feudal tenures with bound and unbound labor, e) Communal tenures and f) Smallholders leasing from private landowners (Croix, 2002). These categories can also be compartmentalized into three sub-sections:

- i) Forms that totally (forms c and d) or partially (form f) oppose land rights of the people;
- ii) Forms that recognize it illegally or pre-legally (forms b and d); and,
- iii) Form that totally and legally accepts people's land rights (form a).

But while the overall poverty level has declined, it remains a significant problem for Pakistan. And one reason behind the persistent poverty is the concentration of land ownership in the hands of a few.

Table 1. Land Tenure Indicators

| INDICATORS | SCORE |
|---|------------|
| Score Millennium Challenge Corporation Scorebook, 2017 | |
| • Land Rights and Access (Range 0–1; 1=best) | 0.66 |
| International Property Rights Index, 2017 | |
| • Physical Property Rights Score (Range: 0–10; 0=worst) | 4.2 |
| World Economic Forum’s Global Competitiveness Index, 2016 to 2017 | |
| • Property Rights (Range: 1–7; 1=poorly defined/not protected by law) | 3.5 |
| • Ease of Access to Loans (Range: 1–7; 1=impossible) | 3.6 |
| • Legal Rights Index (Range: 0-10; 10=best) | 3.0 |
| International Fund for Agricultural Development, Rural Poverty Report, 2001 | |
| • Gini Concentration of Holdings, 1981 to 1990 (Range: 0–1; 0=equal distribution) | 0.58 |
| International Fund for Agricultural Development, Rural Sector Performance Assessment, 2015 | |
| • Access to Land, 2015 (Range: 1-6; 1=unsatisfactory access) | 3.5 |
| Food and Agricultural Organization: Holdings by Tenure of Holdings | |
| • Farm Area, Privately-owned farms (in acres), 2010 | 39,431,999 |
| • Farm Area, Owner with Tenant (in acres), 2010, | 584,079 |
| • Farm Area, Tenant only (in acres), 2010 | 5,894,340 |
| • Owner-operated area (in acres), 2010 | 42,530,879 |
| • enant-operated area (in acres), 2010 | 10,379,52 |
| World Bank Group, Doing Business Survey, 2017 | |
| • Registering Property-Overall World Ranking (Range: 1–181; 1=Best) | 169.0 |
| • Quality of Land Administration (Range: 0-30; 0=lowest quality) | 6.8 |
| • Registering Property-Number of Procedures | 8.0 |
| • Registering Property-Days Required | 154.8 |
| • Enforcing Contracts-Overall World Ranking (Range: 1-190) | 157.0 |
| World Bank Group, World Development Indicators, 1998 | |
| • Percentage of Population with Secure Tenure | – |
| Heritage Foundation and Wall Street Journal, 2017 | |
| • Index of Economic Freedom-Property Rights (Range 0-100; 0=no private property) | 36.4 |
| Economic Freedom of the World Index, 2016 (2014 data) | |
| • Legal System and Property Rights (Range 0- 10; 0=lowest degree of economic freedom) | 3.96 |
| • Protection of Property Rights (Range 0-10; 0=lowest degree of protection) | 4.12 |
| • Legal Enforcement of Contracts (Range: 0-10; 0=lowest degree of protection) | 5.00 |
| • Regulatory Costs of the Sale of Real Property (Range: 0-10; 0=highest amount of restrictions) | 6.59 |

Source: Pakistan Country Profile (USAID, 2018)



ACCESS TO LAND, POVERTY, AND DEVELOPMENT

Ownership and control of land is concentrated in the hands of a few landlords and intermediaries who extract maximum rent, either in cash or kind, from the tenants or sharecroppers.

Under this arrangement, the sharecropper or tenant farmer has little economic motivation to develop the farmland for increased production. On the other hand, the landlord is not concerned about improving the economic condition of the tillers, resulting in loss of land productivity and deprivation of the tenants' economic, social and human rights.

It is not surprising therefore that the landless in the rural areas count among the poorest of the poor in Pakistan. It is indeed in the rural areas where the worst poverty and hunger are found.

Worldwide, land reform has been used as a powerful strategy to promote both economic development and environmental quality. Land reform here is defined as the reallocation of rights to establish a more equitable distribution of farmland (DAWN, 2006).

Data from the Agricultural Census Organization show that as much as 81 percent of country's farmers own farms less than five hectares in size. On the other hand, large farmers with landholdings of more than 10 hectares account for only 6.8 percent of country's farmers but hold 39.8 percent of the country's total farm area.


