

SECURING

An Overview on

THE RIGHT

Access to Land

TO LAND

in Asia





ANGOC

**Asian NGO Coalition for
Agrarian Reform and Rural
Development**

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Founded in 1979, ANGOC is a regional association of 17 national and regional networks of non-government organizations (NGOs) in Asia, actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance and rural development activities. ANGOC member networks and partners work in 14 Asian countries with an effective reach of around 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy debates with national government, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

The complexity of Asian realities and the diversity of NGOs highlight the need for a development leadership to service the poor of Asia — providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives.

Securing the Right to Land

An Overview on
Access to Land in Asia
(2nd edition)



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Foreword

Set against the backdrop of escalating food prices and worsening food insecurity, the issue of land becomes more relevant and urgent. The facts and figures speak of a great irony. More than half a billion people in Asia suffer from hunger and food insecurity, and too often these are the small food producers, who comprise farm laborers, tenants and small farmers. The region is home to 75% of the world's farming households, 80% of which are resource-poor, and lack access to productive land.

Farmers' and rural food producers' lives are closely bound up with their lands, which are their source of food and livelihood as well as their best chance of escaping poverty. For indigenous peoples (IPs), securing recognition of their customary rights to ancestral lands is indispensable to their right to self-determination, cultural integrity and identity. Unfortunately, these and other groups that till the land and depend on it for their survival have least access to it.

Across many countries, improving access to land is key to solving many social problems, including rural unemployment, poverty, food insecurity, rural-urban migration, and political stability. Increasingly, the land access issue has been seen as a major reason behind armed conflict, domestic violence, corruption, internal displacement, structural violence and other social ills.

Improving the poor's access to land would guarantee their survival as well as enhance the quality of their lives. Agrarian reform brings direct relief to rural poverty, but just as importantly, its democratizing effects enable other pro-poor reforms to work more effectively.

Yet, agrarian reform has not been given sufficient attention in poverty reduction strategies at global and national levels. Strengthening advocacy for agrarian reform to make certain that it is effectively implemented is essential for making significant strides in combating poverty in the region. It is in this context that Land Watch Asia was initiated.

Land Watch Asia (LWA) is a regional campaign undertaken by a coalition of civil society organizations with a view of supporting and advancing the advocacy for access to land in Asia, particularly in the eight participating countries, namely: Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines and Sri Lanka. LWA campaign ensures that the issues of access to land, agrarian reform, and equitable and sustainable development in rural areas are addressed in national and regional development agendas. It also serves as a monitoring mechanism to assess the status of agrarian reform in the region.

As part of the campaign, country strategy papers were prepared to: i) assess the policy and legal environment on access to land and tenurial security; ii) review past contributions and existing efforts of different stakeholders (government, private sector, donors, social movements and civil society) in addressing land issues; and iii) identify opportunities and strategies to effectively address existing issues and gaps and in advancing access to land and tenurial security.

This second edition of *Securing the Right to Land* (2012) features the regional summary and the abridged versions of eight country papers. Two country studies (Pakistan and Sri Lanka), along with other country updates, have been added to the original edition of 2009. The following organizations spearheaded the drafting of the country papers: ALRD and SEHD (Bangladesh), STAR Kampuchea and NGO Forum on Cambodia (Cambodia); AVARD, Ekta Parishad and SARRA (India); KPA, Bina Desa and AGRA (Indonesia); CSRC, FECOFUN and NFN (Nepal); SCOPE (Pakistan); ANGOC, AR Now!, CARRD, PAFID, SALIGAN and PhiIDHRRRA (Philippines); and SARVODAYA (Sri Lanka). Other groups involved in the various processes at the national and regional levels are listed in the Acknowledgments Page.

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and partners towards securing greater access to land of the poor in the region.

The first edition was prepared under the overall guidance of Antonio B. Quizon and editorial work of Teresa Lingan–Debuque, who also co-wrote with Catherine C. Liamzon the regional summary paper. This second edition has been put together with Antonio B. Quizon, Catherine C. Liamzon and Nathaniel Don Marquez as editors. Our thanks to Maria Liza Almojuela for the book layout and cover art.

We would appreciate your feedback and comments on this publication. Write to us at angoc@angoc.org

This publication is part of our contribution to ongoing development efforts in pursuit of the Millennium Development Goals (MDGs), and towards realizing the goals of the International Conference on Agrarian Reform and Rural Development (ICARRD).

ANTONIO B. QUIZON
ANGOC Chairperson

NATHANIEL DON E. MARQUEZ
ANGOC Executive Director



Message



During the launching ceremony of the first edition of *Securing the Right to Land—A CSO Overview on Access to Land in Asia* at the 2009 ILC Assembly of Members in Kathmandu, I enthusiastically hailed ANGOC's initiative. I saw the publication as the culmination of civil society mobilization efforts (under the Land Watch Campaign) in many Asia countries, often in difficult contexts and with very limited resources. By supporting NGOs and farmer organisations to collect and analyze land-related information in their own countries and from their own perspectives, the initiative was contributing to democratize information generation and dissemination. I also perceived it as a means of empowering civil society organisations to engage in national policy dialogues with confidence and credibility.

ANGOC's Land Watch initiative is even more crucial today than it was three years ago. Since 2008, we are witnessing a dramatic intensification of the competition for land and associated natural resources such as water, forests, pastures. Land has become a strategic resource disputed at local, national and international levels, because of its key role in almost all response-options

to the multiple global crises we are faced with: the food, energy, climate and financial crises. The global rush for land, also referred to as land grabbing, is a consequence of the increased strategic importance of land.

Because the terms of this multifaceted crisis vary from one country context to the other, solutions are to be devised and negotiated at the national level. Although there are no ready-made solutions valid in all contexts, we know that the best choices are made by society when they emerge from open and inclusive consultation processes. The extent of participation of civil society and farmer organisations is a key barometer of good governance and an indication of the likelihood of sound and legitimate choices.

It is therefore a real pleasure to see that ANGOC is updating and re-editing this landmark publication.

ILC is proud to have supported this initiative and is committed to continuing to support members to engage in and influence land policy processes at the national level and regionally.

Madiodio Niasse

DIRECTOR

INTERNATIONAL LAND COALITION (ILC)



Message



MISEREOR considers the question of access to resources, particularly access to land, as one of the key questions of our time. Access to land is an issue of food security: the majority of the hungry live in rural areas, and in Asia it is above all the landless who are affected by hunger. Moreover, access to land is a human rights issue: all signatory states to the International Covenant on Economic, Social and Cultural Rights have agreed on guaranteeing access to food production resources or to the labor market, highlighting the importance of access to land for a life in dignity. Since the first edition of ANGO's publication "Securing the Right to Land", discussion on land has gained momentum, as "land grabbing" as term for large-scale, mainly foreign, investment in land has been introduced, pointing to the accelerated loss of land of small-scale landowners and indigenous peoples.

The concentration of land ownership may mainly be a result of former (and current) feudal or colonial property and ownership relations. However, globalization processes in the agricultural sector and the expansion of production for the export market have also led to the displacement or expulsion of small farmers and to an increased concentration of land ownership. In the light of the current debate on food prices and agrofuel production, this process is even gaining pace. Instead of halving the world's hungry people by 2015, we observe on a daily basis the negative impacts of the globalised economy on the poor.

High food prices lead to increasing poverty and hunger, and at the same time rising interest of the powerful in agriculture. Speculation on food commodity prices is directly causing hunger. The investment of powerful corporations in agriculture directly reduces the poor's access to land, and is a main challenge for agricultural reforms. More and more land is earmarked for animal feed and agrofuel production to feed the mobility hunger of the rich in industrialized countries—and in China and India as well. Consequently, the pressure on

small-scale farmers increases. The land legislations and political frameworks in Asian countries do not protect small farmers' access rights to land, however; the situation of indigenous peoples, whose land rights are rarely recognized, even worse.

Many poor lose their livelihood base at this moment when the international community is intensely discussing the hunger crisis and the need for sustainable development options in agriculture. The International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) report emphasizes the need for small-scale sustainable agriculture. Compared to the industrialized agriculture model, small farms can be superior in terms of economic, ecological and social indicators such as productivity, adaptability and diversity. They not only increase the subsistence level of farming families, but also serve local markets at reasonable prices and offer good quality. A locally adapted agriculture reduces the risks for farming households—an aspect increasingly important given climate change and a rising incidence of disasters.