According to the final declaration of World Forum on Food Sovereignty held in Havana, Cuba on 7 September 2001 (civil society preparatory meeting for World Food Summit +5), agrarian reform, above all, should be recognized as an obligation of national governments, as this process is necessary within the framework of human rights and as an efficient public policy to combat poverty.

Several attempts have been made to reduce the concentration of land in a few hands.

In 1959, the government imposed ceilings on the private ownership of land. Individuals were limited to owning 500 acres (202 hectares) of irrigated and 1,000 acres (404 hectares) of non-irrigated land.

In 1972, the ceilings were further lowered to 150 acres (61 hectares) of irrigated and 300 acres (122 hectares) of non-irrigated land. Owners of expropriated excess land received no compensation, and beneficiaries were not charged for the distributed land.

Then in 1977, the government further reduced the ceiling to 100 acres (40 hectares) in irrigated areas and 200 acres (80 hectares) in non-irrigated areas.



Unfortunately, the powerful landlords successfully foiled attempts to break up large estates or lessen the power or privileges of the landed elite. For example, landlords were able to circumvent rules on maximum individual land ownership by acquiring land in the name of their wards and kin.

As a result, large landowners managed to keep their holdings within an extended joint family framework and have given up only some marginal, not very productive, swampy lands.

KEY ISSUES AFFECTING RURAL POOR'S ACCESS TO LAND

Legal Issues

Pakistan has numerous laws that deal with land rights, covering ownership, transfer, acquisition and tenancy. However, these are for the most part obsolete, fragmented, and deficient. Also, land laws that apply to rural and urban areas are often different (UN-Habitat, 2012).

Revenue legislation at the provincial level spells out the categories of landholdings, recordkeeping regulations, land transactions, surveys, official partitions, and the powers of revenue department officials.

Property rights of the indigenous peoples or tribal populations of Federally Administered Tribal Area (FATA) and Provincially Administered Tribal Area (PATA) are covered by a different set of rules, majority of which are based on customary law (GOP Constitution 1973; Khan 1981; USAID 2008, UN Habitat 2012b; United Kingdom 2017).

Customary law

Customary or traditional law is widely accepted in Pakistan. Specifically for land rights, there is a well-developed and comprehensive set of customary laws. Established tribunals known as *jirgas* enforce customary law that may differ across provinces, tribes, classes and residential status.

Land-related customary laws cover a wide range of issues including marital property rights to property boundaries. In tribal areas, the people are free to settle disputes according to their own laws and the national government works in these areas through tribal leaders. Tribes recognize individual land ownership, ownership by a joint or extended family and collective landownership by a tribe (Shirkat Gah 1996; GOP 2006a).

Sharecropping

Battai or sharecropping arrangements are commonly found in agricultural land spanning less than 30 hectares. It is estimated that a little over 70 percent of Pakistan's tenanted land was put



under this kind of an arrangement as of 2010. The prevalence of the sharecropping arrangement, which largely favors the landowners, is a cause for concern because as much as 84 percent of sharecropper households are deemed vulnerable to poverty (GOP 2010; Jamal 2017).

The difficulty in reforming sharecropping arrangements can be attributed to the fact that these arrangements span generations, thus making it onerous for sharecroppers to break the chains that bind them to the landowners.

Under this arrangement – almost always unwritten or unbound by actual contracts – sharecroppers provide the landowner with half of the agricultural production. Middlemen may broker sharecropping agreements.

Alternative land redistribution schemes

Redistributing large tracts of land for redistribution to the rural poor who want to own and work on their own piece of land is not the only option available to the government. There are innovative options available for increasing rural land access for the poor.

One of these is the use of micro-plots, which could immediately provide poor farming households with the economic, social, and psychological benefits of landownership.

It will also benefit Pakistan to develop effective means for women to acquire land and water ways consistent with Islamic law and Pakistan's Constitution, as it will unleash women's potential to be even more productive than they already are.

Secure property rights

Similar to the situation in other nations in Asia, land in Pakistan tends to be kept within families with ownership passed on from one generation to another through inheritance. Ownership is almost never registered, however, making these families' hold over their land tenuous, especially in the face of more powerful interests wanting to take over their property.

Registration has been hampered by complicated and lengthy procedures. These discourage landowners from going through the process of registration despite formal laws mandating it.

For land that is under formal titles, it is usually under the name of the head of the household or the eldest male family member. Joint titling is uncommon, although community property rights are recognized.

Islamic law contrasts with State statutes in this aspect as Islamic law allows unrecorded declarations of land donations. Statutory laws, meanwhile, require a write with the *Benami* Act



legalizing documented albeit unrecorded transactions. Land in the Tribal Areas, meanwhile, is not recorded.

There is no official record at this time of the extent of land registration in Pakistan, but will likely be known once digitization across all provinces and territories is completed (Dowall and Ellis 2007; GOP 2006a; SDPI 2008a).

Landowners who cannot or do not want to cultivate land usually have it placed under leasehold or sharecropper arrangements. And because there are quite a number of landowners who no longer want to work the land, the land-lease market is active in Pakistan.

There are two main types of tenancy, one where tenants have statutory rights to occupy the land and another where simple tenants occupy the land according to a contract with a landlord (Bisht 2011).

In rural areas, tenants on smallholdings have seasonal or annual contracts that, as a matter of practice, are generally renewed for a number of years. Nevertheless, the rights of these tenants to access and use the land is not secure.


This has resulted in an uneven power relationship between landed families and the tenants with a weak hold on land, creating dependency and keeps tenants in a lower social and political position.

So far, reforms to the tenant-landowner relationship have been ineffective in increasing security. Thus, tenants have little legal recourse in case of eviction (Jacoby and Mansuri 2006).

Land registration system

There is no central land register that conclusively records all rights pertaining to land from where a prospective buyer can investigate title to land and check it for any encumbrances. In Pakistan the State is not the guarantor of title. A buyer must carry out due diligence by investigating the seller's title and bear responsibility for the eventuality where the title is proved to be defective. In other words, the State does not even guarantee the accuracy of the land record it maintains. Thus, where a buyer has acted in reliance upon governmental records to purchase a piece of land and it is subsequently found that the seller's title was defective, the State will not compensate the buyer. Instead, the matter would be settled by litigation.

There are two overlapping and parallel legal systems that affect the land, the first is the **Land Revenue Act (1967)**. Under this said act, each local *patwari* (land demarcation officer of land department) is mandated to maintain a 'record-of-rights' for land and separately record changes in ownership. This is to help the State collect land taxes.



Over time, due to the lack of an alternative record keeping, the record originally maintained by the revenue officials for fiscal purposes assumed greater significance and gradually became recognized as evidence of title.

LEGAL POLICY AND ENVIRONMENT ON ACCESS TO LAND

There are numerous laws that regulate the ownership, transfer, acquisition, taxation, registration, tenancy, etc. of land. The more prominent pieces of legislation are:

- The Transfer of Property Act, 1882;
- The Punjab Tenancy Act, 1887;
- The Government Tenants Act, 1893;
- The Land Acquisition Act, 1894;
- The Registration Act, 1908;
- The Colonization of Government Lands Act, 1912;
- The Sindh Tenancy Act, 1950;
- The Khyber Pakhtunkhwa Tenancy Act, 1950;
- The Provincial Land Revenue Acts of 1967;
- The Baluchistan Tenancy Ordinance, 1978;
- The Land Record Manual;
- The Land Administration Manual; and,
- The Settlement Manual.

Some of these laws relate to land or property in rural areas, whereas some relate to urban areas, but some have overlapping applications to both types of the property.

Land is one of the primary engines of economic growth and the State often seeks to control and regulate its output. It is no accident, therefore, that in Pakistan, the administration of agricultural land falls under the “Revenue” Department.

Land records

Organized land records are necessary for private ownership and tax-paying purposes. This requires a survey of the lands to know the exact details of land belonging to each owner in the village like size and location. Such also needs a proper system for the measurement, identification, partition, and the delineation of land holdings.

A comprehensive Record of Rights (*Misal-e-Haqiat*) is prepared after carrying out a proper settlement operation of the land after every 25 years and later, *Jamabandi* (prepared after every four years), and the Register of Mutations (*Intaqalaat*) are prepared.



STATUS OF ACCESS TO LAND BY THE RURAL POOR

Land ownership is the important natural source of security against poverty in rural Pakistan, where agriculture accounts for 42 percent of full time employment and 23 percent of GDP. About 60 percent of Pakistan's population lives in rural areas and 67.5 percent of the rural population depends on agriculture for sustenance. However, landownership is highly skewed in Pakistan. Based on Household Integrated Economic Survey (HIES) 2001 to 2002 data:

- approximately 10.36 percent of the rural population is landless;
- 32.67 percent owns land under 1 hectare;
- 0.046 percent owns between 1 and 2 hectares of land;
- 0.0309 percent owns 2 to 3 hectares of land; and
- only 0.0293 percent owns 5 or more hectares of land.