For MISEREOR, access to land is critical since we believe that it is a key factor of a long-term solution to the world food crisis. More than ever, civil society has to fight for people's access to land—the implementation of land reforms, the recognition of user rights on common land resources, and the security of land rights irrespective of gender, caste, religion, etc. Through participatory documentation processes and the facilitation of dialogues among government and civil society in different countries, ANGO and Land Watch Asia continue to support landless people in their struggle for access to land.

Anja Mertineit
 PROGRAMME OFFICER FOR RURAL DEVELOPMENT,
 ASIA DEPARTMENT
 MISEREOR

Message

ActionAid International (AAI) considers the rights to land of women, and of poor and excluded people as one of its principle agendas, as these rights are intimately linked to people's food security, dignity and sovereignty. However, in most countries of Asia (and elsewhere) a few rich people and multinational corporations have acquired monopolies over vast areas of land, thereby depriving the poor people of their fair share. Equitable land distribution through proper land reform has not happened in most countries. Instead, rich business companies are increasingly buying up productive lands, either for building their industries, for commercial export-oriented agriculture, for biofuels production or simply for speculation purposes, thereby further marginalizing the poor and excluded people. Several governments in the region are changing their policies in favor of the business sector in a bid to attract more investments into their countries. Such neoliberal policies and practices are alienating farmers and farm workers from their land, and prompting a mass exodus from the rural areas to the cities and abroad in search of work—thereby jeopardizing their fragile lives and livelihoods.

In this context, we must commend the campaign spearheaded by the Land Watch Asia to embolden people's organizations to fight for their rights and lobby governments to promulgate and implement policies to safeguard poor people's rights to lands. The event which brought together the rights activists from Asia and several other stakeholders from elsewhere in Bangkok to discuss the findings of their research and campaign work shows a varying level of rights violation that poor people are facing and the ongoing struggle that people are spearheading to claim their rights. The report also draws from the experiences of success from various Asian countries and highlights the need for continued struggle at the national, regional and global level to ensure that agrarian reforms would guarantee land to poor people. ActionAid would definitely like to continue being a partner of Land Watch Asia and take part in struggles together with members of regional and international networks fighting for land rights.

We appreciate the work undertaken by coalition partners at country and regional level. We also acknowledge ANGOC for ably coordinating the campaign work.

Ruchi Tripathi
SENIOR PROGRAMME MANAGER
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Land Watch Asia Partners

Bangladesh



Association for Land Reform and Development (ALRD)
www.alrd.org

ALRD is a single focused, rights-based policy advocacy and networking NGO that seeks to empower the poor, women, indigenous peoples and other marginalized groups and to ensure their land rights through comprehensive land and agrarian reform in Bangladesh. The ALRD network has 260 NGOs.



Society for Environment and Human Development (SEHD)
www.sehd.org

Founded in 1993, SEHD is a non-profit Bangladeshi organization promoting investigative reporting, engaging in action-oriented research, assisting people think and speak out. Its areas of work are mainly environment and human rights.

Cambodia



STAR Kampuchea
www.starkampuchea.org.kh

STAR Kampuchea is an NGO working to build democracy by strengthening civil society in Cambodia. It deals with issues related to land, forestry and fisheries. It also provides funding support and advocacy capacity to its 11 Provincial Advocacy Networks (PANs) and cooperating organizations.



NGO Forum on Cambodia
www.ngoforum.org.kh

The NGO Forum on Cambodia is a membership organization for local and international NGOs working in the country. It exists for information sharing, debate and advocacy on priority issues (such as land) affecting Cambodia's development.

India



Association of Voluntary Agencies in Rural Development (AVARD)
www.avard.in

AVARD is a network of some 700 voluntary organizations in India engaged in rural development, including advocacy on land. Its goals are to: promote cooperation and understanding among voluntary agencies to work for rural communities; strengthen capacities; and facilitate exchange of ideas and experiences within the network.



Ekta Parishad
www.ektaparishad.com

Ekta Parishad is a non-violent social movement in India actively working on land and forest rights at the national level. It is demanding for structural change: complete land redistribution for the landless and marginalized sectors of society to escape poverty.



South Asia Rural Reconstruction Association (SARRA)

Based in south India, SARRA develops knowledge on sustainable development; and designs strategies for participatory planning, implementation, monitoring, feedback and evaluation. Over the years, SARRA has promoted indigenous sustainable agriculture practices through trainings, farmer field schools and publications.

Indonesia



Consortium for Agrarian Reform (KPA)

www.kpa.or.id

KPA coordinates 104 people's organizations (landless, small peasants, fishers, women, indigenous peoples) and 83 NGOs from 23 provinces in Indonesia. It works towards the realization of a fair agrarian system and promote ownership, control and use of land and natural resources for the poor.



Bina Desa

Bina Desa

www.binadesa.or.id

As a network of some 40 NGOs working together, Bina Desa facilitates the participation of community organizations and people's movements in the socio-cultural political fields. It prioritizes developing human resources at the local level.

Nepal



Community Self-Reliance Centre (CSRC)

www.csrcnepal.org

CSRC has facilitated the land rights movement in Nepal since 1995, growing into a national movement promoting pro-poor land reform and management as a means to secure the rights of the land-poor. It works with the landless and indigenous minorities.



FECOFUN

Federation of Community Forestry Users, Nepal (FECOFUN)

www.fecofun.org

A formal network of forest user groups from all over Nepal, FECOFUN has grown into a social movement organization with about 8.5 million forest users. It promotes sustainable forest management and utilization of resources, building consensus and enhancing community participation.



NFN

NGO Federation of Nepal (NFN)

www.ngofederation.org

NFN emerged as an umbrella organization of NGOs in the aftermath of democratic political change and establishment of multiparty parliamentary system in 1990. Since its establishment, NFN has an outreach of 5,227 NGOs promoting human rights, social justice and pro-poor development.

Pakistan



Society for Conservation and Protection of Environment (SCOPE)

www.scope.org.pk

SCOPE focuses on environmental protection and land rights, through advocacy, capacity building, networking and field projects. It has been instrumental in the the formation of the National Peasant Coalition of Pakistan.

Philippines



AR Now!

The People's Campaign for Agrarian Reform (AR Now!)

www.landwatch.i.ph

AR Now! is a national coalition of 15 NGOs and people's organizations involved in agrarian reform advocacy.



Center for Agrarian Reform and Rural Development (CARRD)

www.carrd.org.ph

CARRD is an active partner of farmer groups and cooperatives in the pursuit of land tenure improvement and agricultural sustainability. CARRD strengthens its advocacies through strategic partnerships, working in three provinces, with four partner-farmers' organizations.



Philippines



PhiDHRRA

www.phidhrra.net

PhiDHRRA is a national network of 67 NGOs that enhances the capacity of its members to address agrarian reform and rural development issues.



PAFID

www.pafid.org.ph

PAFID is an NGO support organization with over 140 members engaged in the development of indigenous social organizations, ancestral domain management, community-based natural resources management planning, community mapping, agro-forestry, technical services and policy advocacy.



SALIGAN

www.saligan.org

The Center for Alternative Legal Assistance is a legal resource NGO doing developmental legal work with women, farmers, workers, the urban poor, the indigeneous peoples and local communities. It seeks to effect societal change by working towards the empowerment of women, the basic sectors, and local communities through the creative use of the law and legal resources.

Sri Lanka



Sarvodaya Shramadana Movement (SARVODAYA)

www.sarvodaya.org

Sarvodaya was founded as a people's self-help organization inspired by Gandhian ideals of "truth, non-violence and service for all". It seeks to empower some 5,200 community-based organizations (Sarvodaya Shramadana Societies) in over 15,000 villages in Sri Lanka.

Regional Convenor



Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)

www.angoc.org

ANGOC is a regional association of 17 national and regional networks of Asian NGOs actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance and rural development.