This means that a large majority of rural households do not own land at all or do not own enough for subsistence. This implies that rural poverty is extremely high. In fact, almost 57 percent of households are involved in non-agricultural work in order to survive. Given this situation, looking at women's ownership, access and control over land is a critical area for investigation if any progress is to be achieved to ensure social protection.

Unequal command over property, arguably, is the most severe form of inequality between men and women today.

It needs to be mentioned that the application of the Tenancy Acts remains negligible in the neo-liberal era. In some parts of the country, *begari* (forced and unpaid labor) continues. The poor peasants or the *hari* do not receive their legal share of the produce.

Small farmers

Agriculture is the mainstay of the economy of Pakistan. About 45 percent of the population generate their income from the agriculture sector and 85 percent of them are small farmers. According to the standard definition, a *small farmer* is someone operating less than 12.5 acres (five hectares) of irrigated land or less than 25 acres (10 hectares) of non-irrigated land.

In contrast, big landlords are defined as those holding more than 50 acres (20 hectares) of land in Punjab and Khyber Pakhtunkhwa (KP), and over 64 acres (26 hectares) of land in Sindh and Balochistan.

The average farm size in Pakistan is 5.6 acres (two hectares), less than half of what it was back in 1972. This makes it difficult for banks to reach out to the underserved segments of agricultural borrowers. Small farmers are those who hold up to 12.5 acres (five hectares) in Punjab and KP, up to 16 acres (six hectares) in Sindh and up to 32 acres (12 hectares) in Balochistan.



Family owner-cultivators

This group of landowners includes all those possessing 7.5 to 25 acres (three to 10 hectares) of irrigated land or a corresponding area of non-irrigated land. They number around 300,000. They personally cultivate their land with one or two pairs of bullocks, and in the upper size range, may hire a farmhand. Farming is considered a family enterprise.

Some owner-cultivators have increased their farm acreage by renting some land in addition to that owned. This group forms the upper class of the village society, especially if no landlord resides there. They enjoy relative economic security, reasonable income, and the prestige resulting from being a landowner.

Usually, they belong to a respected caste (*zaat*) which improves their position even more. They control village politics, occupy posts at union council level, in cooperatives, etc. and are very often, excellent farmers with all the positive attributes of family farms, i.e. they achieve high cropping intensity and non-monetary capital formation to improve the farm.

Rural women

Women's ownership and control of land have positive linkages with sustainable development, reduction of poverty, food security, and environmental concerns. The control and ownership of land are also integral to the independence and security of women. But despite the wide recognition of the links between a gender-balanced land policy and development, the topic of women's land rights is hardly discussed in Pakistan.

Legal context of women's land rights

Civil laws in Pakistan do not discriminate against women. But matters related to succession and inheritance are dealt with under West Pakistan Muslim Personal Law, which stipulates that women get half the share of a male sharer.

There have been three State-led land reforms in Pakistan under different governments but none of these recognized women as a separate group or stakeholders in property rights. However, as an unintended outcome of the 1959 land reforms, some women did receive land when landowners transferred land to women within their families in order to escape redistribution of land to the landless. The part of Islamic law that accorded women some rights, albeit unequal, was not enforced and the ownership and transfer of land continued to be governed by customary laws that exclude women altogether.

Even if women wanted to claim their rights, they could not receive land because they were not enrolled on revenue records as tenants; and no legal mechanisms were developed to



acknowledge women's economic contribution inside and outside the home and the agricultural labor that they provide.

Men and women have different views on women's rights to own and control land. While the idea of women having the right to own and control land on their own, based on the concept of religious and human rights is generally accepted by men, very little has been done by men to help women in their families have secure rights to property. This also despite the fact that men in Pakistan have expressed faith in women's ability to manage and control land, even on their own. In short, words have not translated into deeds.


The usual arguments against upholding women's right to land include supposed inability of women to manage land; the threat that it will destroy traditional social structures and gender roles and possible compensation for women for the lack of land rights with a dower and other occasional gifts from their natal family and security from male relatives. But there are also men who see the lack of women's land rights as part of the general plight of the poor and vulnerable landless peasants.

On the other hand, women know full well the importance of having rights to own and control land. Most women also believe that having an increased dower or gifts from family and relatives does not fully compensate for the absence of these rights that are increasingly being considered as fundamental human rights. Unfortunately, even if they do know about the importance of having rights over land, women rarely seek government help in enforcing their rights, such as to inherit land. And they cannot be faulted for this as State institutions and social protection systems are not strong enough to help them. At this time, women are almost entirely dependent on their family and the security that they get from their male relatives. Hardly anyone is brave enough to jeopardize that relationship by fighting for land rights. Also, most women feel that the legal system is too complex for them to engage in and understand. And lastly, they do not have enough faith in the ability or even willingness of State institutions to dispense justice and uphold their legitimate rights to land.

LAND GOVERNANCE

Land governance involves the procedure, policies, processes, and institutions by which land, property, and other natural resources are managed. This includes decisions on access to land, land rights, land use, and land development.

Land administration is a part of land governance. In Pakistan, land administration is complex due to issues ranging from policy, economic, social, technical, legal and political to institutional.



The key policy issues include existence of non-conducive policies and the policy implementation environment. It is therefore recommended that various departments engaged with LA in the country should be aligned and synchronized to facilitate implementation efforts.

Pakistan is less developed economically, and is therefore unable to allocate enough funds for LA-related technologies and human resources.

The complex legal framework that delays the implementation of land administration, unnecessary restrictive laws and regulations, and weak land rights legislation have worsened the situation. Thus, people go to the courts to resolve land disputes.

Digitization of land records

In 2012, the government of Punjab started the digitalization of land records. Supported by the World Bank, the government replaced the error and corruption-prone manual land recordkeeping with a digital “Land Records Management and Information System (LRMIS)” handled by professional staff in 144 modern land record centers across the province’s 36 districts.

Within just five years, the project scanned 10 million pages of old records, digitized all land records for over 55 million landowners across the province of Punjab, and made digital land title information easily accessible online. As a result, the time needed to complete a transaction dramatically decreased from two months to just 50 minutes.


The project not only helped to increase land value for landowners, but also empowered women and poor farmers, whose land rights were not adequately protected in the old system. This system helped reduce the chances of fraud and corruption.

A similar project was replicated in Sindh Province. The Sindh Board of Revenue has digitized the revenue record of 29 districts, while properties in 2,300 villages out of 2,500 in Punjab have been brought online under the LRMIS. The computerization of land records in Punjab and Sindh promises an end to infamous *patwari* (field official of land revenue department) culture.

LAND CONFLICTS

According to the Human Rights Commission of Pakistan (HRCP), various forms of land grabbing continue across the country. The USAID also noted in its report on land rights that “land disputes are prevalent in rural and urban areas throughout Pakistan.”

In July 2016, a Supreme Court judgment cited by The Express Tribune stated: *“In our society, the acts of illegal dispossession are largely committed at the behest of persons who are rich, powerful feudal lords, politicians, builders, government functionaries or persons who head*



large communities, and on account of their influence and power that place them in domineering positions either over their fellow community members or over less powerful communities living in an area of their influence.”

According to an Amnesty International researcher, speaking to Al Jazeera in 2014, Pakistan’s blasphemy laws were reportedly used ‘to make unfounded malicious accusations to settle personal scores in land and business disputes. The International Crisis Group (ICG) stated in its 2014 report on policing urban violence that “unresolved land disputes are often settled by force, turning civil cases into criminal ones.”

Pakistan’s formal court system also has jurisdiction to hear land cases, creating a parallel structure of courts. Land disputes are the most common form of dispute filed with the formal court system, perhaps in part because filing a case may stay a pending revenue court proceeding. Pakistan’s judiciary is hampered by low pay, poor training, and a large volume of cases. Between 50 and 75 percent of cases brought before lower-level civil courts and the high courts are land-related disputes. By one estimate, over a million land cases are pending countrywide.

Major causes of land disputes are inaccurate or fraudulent land records, erroneous boundary descriptions that create overlapping claims, and multiple registrations to the same land by different parties. Credible evidence of land rights is often nearly impossible to obtain. Land cases can take between four and 10 years to resolve.


According to The News International, reporting in October 2016 on plans to overhaul Pakistan’s justice system, up to 80 percent of Pakistan’s civil case load has to do with land acquisition and titling disputes, with a large percentage of those disputes arising out of land grabbing and misappropriation of property.

Mechanisms for resolving land conflicts

In the formal litigation process or adjudication in Pakistan, the decision-maker is a judge at a regular court, a specialized land court or a tribunal. In this respect, the process of conflict resolution is formal. Both parties appoint a lawyer to present their case at the court and the judge makes an evidence-based decision.

In Pakistan, being a Muslim-majority State country, land conflict resolution is often based on *Shariah* (Muslim personal law) which can be roughly translated as the *Islamic Civil Code*; this is a popular practice among the rural population. However, with modernization reaching even the distant villages of Pakistan, the popularity of this practice is on a decline.