The Prolonged Struggle for Land Rights in Asia

**A Regional Overview
Land Watch Asia**





Abbreviations

ADB	Asian Development Bank	LANGO	Law on Associations and NGOs
ADHOC	Cambodian Human Rights and Development Association	LAP	Land Administration Project
AGRA	Alliance of Agrarian Reform Movement	LDT	land development tax
API	Aliansi Petani Indonesia	LGU	local government unit
ALRD	Association for Land Reform and Development	LICADHO	Cambodian League for the Promotion and Defense of Human Rights
AVARD	Association of Voluntary Agencies for Rural Development	LWA	Land Watch Asia
BAL	Basic Agrarian Law	MPR	People's Consultative Assembly
SCs	Scheduled Castes	MQM	Muttahida Qaumi Movement
CADCs	Certificate of Ancestral Domain Claims	NALDR	National Authority of Land Dispute Resolution
CADT	Certificate of Ancestral Domain Title	NAP	National Agriculture Policy
CAF	Corporate agriculture farming	NCIP	National Commission on Indigenous Peoples
CARL	Comprehensive Agrarian Reform Law	NCLL	National Campaign for Land and Livelihood
CARP	Comprehensive Agrarian Reform Program	NCS	National Conservation Strategy
CARPER	Comprehensive Agrarian Reform Program Extension with Reforms	NGO	non-governmental organization
CCA	climate change adaptation	NLRC	National Land Reforms Council
CHT	Chittagong Hill Tracts	NLRCC	National Land Rights Concern Group
CSO	civil society organization	NLRF	National Land Rights Forum
CSRC	Community Self-Reliance Centre	NLUA	National Land Use Act
DAR	Department of Agrarian Reform	NPC	National Planning Commission
DDC	district development committee	NPCP	National Peasants Coalition of Pakistan
DENR	Department of Environment and Natural Resources	ODA	official development assistance
DLRO	District Land Reform Office	PML-N	Pakistani Muslim League–Nawaz Government Regulation
DRR	disaster risk reduction	PP	<i>(Peraturan Pemerintah)</i>
EBSATA	East Bengal State Acquisition and Tenancy Act	PPP	Pakistan Peoples Party
ELCs	Economic Land Concessions	RA	Republic Act
EPA	Enemy Property Act	REDD	Reducing Emissions from Deforestation and Forest Degradation
FLA	fishpond lease agreement	RPPK	Revitalization of Agriculture, Fisheries and Forestry Policies
FPIC	free, prior and informed consent		<i>(Revitalisasi Pertanian Perikanan Kehutanan)</i>
ICCs	indigenous cultural communities	SEZs	special economic zones
IDPs	internally displaced persons	SLCs	Social Land Concessions
IFI	international financial institution	STN	Serikat Tani Nasional
IGO	intergovernmental organization	STs	Scheduled Tribes
IP	indigenous people	TNC	transnational corporations
IPRA	Indigenous Peoples Rights Act	UDHA	Urban Development and Housing Act
ISF	integrated social forestry	UUPA	Basic Agrarian Law
LAND	Land and Agrarian Network for Development		<i>(Undang-Undang Pokok Agraria)</i>
		UUPBH	Law No. 2 on Sharecrop Agreement
			<i>(Undang-Undang Pokok Bagi Hasil)</i>

VANI	Voluntary Action Network of India
VDC	village development committee
VPA	Vested Property Act
WALHI	<i>Wahana Lingkungan Hidup Indonesia</i>
YLBHI	<i>Yayasan Lembaga Bantuan Hukum Indonesia</i>



Glossary

<i>Adivasis</i>	Indigenous peoples
<i>Bhoodan</i>	“Land gift”
<i>Char</i>	Accreted land; alluvial land or land deposits from the river silt on the riverbed created by flood or sedimentation
<i>Charuwa</i>	Cattleherder
<i>Haruwa</i>	Plowman (a kind of bonded system mostly practiced in Terai)
<i>Daibhag</i>	Book of law followed by Hindus
<i>Dalits</i>	Scheduled Caste
<i>Haliya</i>	Agricultural laborer
<i>Hari</i>	Sharecropper
<i>Jagir</i>	Arable lands assigned to government employees and functionaries in lieu of their emoluments
<i>Khas</i>	Government-owned land
<i>Muqarraridars</i>	Tenant
<i>Mushakar</i>	A caste under the Dalit group who are discriminated and humiliated
<i>Shari ‘a law</i>	Moral code and religious law of Islam
<i>Tanazul</i>	Islamic practice whereby women renounce their inheritance rights
<i>Terai</i>	The plain land of the southern part of Nepal
<i>Thesavalamai</i>	The traditional law of the Malabar or Sri Lankan Tamil inhabitants
<i>Zamindari</i>	A system of land management with <i>zamindars</i> (landlords) as intermediaries between the state and the tenants (tillers)
<i>Zamindar</i>	Landlord



A Regional Overview of Access to Land¹

This article aims to provide a regional synthesis of the Land Watch Asia country studies from Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines and Sri Lanka, which were originally written as strategy papers for the campaign. They allow readers to understand the context for access to land, and the challenges and opportunities for land rights advocacy in the region. It begins by providing an overview of the situation of rural poverty and landlessness in the eight countries, and proceeds with a discussion of policy and legal initiatives for land reform and access to land, and the issues and challenges each country has to face in the struggle for land rights. A section summarizes the various actors that either facilitate or impede access to land. It outlines the recommendations to give agrarian and land reforms the necessary push.

This is an updated article, based on the revisions from the country papers themselves and supplemented by material from other sources. It is also expanded to include two new country papers from Pakistan and Sri Lanka.

A Sketch of Rural Poverty AND Agrarian Issues in Eight Asian Countries

Asia is home to 75% of the world's farming households, and about 80% of these are small-scale farmers and producers. An estimated 87% of the world's 500 million small farms—less than 2 hectares (ha) in size—are found in Asia and the Pacific.² Even with figures that vary from country to country, the general trend indicates that most of these rural poor do not have their own land or have too little of it to be able to eke out a decent living. The poorest of the poor have practically no land, while those who have more are only slightly better off. In terms of sub-groups, those who bear the brunt of poverty the most are the landless, marginal farmers and tenants, *adivasis* or indigenous peoples, minority castes and internally

displaced persons. Rural women and female-headed households are particularly prone to acute poverty.

Patterns of uneven development and inequality run across all countries. The overall land ownership patterns are heavily skewed: a small fraction of landowners own vast amounts of land, in contrast with the preponderance of small/marginal landowners and landless people. Large landholdings have decreased, but this has been offset by growth in the number of marginal holdings, as is the case in Bangladesh and India. The average size of landholdings in countries is generally shrinking. In the Philippines, it has fallen from 2.2 ha in 1991 to 2 ha in 2002.³ Likewise, in Indonesia, from 0.83 ha in 1993, the average landholding of marginal farmers decreased to 0.5 ha in 2003.⁴ The increase in landholdings can be partly due to population growth and reliance on agriculture for livelihoods. More than two-thirds of peasants in Nepal own less than a hectare of land, while in India a little less than half of the population owns less than 0.2 ha of land. The number of landless or near landless persons is also growing in the region.

That rural poverty persists in many Asian countries is troubling, especially amidst increasing wealth. Poverty and landlessness are inextricably connected, especially in rural areas where land strongly remains a source of wealth and power. Genuine land reform offers the best chance for the poor to break away from the shackles of hunger and poverty.⁵ It has been shown that small farmholders are more productive, since they will invest more in land that is theirs. Another compelling reason to support land reform is that it promotes biodiversity conservation.⁶

The summary in Table 1 provides an introduction to the state of rural poverty, land ownership distribution patterns, and landlessness in the eight countries that are part of the Land Watch Asia campaign: Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines, and Sri Lanka.

Table 1. Rural Poverty and Patterns of Land Ownership Distribution in Eight Asian Countries

Rural poverty and land ownership distribution patterns	
Bangladesh	<ul style="list-style-type: none"> • In 1960, 10% of rural households owned 37% of the country's largest parcels of land (>3 ha). In 1996, the percentage of owners of large landholdings had dwindled to 2.1%, owning 17.3% of all agricultural land. However, the percentage of landless households (owning less than 0.19 ha) rose from 19% in 1960 to 56% in 1996.ⁱ • 13% of households own more than half (58%) of the country's farmland, whereas majority of households (70%) are landless and marginal farmers owning 15% of total agricultural land. • Households own an average of 0.3 ha. • Around 57.1% and 70.6% of households living below the lower and higher poverty lines respectively are absolutely landless. In contrast, 4.1% and 8.1% of households living below the lower and higher poverty lines respectively owned more than 3 ha. • In 2008, the Bangladesh Agriculture Census reported a total of 8 million sharecroppers. Sharecropping is observed to be rising. According to one estimate, there were some 12.1 million sharecroppers in 2009.
Cambodia	<ul style="list-style-type: none"> • In 2004, 91% of the poor lived in rural areas. • 40% of households whose heads are engaged in agriculture are poor. • Landlessness has been rising since 1997. 21% of rural people are landless (2008). • Farming households own an average of 1.5 ha of land. • In 2004, 26% of households in rural Cambodia owned less than half a hectare. Another survey claims that 45% of rural households owned than 1 ha (2008). • The rate of landlessness among female-headed households is 21.2%. • The top 5% of landowners are gaining more control of private lands at a rate of 2% per year. In 1999, they held close to 60% of all privately held land. By 2003, their share had risen to 70%. • 89% of the poorest quintile in Cambodia owns or operates agricultural lands. • In the period 2004–2007, the access of the richest quintile to agricultural lands dropped from 48% to 39%. The poorest quintile, on the other hand, experienced a 6–percentage point increase in access to land.ⁱⁱ • 8% of lands are operated through tenancy, sharecropping, or other means.ⁱⁱⁱ • Only 20% of landowners hold secure titles to their land. • Between 1991 and 2004, there have been 1,551 land disputes covering over 380,000 ha and more than 160,000 farming families. As of 2006, two-thirds of these cases remain unsolved.
India	<ul style="list-style-type: none"> • In 1971–1972, large and medium-size holdings were owned by the top 10% of landowners and covered 54% of the total land area. By 2005–2006, the proportion of owners of large and medium-size holdings had declined to 5.78%, and their combined area had been reduced to 35% of all land. • The proportion of marginal holdings has increased in all states: from 63% in 1971–1972 to 64.77% more than three decades later.

ⁱ Landless households have 0–59 decimals. A decimal is approximately 1/100 acre or 40.46 square meters.

ⁱⁱ World Bank. Cambodia: *Halving Poverty by 2015? Poverty Assessment 2006* (2006), as cited in STAR Kampuchea, *Land Monitoring Report: Cambodia*.

ⁱⁱⁱ Ibid.



Table 1. (con't.)

Rural poverty and land ownership distribution patterns	
India	<ul style="list-style-type: none"> • The number of marginal and small landholdings represents 83.29% of the total in India. They make up an area of 41.14% of total agricultural land. • 43% of the population is still absolutely and near landless, owning less than 0.2 ha. • An estimated 87% of landholders among Scheduled Castes (SCs) and 65% of landholders among Scheduled Tribes (STs) in the country are classified as small and marginal farmers. Some 64% of SCs and 36% of STs are primarily agricultural workers. • About 47.5% of households possess land below 0.5 ha.^{iv}
Indonesia	<ul style="list-style-type: none"> • In 1993, about 30% of all farming households were landless. Another 34% of 10.8 million farming households owned less than a hectare of land. By 2003, this number had increased to 13.7 million, or an increase of 2.6% a year. In 1993, over half (52.7%) of the country's farming households were considered poor. By 2003, the proportion was 56.5%. • The number of families that make their living from agricultural activities increased from 20.8 million in 1993 to 25.4 million in 2003, or an increase of 2.2% a year. • Of the 25.4 million farming families recorded in 2003, 54.4% lived in Java, and the rest (45.6%) in outer Java. Poverty among Javanese farming families rose from 69.8% to 74.9% during the period 1993–2003. In outer Java, the number of poor farming families increased from 30.6% to 33.9% during the same period, representing an increase of 3.3% a year.
Nepal	<ul style="list-style-type: none"> • Out of a total of 4.2 million households, 1.3 million households or about 30% of the population are landless. • In rural areas, almost 29% of households, or over 5.5 million rural-based Nepalis do not own any farmland. • 1.4% of landowners own 14% of arable land. • 47% of landowning households own 15% of total agricultural land. The top 5% of landholders own more than 37% of the land.^v • The average landholding size is 0.6 ha (2009).^{vi} • Less than 1% of landowners hold more than 5 ha. • Only 8% of landholders are female, though this proportion is gradually improving. • Marginalized groups include freed bonded laborers (about 26,000 families), landless peasants, squatter settlers, indigenous peoples, <i>Haliya</i> (300,000 persons), <i>Haruwa/Charuwa</i>, <i>Dalit</i>, <i>Badi/Badini</i> (4,442 persons), indigenous and minority groups, <i>Mushakar</i>, and internally displaced people. • Some 287,100 families do not have enough land on which to build a house—these are considered the agricultural landless (2006).^{vii} • Landlessness is highest in the Terai districts compared to the hilly ones.

^{iv} Association of Voluntary Agencies for Rural Development (2012). *Country land reforms monitoring report*. Report submitted to ANGOC.

^v Community Self-Reliance Centre. (2012). *Land reform monitoring indicators, Nepal*. Kathmandu: Author.

^{vi} Central Bureau of Statistics (CBS), 2009, as cited in CSRC, *Land reform monitoring indicators, Nepal* (2012).

^{vii} Central Bureau of Statistics (2009), as cited in CSRC, *Land reform monitoring indicators, Nepal* (2012).



Table 1. (con't.)

Rural poverty and land ownership distribution patterns	
Pakistan	<ul style="list-style-type: none"> • An estimated 30% of the population is considered “income-poor”. • About half of the workforce is engaged in agriculture. • Majority of the poor lives in rural areas. • 10.36% of the rural population is landless; 32.67% owns land under 1 ha; whereas 0.03% owns 5 or more ha. • Land distribution remains highly skewed in Pakistan.
Philippines	<ul style="list-style-type: none"> • The Philippine agrarian structure is made up of small peasant farms and large plantations. • Around 50% of 88.7 million Filipinos live in rural areas.^{viii} • 60% of Filipinos derive their livelihood from forestry or agriculture. • Over 31 million poor Filipinos are found in rural areas. Poverty incidence remains highest among farming and fishing families. Within agriculture, farm workers in sugarcane, small farmers in coconut, rice and corn, fishermen and forester households are among the poorest, accounting for 70% of the country’s subsistence households. • About 1 million ha of farmlands remain undistributed to farmers. More than 650,000 farmers are deprived of the chance to benefit from agrarian reform. • Only 55% of the targeted area of 7.7 million ha has been awarded to indigenous communities as ancestral domains. • Community-managed forests only cover 22% of total forest cover. • Barely half of coastal towns have effectively delineated municipal waters for small fishers. • Almost 85% of fishers are threatened by eviction.
Sri Lanka	<ul style="list-style-type: none"> • An estimated 85% of the land in Sri Lanka, comes under the ultimate ownership of the state, leaving only about 15% for private ownership • One in every three Sri Lankan families lives on land alienated by the government under long-term leases or other forms of tenure.

^{viii} National Statistics Office (2007). *Census of the Philippine Population*.



Laws AND Policies FOR Land Rights

In all eight countries, laws have been passed, and policies formulated, in regard to reforming land ownership and agrarian structures. Such reform initiatives can be grouped into two “generations” of reforms: the first, which go back to the 1950s; and the second, which started in the 1990s.

“FIRST GENERATION” REFORMS

One of the most common “first generation” reforms was the establishment of ceilings for landholdings. Between 1950 and 1984, Bangladesh vacillated about the maximum size of landholdings that families could legally possess, raising it to 50 ha, at its highest, and eventually lowering it to 8 ha. Nevertheless, the government failed to recover “surplus” land, estimated at 1 million ha, because of lack of political will. Similarly, India’s states individually imposed landholding ceilings between 1955 and 1985, with mixed success. About a million hectares of “surplus” land was recovered by the government in 1970, half of which reverted to the states, while the remaining half was distributed to the landless. However, between 1972 and 1985, and despite the lowering of the ceiling, the size of the “surplus” land recovered by the government had increased by just 10% over the 1970 figure.

Pakistan has had three waves of land reform efforts, which progressively lowered land ceilings. It began with the 1959 Martial Law Regulation 64 that sought to “boost agricultural output, promote social justice, and ensure security of tenure”. The Land Reforms Regulation of 1972 allowed lands to be confiscated from landowners without compensation and given to beneficiaries for free. Meanwhile, the Land Reform Act of 1977, meanwhile, was an attempt to go further in tackling land tenure insecurity and land inequality; redressing gaps in prior legislation; and implementing tenancy, land ceiling and land distribution reforms. Sri Lanka was an early starter, with the Land Development Ordinance of 1935 serving as an instrument for lands to be provided to the landless. Moreover, its Paddy Lands Act of 1957 began to

introduce tenurial reform, while the land reform laws of 1972 and 1975 established land ceilings resulting in more than 1 million ha of private land coming under government ownership.