For tribal people, conflicts are resolved by *Jirga* (a traditional tribal committee of justice, headed by tribal elders and chieftains). They resort to customary conflict resolution, which is a form of



arbitration with a strong conciliatory character, whose words are law. However, this system is not legally recognized in Pakistan.

Effectiveness of legal and institutional frameworks

The legal and institutional frameworks have a very limited capacity in respecting, protecting, and resolving land conflicts, and preventing violence.

One reason is that land related laws are often unclear and unnecessarily complicated. Another reason is the institutional bias towards the rich and the powerful.

TRANSPARENCY IN LAND GOVERNANCE

Transparency in land governance plays an important role in making the system efficient as well as improving land markets and reducing land-related conflicts.

There is space for forming Land Management Committees which include CSOs along with water-users' associations, *Kisan* (farmer) committees, and district and sub-district (*tehsil*) committees for lease settlement.

It is also possible to include representatives of farmers' associations, water-users' associations, women's groups, and NGOs in the National Land Settlement Committee to ensure transparent land governance and administration in the country.


Mechanisms for participation in land governance

There are some mechanisms – community monitoring, community scoring, community advocacy, social auditing, public hearing, policy advocacy, mass campaign – whereby land rights CSOs or NGOs, and through them, the marginalized and poor rural women and indigenous people, are able to participate in land governance.

Pakistan's government provides a range of support measures including promotion and establishment of "invited space" (civil society representation in different government committees, such as National, District, and *tehsil* Land Management and Distribution Committee) and dialogues on policy matters.

CSO Participation in Land Governance

There is space for CSOs, though limited, to participate in land governance. CSOs have been advocating and campaigning for pro-poor, pro-marginalized issues in the vested property rights movement.



CSOs are trying to broaden their space to participate in land governance through strengthening the proven strategies and exploring innovative actions. On the other hand, the vested interest and anti-reform groups, including a portion of the politicians and the bureaucracy, are agile in shrinking the space through power and party politics.

There are CSOs networks such as National Peasants Coalition of Pakistan (NPCP), Pakistan Kissan Ittehad (PKI), which could play important roles in participation in land governance through their vast networks.

CONCLUSIONS AND RECOMMENDATIONS

Land rights and land access in Pakistan

- The majority of the Pakistani rural poor are powerless and marginalized; they include the unemployed, victims of ecological disaster, religious, and ethnic minorities.
- In rural Pakistan, there still exists a strong causal relationship between land ownership and poverty; the same goes for land ownership and human development. The more land one owns, the more chances he has to escape from the jaws of poverty.
- Commercial pressure on land, due to housing and industrial needs, has been increasing. The key issues that adversely affect the access to land of the rural poor are commercial use of land and land grabbing. Setting up commercial plantations, contract farming, fixed rent leasing, problems associated with land registration systems, development projects like the exclusive economic zones (EEZs) and national parks, among others, have further restricted land access of the poor and marginalized rural people.

Legal and policy environment on access to land

- The Land Reform Act of 1977 and provincial tenancy acts, among other laws and policies, make up the legal framework that defines ownership, control, and access to land. Some sections of these laws and policies acknowledge the rights of some marginalized groups over land, though there is serious lack of implementation to ensure and safeguard those rights.
- Existing land laws do not recognize and protect customary rights, informal rights, and equal land rights for women, as required. Legal recognition and protection becomes more vulnerable when questions arise regarding implementation.
- There have been limited efforts at land redistribution and tenure reform mostly through the implementation of a ceiling for land ownership. Among many other policies, laws, rules and orders, Land Reform Act (1977) and provincial tenancy acts are major legal instruments for improving the poor's access to land and tenurial security.



Status of access to land by the rural poor sectors

- More than 65 percent of the country's farmers are *small* farmers.
- Rural Pakistan abounds with family farming households. It safeguards food security for marginalized peasants and poor households. It also creates jobs for women, men and young people, both within their family farms and in related enterprises along food and agricultural value chains.
- Agriculture policies are supportive of family farms and small-scale producers. However, support services, capacity building, rural infrastructure, financing for small farmers, and producers are not adequate.
- Land distribution is very unequal in Pakistan. Large farmers with land holdings of more than 10 hectares comprise only 6.8 per cent of country's farmers, but account for 39.8 percent of the total farm area.
- Contract farming, land grabbing, and out-migration of the rural youth seem to be major threats to family farming and small-scale production.
- Different articles of the Constitution of Pakistan make no discrimination between the sexes over land rights and access. Moreover, Pakistan ratified the Convention on Elimination of All Discriminations Against Women (CEDAW), though with reservations about articles that have to do with women's inheritance rights. Despite these developments, the existing legal framework does little to protect women's land rights.
- The land rights of women are stalled by religious and customary laws that overly discriminate against them. Apart from religious traditions and cultural beliefs, the patriarchal mindset of society impedes women's equal rights to land. The government land registration system, being complex, expensive, and time consuming, is not women-friendly at all.

Resolution of land conflicts and protection of land rights workers

- The major causes of land conflicts over the past 10 years are political, economic, socio-economic, sociocultural, demographic, legal and judicial, administrative, and technical in nature.
- To address grievances and resolve conflicts, besides the formal judicial system, there are consensual (facilitation, moderation, consultation, mediation, and conciliation) and non-consensual (arbitration) mechanisms in place, but they are not sufficient.
- The country's legal and institutional framework is not that effective in respecting, protecting, and resolving land conflicts.
- Due to pressure from land rights CSOs, among others, measures have been taken to prevent land conflict and to protect land rights defenders, but they prove to be largely insufficient.



Transparency in land governance and administration

- There are some mechanisms like community monitoring, community scoring, community advocacy, social auditing, public hearing, policy advocacy, mass campaign, whereby land rights CSOs, and through them, rural women and indigenous people, are able to participate in land governance. However, the effectiveness of these mechanisms has been limited.
- Information and data on land and tenure-related issues are available to some extent, for which the Right to Information Act 2009 deserves credit. Some of these information and data are accessible to general public, are free of cost, and are relevant as well as reliable. However, there is much to do to make them timely and more user-friendly by completing the ongoing digitalization process, along with other reform initiatives.
- There is limited space for CSOs for participation in land governance. However, in the face of vested interest groups, CSOs are trying to widen their scope for participation.

OPPORTUNITIES FOR ADVANCING LAND RIGHTS

The land rights situation in Pakistan is not satisfactory for the poor and powerless sections of the society. There are both legal and administrative encumbrances to ensure their rights over land. Some of those date back to the colonial period while others emerged in relatively recent times. Moreover, there are deep social prejudices, especially against the poor and powerless, that make their life more vulnerable than others. Hence, to advance land rights in Pakistan, taking only legal-administrative steps will not be enough. Efforts should be made by both the government and CSOs to change the predominant hierarchical social psychology and attitudes.

RECOMMENDATIONS

For Government

1. *Secure Tenure Rights*

- a) A National Land Use Policy should be formulated and implemented as soon as possible so that the land rights of women and men living in poverty can be respected, protected, and strengthened, ensuring that no one is deprived of the use and control of the land on which their well-being and human dignity depend.
- b) Effective mechanisms need to be devised to ensure successful retention of land by the rural poor.
- c) In order to ensure empowerment of their tenancy right, all sharecroppers must be provided with legal deeds and agreements signed by them and landowners.



2. Strong Small-scale Farming Systems

- a) Distribute all agricultural State land to the poor and landless immediately.
- b) A support system needs to be instituted to provide relevant productive assets (cattle, plough, irrigation machineries, and equipment), recurrent inputs (seed, fertilizer, water, pesticide, etc.) to the landless, small-scale rural producers. A system must also be put in place to protect them from the “free market.”
- c) Organize cooperative farming in all possible situations; organize cooperatives for input, credit, marketing, and other productive purposes.

3. Diverse Tenure Systems

- a) Formalize the tenure-related customary laws and practices of forest dwelling people, pastoralists, thus formulating a new and vibrant policy framework.

4. Equal Land Rights for Women

- a) Inheritance laws should be enforced with adequate provisioning for women’s inheritance. If the male heirs of the property are absent and the female(s) are permanently residing in Pakistan, the property should be leased-out to them until final settlement is made.
- b) A national policy framework should be formed to formalize equal land rights of women, abolishing the existing discriminatory traditional laws.

5. Locally-managed Ecosystems

- a) The Land Use policy should be formulated with a directive to enable the role of local land users in territorial and ecosystem management, recognizing the need for sustainable development and the stewardship of ecosystems through participatory decision-making and management at the territorial level, empowering local land users and their communities with the authority, means, and incentives to carry out this responsibility.