A second type of reform was the abolition of, or the efforts to eliminate, the practice of absentee land ownership. The 1950 law passed by the Indian state of Uttar Pradesh abolishing the *zamindari*, or absentee landlord system, was one of the first laws of this kind. Bangladesh sought to put an end to absentee land ownership by prohibiting the subletting of land. Indonesia proscribed the practice because it resulted in the exploitation of tenants, usury, and unjust sharecropping arrangements.

But perhaps the most important type of reforms in this group had to do with transforming the relationship between landlord and tenant, and in some cases, the abolition of tenancy. Nepal’s six types of tenurial arrangements, which date back to 1946 and persisted well into the 1970s, are infamous for their exploitative nature, as exemplified by such practices as bonded labor, arbitrary eviction of tenants, and collection of unreasonably high land taxes and rents. The Nepali government sought to improve the lot of tenants, through the Land Reform Act of 1964, by abolishing dual ownership of land or rented tenure arrangements, and by fixing the rent on agricultural land. In 1960, Indonesia passed the Basic Agrarian Law (BAL) to protect sharecroppers from exploitation by landowners, particularly by requiring that sharecropping agreements be put in writing and signed by the parties before the village head, and have a fixed duration, thus precluding arbitrary changes imposed by the landowner. Bangladesh made provisions to restore the rights of tenants to lands that are rendered temporarily non-existent by submergence in water during seasonal floods. The Philippine Constitution unequivocally promotes the redistribution of lands to their actual tillers, based on the principle that property ownership and use should further the state’s program of redistributing wealth.

“SECOND GENERATION” REFORMS

Cambodia is a late reformer. It instituted a private property rights regime only in 1989, pursuant to an amendment to its Constitution. Its Land Law of 2001

provides for the grant of private property rights, specifically through the awarding of Social Land Concessions (SLCs) and Economic Land Concessions (ELCs). The government has also formulated laws promoting community management of forest resources, laws against unlawful eviction and expropriation of land by the state, and laws providing for just compensation of displaced persons, but these have yet to come into effect.

Bangladesh's "second generation" reforms centered on resettling landless families on state land, including newly resurfaced lands (or lands that were formerly submerged in floodwaters), and the distribution of land titles in certain cases.

In Indonesia, the People's Consultative Assembly (MPR) issued a decree in 2001 mandating specific government entities to correct the errors in the implementation of agrarian reform under the 1960 Basic Agrarian Law. Notwithstanding the good intentions of this law, the government's active promotion of mining, extractive forestry activities, and the expansion of plantations is expected to negate whatever gains may be had as a result of the 2001 MPR decree.

India's Eleventh Five-Year Plan (2007–2012) Approach Paper incorporates a land reform component. Specifically, the Plan recommends: (1) making land distribution more equitable and improving land tenure security; (2) providing support services to women farmers and issuing joint titles to husband and wife, to enable women to gain access to credit; (3) restricting the diversion of prime agricultural land for non-farm purposes; (4) legalizing tenancy to allow tenants to apply for credit from formal sources and to provide them with enough incentive to develop the land; and (5) facilitating the lease of cultivable land, whose owners reside in urban areas, so that the land would not lie fallow for too long.

Nepal's Interim Constitution of 2007 is committed to the pursuit of "scientific land reform" that entails the abolition of "capitalistic land ownership practices". The drafting of Nepal's new Constitution, which would serve as the cornerstone of the country, has reached an impasse as its Constituent Assembly has failed to meet

its deadline. The new Constitution would also represent a significant opportunity for the fledgling republic to put an end to feudalism and power on more decisively towards land reforms, while it has the momentum to effect change. As yet, land reform commissions in 2009 and 2010 provided recommendations, but these have not been translated into action.

A major development in Pakistan was the Punjab Assembly's passage of the Punjab Conferment of Proprietary Rights on Occupancy Tenants and Muqarraridars in December 2011. This bill grants proprietary rights to tenants "in possession of their land and cultivating it without paying the landlord rent for 20 years before the promulgation of the Punjab Tenancy Act, 1887." The law will come into force when the Punjab governor has signed it, with around 200,000 tenants standing to gain some 0.4 million acres of land.

The Philippines has produced some of the most progressive reform legislation. In 1988, it passed the Comprehensive Agrarian Reform Law, which is broad in scope and guarantees equal land ownership rights to men and women. Funding for the Comprehensive Agrarian Reform Program (CARP) expired in 2008, and CARP Extension with Reforms (CARPER) was enacted by the Philippine Congress in 2009, thereby extending the land acquisition and distribution component of the program, introducing major changes and infusing additional funding for its implementation until 2014.

In Sri Lanka, the 13th Amendment to the Constitution in 1987 devolved powers to the provincial councils, which included land, irrigation and agriculture. It also addresses land issues in the context of ethnic reconciliation, which was significant since by 1985, according to the Land Commission, there were none less than 39 major pieces of legislation on land management. In the last two decades, the number of laws has only grown.

PENDING LEGISLATION

CSOs are lobbying for the passage of several bills in Congress or in Parliament deemed critical to achieve objectives and protect previous gains on land tenure security. Some of the urgent legislation has been a long



time coming. For instance, India's Lok Sabha (Parliament) is expected to enact a new land acquisition act. This law would inevitably replace the antiquated 1894 Land Acquisition Act, which has facilitated land grabbing and sought "public purpose" at the expense of the poor: without proper compensation, and rehabilitation and resettlement.

The formulation of national land policies (including land use) is being pursued in a number of countries. India's Committee on State Agrarian Relations and the Unfinished Task of Land Reforms submitted a draft national land reform policy in 2009, which is yet to be heeded by the National Land Reforms Council. Similarly, in Sri Lanka, a National Land Coalition should be established to put in place a national land policy to guide the country. Attempts on the part of agencies and ministries to formulate such a policy have only met with opposition as regards their constitutionality.

A land use policy for Bangladesh is also being reviewed in Parliament.⁷ Discussions are also underway for a land law for the country's indigenous peoples, the *adivasis*. As well, a national land use act has sat in the Philippine Congress for six sessions. But CSO advocates are hoping that the next session will yield a law to harmonize all conflicting land-related laws in the Philippines and determine priorities for land use.

DISCRIMINATORY LAWS and PRACTICES

Women

Women's right to possess and inherit land is guaranteed by law in a number of Asian countries, but such laws offer no protection to women against sexual discrimination rooted in tradition and religion. For example, Shari 'a law grants Muslim women limited rights to inherit property. In practice, however, the patriarchal nature of Muslim society prevents women from claiming this limited entitlement. A woman, being a "good sister", is expected to surrender her claim to paternal property to her brother/s. India's Eighth Five-Year Plan (1992–1997) stipulated that to improve the status of women, inheritance laws should be changed for women to receive an equal share of parental property, whether inherited or self-acquired. Unfortunately, there are no

government directives to ensure this is enforced. Moreover, while the subject of women and land is cited in subsequent Five-Year Plans, women's rights to land still receive little attention.

Aside from inheritance laws, a number of policies in land distribution programs also reflect biases against women.⁸ (See next page, "Women's Access to Land in Asia".)

Indigenous Peoples

Asia has 70% of 370 million indigenous people. Customary land rights of indigenous peoples are customarily ignored, as in the case of Bangladesh's *adivasis*, who are prey to continual eviction from their land in the Chittagong Hill Tracts. As yet, indigenous peoples are among the poorest in society, untouched by agrarian reforms. Too often, national economic development comes at their expense. These are divested of their landholdings or denied access to natural resources. Sometimes, programs that are, on their face, well-intentioned, such as the setting up of conservation parks and reserves, have the same effect of keeping not only indigenous peoples, but also other forest and upland communities, out of their traditional source of livelihood.

Nonetheless, there have been legal and policy initiatives to uphold indigenous peoples' rights. The Philippines passed law the Indigenous Peoples Rights Act of 1997 (IPRA), which marked a watershed for the recognition, promotion and protection of the rights of indigenous peoples, including their right to ancestral domain and lands, self-governance, and cultural integrity.

India's Constitution requires its states to ensure the total prohibition of immovable property to any person other than a tribal group. Its Forest Rights Act of 2006 seeks to recognize and strengthen the land rights of forest-dwelling communities, including Scheduled Tribes and traditional forest dwellers. There are, however, several aspects of the law that leave room for doubt as to how effective it would be in rectifying what the Indian government has conceded to be "historical injustices" to the forest-dwelling STs and other traditional forest dwellers.