6. Inclusive Decision-making

- a) The committee for the identification of vacant State land should be reorganized to include civil society representatives.
- b) A “watchdog” mechanism (e.g., citizens committee) needs to be developed to monitor land identification, distribution, and post-distribution situation.
- c) A committee for resolution of land related disputes at the local level should be formed under the leadership of local elected representatives, along with representatives from judicial department, local administration, law enforcing agencies, land revenue offices, landless groups, CBOs/NGOs, and local people. There must be attempts to resolve land-related disputes at the Union Parishad before filing suits at the district-level court.



7. Transparent and Accessible Information

- a) The government should establish a “Land Data Bank.” This Bank shall have a computerized database containing detailed information about the following:
 - records on land and water bodies by types, locations, distribution status, disputes and conflicts;
 - account of all vested land by types, location, lease status, and other variables;
 - data on illegal takeover of indigenous people’s land by force, fraud and manipulation, as well as subsequent disputes and conflicts.
- b) Information should be suitably classified and organized, so that it can be retrieved quickly, in forms suitable for specific purposes.

8. Effective Actions against Land Grabbing

- a) All land illegally occupied by the land grabbers should be recovered as soon as possible.
- b) Measures should be taken to minimize the influence of the Members of the Parliament, powerful individuals and officials in the committee who exercise monopoly power and/or engage in corrupt practices.
- c) Individuals and government officials engaged in preparing fake land documents should be penalized accordingly. The government should strictly penalize those who adopt fraudulent measures and terrorism to grab land.

9. Protection for Land Rights Defenders

- a) The proposed National Land Policy should include the policy directive to protect land rights defenders.
- b) Land rights defenders should be provided with training facilities, online courses, and other relevant resources to build their capacity.
- c) The government should provide land rights defenders with urgent medical support in cases of injuries as a result of conflicts, legal assistance during land litigations, and financial support for their families in case of their death.

For CSOs

- Many land-water-forest related laws have been analyzed from rights-based approach, and accordingly, new laws/amendments have been devised through participatory research. CSOs must lobby with Parliament to enact these relevant laws, and be engaged in monitoring their proper implementation.
- The local and sub-district level civil society organizations should raise their voice for a free and fair distribution of relevant land and water-bodies to the landless rural producers.
- All the peasants’ organizations should be united in the struggle for poor people’s rights over land, and launch a movement against corrupt practices and inefficiencies of the government in ensuring poor people’s legal and justiciable rights over land and water bodies.

- Land rights related CSOs should lobby that the government institute Alternative Dispute Resolution (ADR) mechanisms.
- CSOs may conduct research studies on new land-rights issues (like individual tenurial security, gender sensitive land governance mechanisms, etc.) as well as on old ones (ex. land litigation) to monitor the rural poor's land rights and access status. ■

ACRONYMS USED

| | |
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| ADR | Alternative Dispute Resolution |
| ANGOC | Asian NGO Coalition for Agrarian Reform and Rural Development |
| CBO | community-based organization |
| CEDAW | Convention on Elimination of All Discriminations Against Women |
| CSO | civil society organization |
| EEZ | Exclusive Economic Zone |
| FAO | Food and Agriculture Organization of the United Nations |
| FATA | Federally Administered Tribal Area |
| GDP | Gross Domestic Product |
| HIES | Household Integrated Economic Survey |
| HRCP | Human Rights Commission of Pakistan |
| ICG | International Crisis Group |
| KP | Khyber Pakhtunkhwa |
| LWA | Land Watch Asia |
| LRMIS | Land Records Management and Information System |
| OHCHR | Office of the High Commissioner for Human Rights |
| NPCP | National Peasants Coalition of Pakistan |
| NGO | non-governmental organization |
| PATA | Provincially Administered Tribal Area |
| PES | Pakistan Economic Survey |
| SDGs | Sustainable Development Goals |
| SDPI | Sustainable Development Policy Institute |
| SCOPE | Society for Conservation and Protection of Environment |
| USAID | United States Agency for International Development |
| UN | United Nations |

GLOSSARY OF LOCAL TERMS

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| <i>Benami</i> | Property without title or name |
| <i>Barani</i> | Land with no irrigation infrastructure; rainfed land |
| <i>Hari</i> | Share cropper, tenant |
| <i>Jirga</i> | Council of tribal elders who hears disputes and makes judgment, alternative judicial system |
| <i>Munshi</i> | Manager of landowner |
| <i>Patwari</i> | Field officer of land and revenue department who holds records and is responsible for farm land measurements |
| Shariah | Islamic law; Muslim personal law |
| <i>Tehsil</i> | Sub-district; administrative division |
| <i>Tehsildar</i> | The officer responsible for the collection of land revenue tax and land administration |



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