Table 2 is a compilation of laws, policies and programs introduced to improve the poor's access to land and tenurial security, as well as essential principles as enshrined in national constitutions. They are by no means comprehensive; but they provide an overview of the legal and policy framework defining ownership, control and access to land in the respective countries.

Women's Access to Land in Asia

In the Asian region, women's access to land is limited; ownership of land even more so. Women continue to suffer from sexual discrimination despite the presence of laws and policies promoting women's rights. Yet their role in agriculture is significant. Amidst the feminization of agriculture that is sweeping some parts of the Asian region, notably South Asia, pushing forward women's rights to land is an urgent agenda.

Women may own land merely to evade taxes or circumventing land ceilings, as is the case in Nepal and Pakistan. These women are wives and relatives of rich landowners from the middle and upper classes, and are not actual farmers. On the other hand, women farmers have no land to call their own. In Nepal, women can inherit, purchase and lease land, but they actually only own 8% of registered landholdings, mostly in urban areas.

In Cambodia, whose Land Law stipulates that land titles be under both husband and wife, 70% of titles are, with women's property comprising 20% of registered land. Sri Lankan women enjoy the same inheritance rights as their male counterparts. Filipino women

can own land, but biases still prevail, especially in rural areas. Men are still recognized as the primary property owners, and they enjoy better access to credit. Women in Pakistan can legally own land under statutory, religious and customary law, but this is mainly an urban phenomenon, with land ownership among rural women a rare occurrence.

In terms of land distribution policies, in Bangladesh, the government's *Khas* Land Management and Distribution Policy allows for joint ownership of *khas* land of husband and wife. In the Philippines, women beneficiaries are guaranteed equal rights to land ownership, as well as equal shares of the produce. In India, land reform laws have not addressed the gender imbalances in land ownership. According to the Land Ceiling Act, a family comprises husband, wife and three minor children; adult sons are separate units, while unmarried adult daughters are left out.

In the event that women may have land in their names, ownership is merely nominal. For instance, despite legal provisions in Cambodia requiring land sales to be approved by both spouses, husbands still sell jointly-owned property

without their wives' knowledge or consent.

In some countries in South Asia, inheritance laws are guided by religious personal law or customary law, most of which are discriminatory against women. For example, Sharia law grants Muslim women limited rights to inherit property: generally half that of a male in a similar position.

Hindu women in Bangladesh, as per *Daibhag*, the book of law followed by Hindus, generally do not have inheritance rights. An unmarried Hindu woman can only benefit from the land if the males in her family take care of her; married, only through her husband. Whereas in India, through the Hindu Succession (Amendment) Act, 2005, Hindu women, have equal land rights.

In reality, however, women have yet to receive equal rights to land. For example, in Bangladesh and Pakistan, the Islamic practice of *tanazul* (renouncing inheritance rights) prevents women from claiming their limited entitlement. Women are expected to be "good sisters" and surrender their claim to property to their brother/s. Enforcement of the Hindu Succession Act remains weak. ■



Table 2. Legal and Policy Environment on Access to Land in 8 Countries

Bangladesh	
East Bengal State Acquisition and Tenancy Act (EBSATA) of 1950	<ul style="list-style-type: none"> • Aims to make peasants direct tenants of the government, with rights to transfer, inherit and cultivate their land as they see fit • Prohibits the subletting of land with the aim of eliminating rent-seeking behavior and absentee landownership • The 1994 amendment mandated that in the case of landholdings lost to erosion, the right, title and interest of the tenant or his/her successor in interest are retained during the period of loss through erosion, but not exceeding 30 years.
Land Reform Policy of 1972	<ul style="list-style-type: none"> • Gives government the mandate to acquire surplus land and to distribute it to landless peasants • Authorizes the government to acquire flooded and accreted land and to treat these as <i>khas</i> land • Exempted landowners holding less than 3.33 ha from paying land tax
Land Reform Ordinance of 1984	<ul style="list-style-type: none"> • Reduced the ceiling for landholdings from 13.3 ha to 8 ha • Prohibits the purchase or transfer of land in the name of another person to conceal identity of the true landowner • Fixes the minimum wage of agricultural laborers at the equivalent value of 3 kilograms of rice • Prohibits the eviction of peasants from their <i>paternal</i> homestead • Instituted a three-way sharing of farm produce: $\frac{1}{3}$ to the landowner; $\frac{1}{3}$ to the sharecropper; and the remaining third to be divided proportionately between the landowner and the sharecropper on the basis of expenses incurred by each one
Khas Land Management and Distribution Policy	<ul style="list-style-type: none"> • Grants joint ownership of <i>khas</i> land to husband and wife
Vested Property Restoration Act of 2001	<ul style="list-style-type: none"> • Abolishes the Vested Property Act (VPA)—formerly the Enemy Property Act (EPA)—that dispossessed Hindus of their ancestral land during the war between Pakistan (of which Bangladesh used to be part) and India in 1965. Even after Bangladesh’s independence from Pakistan in 1971, the EPA was retained and renamed as VPA, and resulted in the confiscation of some 800,000 ha of Hindu property, reportedly victimizing around 0.75 million Hindu households.
Cambodia	
Cambodian Constitution (1993)	<ul style="list-style-type: none"> • Provides that “all persons, individually or collectively, shall have the right to ownership. Legal private ownership shall be protected by Law. The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law, and shall require fair and just compensation in advance.”
Land Law, 2001	<ul style="list-style-type: none"> • Outlines concepts of land classification including state public land, state private land, private and collectively owned land. • Guarantees the inalienability of land, as recognized by the Constitution

Table 2. (con't.)

Cambodia	
Land Law, 2001	<ul style="list-style-type: none"> • Creates a status of registerable ownership of land, which specifically puts women on an equal footing with men • Establishes the legal framework for a collective ownership arrangement specifically designed for the protection of indigenous land and traditional ways of life • Provides for a land distribution policy to benefit the rural poor, specifically through the grant of Social Land Concessions (SLCs) Provides for the establishment of land dispute resolution mechanisms
Forest Law, 2002	<ul style="list-style-type: none"> • Provides the framework for forest classification • Provides for the creation and management of community forests, such that communities are granted an area within the Permanent Forest Reserve to manage and derive benefit from • Guarantees the entry rights of local communities into forest concessions • Prohibits logging of certain trees valuable to local communities as well as trees and areas of cultural or religious significance, such as spirit forests • Mandates the sustainable logging of natural and plantation forests
Sub-Decree on Economic Land Concessions, 2005	<ul style="list-style-type: none"> • Outlines the scope and criteria for awards of economic land concessions, establishing a ceiling of 10,000 ha • Requires the concessionaire to conduct prior public consultation with the local community and comply with safety measures
Sub-Decree on State Land Management, 2005	<ul style="list-style-type: none"> • Gives the principles and mechanisms for the identification, registration, and classification of state land
Sub-Decree on Social Land Concessions, 2003	<ul style="list-style-type: none"> • Provides the mechanism for transferring private or state lands to the landless poor for residential and/or family farming purposes to meet their basic needs
Sub-Decree on Community Forestry, 2003	<ul style="list-style-type: none"> • Establishes the procedures by which forest-dependent communities could have temporary control of forest resources
Sub-Decree on Land and Property Acquisition	<ul style="list-style-type: none"> • Outlines the legal procedure for state acquisition of land for development projects • Includes information on procedures for environmental and social impact assessments and mechanisms for compensating displaced persons
India	
Indian Constitution	<ul style="list-style-type: none"> • Basic tenets of the Constitution are equity and social justice • Provides that ownership and control of the material resources of the community should be distributed in such way that the common good is best served and that the economic system does not result in the concentration of wealth and the means of production to the common detriment • Stipulates that “states [must] direct policies to ensure that all citizens have the right to adequate means of livelihood and that all community resources be distributed so as to serve the common good.”



Table 2. (con't.)

India	
Indian Constitution	<ul style="list-style-type: none"> • Constitutional framers gave each state, rather than the central government, exclusive power to make laws with respect to land, including land reform laws
State Land Reform Laws	<ul style="list-style-type: none"> • Every state has enacted its own land reform laws on subjects such as: <ul style="list-style-type: none"> ➔ abolition of the <i>Zamindari</i> system to eliminate intermediaries; ➔ ceiling on landholdings to address uneven land distribution and redistribute ceiling-surplus land among the landless; ➔ tenancy reforms to ensure tenure security, regularization of rent/revenue, and ownership for tenants; ➔ regulation of sharecropping to safeguard the interest of sharecroppers; ➔ protection against alienation of land belonging weaker sections such as Scheduled Castes (SCs) and Scheduled Tribes (STs); ➔ consolidation of fragmented landholdings; ➔ provision of homestead to landless households; ➔ provision of government land to the landless on long-term lease including tree-lease; and ➔ minimum wages to agricultural laborers.
Forest Rights Act, 2006	<ul style="list-style-type: none"> • Recognizes and gives forest rights, including rights to occupy forestland, to Scheduled Tribes and traditional forest dwellers • Provides the framework for recording forest rights
Indonesia	
Decree of the People's Consultative Assembly (MPR) No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management, or TAP MPR No. IX/2001	<ul style="list-style-type: none"> • Seeks to correct errors of agrarian reform implementation (under the Basic Agrarian Law) • Mandates the government to: <ul style="list-style-type: none"> ➔ conduct a study of various laws and regulations related to agrarian matters in order to harmonize the policies of sectors ➔ implement a land reform program based on the "land to the tiller" principle ➔ conduct a land registration program through a comprehensive and systematic survey of the control, use, ownership and exploitation of the land ➔ resolve all agrarian disputes, and forestall future conflicts by strictly implementing the law ➔ strengthen the institution responsible for implementing agrarian reform ➔ seek out funding for agrarian reform implementation
Basic Agrarian Law of 1960 (UUPA) or Law No. 5 of 1960	<ul style="list-style-type: none"> • Devolves power to exercise state rights to control land to the province, regency, district and village levels. The same rights could be exercised by communities practicing customary law • Provides that the exercise of rights conferred by this law must serve the public interest

Table 2. (con't.)

Indonesia	
Basic Agrarian Law of 1960 (UUPA) or Law No. 5 of 1960	<ul style="list-style-type: none"> • Authorizes the State to grant ownership/property rights to Indonesian citizens; prohibits/limits foreign ownership of the country's land, and provides safeguards against foreign expropriation of the country's natural resources • Prohibits absentee land ownership in agricultural land, because of its tendency to promote exploitative practices, such as bonded labor, unpaid labor, usury and inequitable sharecropping • Sets the minimum size for landholdings to ensure that the land owner has enough land to provide for his/her family
Law No. 56 Prp/1960	<ul style="list-style-type: none"> • Creates different kinds of rights that may be awarded to persons, groups, or legal entities: Property Rights, Lease Rights, Right to Build, User Rights, Right to Rent, Right to Open the Land and to Collect Forest Products, and Water Use Rights • Sets the ceiling for landholdings of families and legal entities to prevent monopoly ownership of land. Land in excess of the ceiling must be turned over to the State upon compensation.
Government Regulation (PP) No. 224 of 1961	<ul style="list-style-type: none"> • Sets the criteria for land to be subject to land reform • Identifies land reform beneficiaries
Presidential Decision No. 30 of 1990	<ul style="list-style-type: none"> • Prohibits the conversion of irrigated agricultural lands to non-agricultural use
Law No. 2 of 1960 on Sharecrop Agreement (UUPBH)	<ul style="list-style-type: none"> • Seeks to protect sharecroppers from exploitation by landowners • Provides that the share of the tiller and the landowner would be decided by the regent, according to type of crop and land density. • Specifies a ceiling of 3 hectares for landholdings • Requires that sharecrop agreements between landowner and tiller be put in writing before the head of the village, and witnessed by one representative from each of the contracting parties.
Revitalization of Agriculture, Fisheries and Forestry Policies (RPPK)	<ul style="list-style-type: none"> • Aims to revive the agriculture, forestry and fisheries sectors, and thereby promote national economic recovery • Targeted the achievement of self-sufficiency by 2010
Nepal	
Land Reform Act, 1964	<ul style="list-style-type: none"> • Establishes a ceiling on the size of agricultural landholdings (16.4 ha in the Terai, 4.07 ha in the hilly regions, and 2.4 ha in Kathmandu valley) • Seeks to protect the rights of tenants by including their names in the owner's land title • Fixes the rent on agricultural land and reduced interest on rural loans • Allows tenants to apply for tenancy rights at the District Land Reform Office (DLRO) provided that they had tilled the land the previous year and could present proof of this fact, such as a grain payment receipt



Table 2. (con't.)

Nepal	
Land Reform Act, 1964	<ul style="list-style-type: none"> • Has been amended 6 times <ul style="list-style-type: none"> ➔ The Fourth Amendment (1996) provided that the land cultivated by the tenant be divided equally between landlord and tenant to ensure that tenants would become landowners themselves, and that a credit facility would be made available to the tenant who wished to buy the landlord's half. It sought to abolish dual ownership of land. ➔ The Fifth Amendment (2001) attempts to lower the land ceiling
Interim Constitution of 2007	<ul style="list-style-type: none"> • Committed to "pursue [a] policy of scientific land reform programs by gradually ending capitalistic land ownership practices." • Mandates the State to pursue a policy of providing adequate land and livelihood to freed bonded laborers
Pakistan	
Martial Law Regulation 64 (West Pakistan Land Reforms Regulation, 1959)	<ul style="list-style-type: none"> • Established land ceilings on individual landholdings: 500 acres (202.34 ha) of irrigated land and 1,000 acres (404.69 ha) of non-irrigated land • Abolished all <i>jagirs</i> (large lands given by the British Government to loyal persons for revenue collection)
Land Reforms Regulation, 1972	<ul style="list-style-type: none"> • Repealed Martial Law Regulation 64 and lowered the land ownership ceiling established by to 150 acres (60.70 ha) of irrigated land and 300 acres (121.41 ha) of non-irrigated land • Provided no compensation for owners' confiscated land and did not charge beneficiaries for land received • Required landlords to pay taxes, water charges, seed costs and half the costs of fertilizers and other inputs • Gave tenants rights of purchased, increased security of tenure and lower rent rates
Land Reforms Act, 1977	<ul style="list-style-type: none"> • Further reduced ceilings on private ownership of land to 100 acres (40.47 ha) for irrigated land and 200 acres (80.94 ha) for non-irrigated land • Imposed taxes on agricultural income, except for small farmers owning 10 ha or less
Pakistani Constitution	<ul style="list-style-type: none"> • Article 3 allows citizens equal rights to acquire, hold, own, and dispose of property; but provides the state with the right to intervene should these rights conflict with the public interest. • Article 24 allows the state to intervene in property rights to protect the ownership rights of the disadvantaged i.e., women and children. • Article 38 declares the state shall "secure the well-being of people... by preventing the concentration of wealth ... by ensuring equitable adjustment of rights between employers and employees, landlords and tenants."
Sindh Tenancy Act, 1950; Punjab Tenancy Act, 1887	<ul style="list-style-type: none"> • Recognize customary rights of farmers such as tenants' right to land occupancy; landlords' and tenants' rights for production; and succession to right of occupancy

Table 2. (con't.)

Pakistan	
Sindh Tenancy Act, 1950; Punjab Tenancy Act, 1887	<ul style="list-style-type: none"> • Outline duties of landlords and tenants as well as provisions concerning debt • Amendments are being proposed to the Sindh Tenancy Act to reform the age-old relationship between the <i>haris</i> and <i>zamindars</i>. Under the Sindh Tenancy Act, the <i>hari</i> is a partner or co-sharer in the produce with the <i>zamindar</i> and as agricultural laborer, is entitled to the same government safeguards provided for industrial labor.
Corporate Farming Ordinance, 2001	<ul style="list-style-type: none"> • Allows stock-listed corporations to lease land in Pakistan for a period of 99 years, broken into two periods of 50 and 49 years • Allows transnational corporations to take lease of unlimited land with a minimum size of 1,500 (roughly 607 ha), with promises of 100% equity, many tax incentives, and full repatriation of profits
Philippines	
1987 Constitution	<ul style="list-style-type: none"> • Lays down the principles that serve as the overall framework for the issue of access to land: protection of property (although property can be taken away for public use with due process and just compensation); promotion of social justice and human rights; promotion of rural development and agrarian reform; and promotion of the rights of indigenous communities to their ancestral lands
Comprehensive Agrarian Reform Law (CARL) of 1988 or Republic Act (RA) 6657	<ul style="list-style-type: none"> • Expands agrarian reform to all agricultural lands regardless of crop planted under the Comprehensive Agrarian Reform Program (CARP). It targeted to redistribute around 8.1 million ha of agricultural land and integrated social forestry areas (ISF) to 3.9 million landless tenant farmers and farm workers over an initial 10-year period. • Provides for different tenurial instruments based on land classification: tenurial security for forestry areas, and tenancy reforms and land redistribution for private and alienable lands. Land redistribution is to be complemented by the delivery of support services like extension, credit, infrastructure facilities and livelihood assistance. • Imposes a 5 ha retention limit for the landowner and provides three hectares for each heir actually tilling the land.
CARP Extension with Reforms (CARPER) (RA 9700)	<ul style="list-style-type: none"> • Extends the acquisition and distribution of all agricultural lands, infusing new funding for CARP implementation • Emphasizes that CARP's land acquisition and distribution component has to be completed by 2014 and that support services and agrarian justice will continue to be provided by the Department of Agrarian Reform • Creates a Joint Congressional Oversight Committee on Agrarian Reform to monitor CARP implementation • Outlines a clear policy on food security and prohibits the conversion of irrigated and irrigable agricultural lands for non-agricultural use
Indigenous Peoples Rights Act (IPRA) or RA 8371	<ul style="list-style-type: none"> • Recognizes, promotes and protects the rights of indigenous cultural communities/ indigenous peoples (ICCs/IPs). Serves as the basis for IP land rights, which are recognized through the issuance of a Certificate of Ancestral Domain Claim (CADC) or a Certificate of Ancestral Domain Title (CADT).



Table 2. (con't.)

Philippines	
Fisheries Code of 1998 or RA 8550	<ul style="list-style-type: none"> • Seeks to protect the rights of small fisherfolk over municipal waters and provides for the establishment of fisherfolk settlement areas • Emphasizes stewardship and protection
Urban Development and Housing Act (UDHA) of 1992 or RA 7279	<ul style="list-style-type: none"> • Lays down the groundwork for a comprehensive and continuing urban development and housing program by prioritizing the provision of decent shelter to the poorest of the poor • Provides the framework for the development and use of urban lands
Sri Lanka	
13th Amendment to the [Sri Lankan] Constitution	<ul style="list-style-type: none"> • Addresses land issues in the context of ethnic reconciliation • Through the 8th and 9th Schedules of the Amendment, granted devolved powers—to include land, irrigation, and agriculture—to the provincial councils
Land Development Ordinance of 1935	<ul style="list-style-type: none"> • Sought to “preserve the peasantry,” alleviate landlessness, and develop available state lands • Designed to address the historical injustices and impacts of the Crown Lands Encroachment Ordinance of 1840, and related colonial legislations that disenfranchised local populations
Crown Land Ordinance No. 8 of 1947	<ul style="list-style-type: none"> • Provided the terms for the grant and disposition of Crown lands, the management and control of such lands and the foreshore, and the regulation and use of water bodies • Provided for vesting land in naval, military and local authorities • Provided the legal basis for government to allocate land for non-farm activities in the Mahaweli development areas and to provide long-term leases of land to private enterprises
Land Reform Laws of 1972 and 1975	<ul style="list-style-type: none"> • Encompasses private estates and imposes land ceilings on private ownership, giving government access to land in excess of one million hectares • Limits the maximum land that could be owned privately to 50 acres (22 ha) and paddy land to 25 acres (10 ha)
Agrarian Development Act No. 46, 2000	<ul style="list-style-type: none"> • Sought the establishment of agricultural tribunals, farmer organizations, and agrarian development councils that promote the interest of the farming community

Issues AND Challenges

Although the case for agrarian reform is strong, it has earned little support. Notwithstanding two generations of reform initiatives, agrarian relations in the eight countries have changed little.

- Bangladesh tried, and repeatedly failed to impose a ceiling on land ownership and to redistribute *khas* (state-owned) lands and water bodies.
- Cambodia sought to end decades of state monopoly ownership of land by enacting the Land Law of 2001, but ended up creating a thriving land market that was quickly taken over by local elites.
- Nepal had tried, as early as the 1960s, to abolish unjust tenurial arrangements in the country, yet to this day, Nepal's tenant farmers continue to work under unconscionably exploitative conditions.
- India implemented various land ceiling laws starting in 1955, but made little headway: much of the “surplus” land reverted to the states, while the proportion that was redistributed did not go to their intended beneficiaries, the landless poor.
- Indonesia has abandoned its early attempts at agrarian reform and even its land administration program is rendered inutile by corruption in the land registration system and by political leaders that are not only indifferent but outrightly hostile to anything that smacks of agrarian reform.
- Land reform in Pakistan has lost its momentum, despite three efforts at land reform (1959, 1972, and 1977). The Land Reform Act of 1977 was the most recent yet antiquated effort and failed to address policy constraints to redistributive land reform. Now, the country is opening swathes of prime farmlands to foreign commercial investors.
- The Comprehensive Agrarian Reform Law (CARL) of the Philippines held out the promise of genuine agrarian reform when it was enacted in 1986. It received a new lease of life—but time is fast running out for redistribution, and landowner resistance is strong for private agricultural lands remaining to be redistributed.
- The “open economic policies” introduced by Sri Lanka in the 1970s led to the opening up for land markets.

Beyond ill-fitting national land policies or the lack of implementation of pro-poor land policies and programs, the broader socioeconomic and environmental context in which land rights are situated is changing. Access to land is influenced by a host of dynamic pressures—such as political space, migration, climate change, and urbanization.

SHRINKING POLITICAL SPACE

The political space for civil society is shrinking, as governments retaliate from criticisms by CSOs. This is manifested in several ways. Human rights defenders and activists are harassed and killed; CSOs are silenced by fear of government.

CSOs need an enabling environment to be able to do advocacy work on land. Without such a democratic space, advocacy work is significantly curtailed, and with that, the hope for advancing land rights. As it were, local CSOs in Cambodia have a well-developed advocacy agenda, yet continue to rely on international NGOs and donor agencies working in the country to pressure the government to address land issues. The country's draft law on associations and NGOs (LANGO) or the NGO law perfectly demonstrates government's antipathy towards civil society: if passed, the government would have the broad authority to make arbitrary decisions about which groups are allowed to operate in the country, and which cannot.⁹ When Bangladesh was under a caretaker government, possible reforms were limited. Nepal's stalled Constitution has also hindered the push for reforms.

NEOLIBERAL ECONOMIC POLICIES and PROGRAMS AGAINST LAND REFORMS

Governments have lost interest in enforcing redistributive land and resource policies. The politically sensitive task of land redistribution has been shelved in favor of resource-extractive and export-oriented activities, which are easier, instantly gratifying, and lucrative. National land policies are instead biased toward promoting agribusiness or extractive ventures and urbanization. Land and forests are valued for the profit they bring, rather than for the food security they ensure or the healthy environment they promote.



National governments, espousing neoliberal economics, set development agendas that promote land concessions, plantations, joint venture agreements, mining operations, and the establishment of special economic zones (SEZs). In other cases, the government itself forcibly takes land from their owners for “public purpose”. More often than not, such incidents of state expropriation of land are not motivated by the public interest, but rather are the inevitable result of government’s indiscriminate awarding of land concessions for logging, mining and plantations, among others.

For example, Indonesia, and the Philippines are putting more and more of their land under plantation crops; aggressively promoting large-scale mining operations; and stiffening their investment laws to entice foreign capital into the country and head off local opposition

to investment projects. Corporate farming, including of agrofuel crops, has become all the rage in India, Indonesia, Pakistan, and the Philippines, because of growing worldwide demand for agrofuels. Poor and landless farmers lose out in the competition for land brought about by such schemes. SEZs are mushrooming all over India, while the Cambodian government has been regularly granting land concessions to business interests.

As it were, the proportion of the poor and landless is high, and the demand for land is increasing. Most lands in the region are already used or occupied. Which lands should be distributed to the landless poor is the hanging question amidst such economic development agendas, which threaten to reverse the gains of land reform.

The Rush for Asia’s Farmland

The past few years have witnessed a surge in the number of agricultural investments in the region, marked by a scramble for agricultural land. One driver of this phenomenon is the food price crisis of 2008, characterized by spiraling prices of food and worsening hunger. For food-importing countries, the food crisis served as a gross reminder of agriculture’s prolonged neglect, and highlighted the need to protect domestic food security by acquiring agricultural lands for production.

Another driver is the rising demand for biofuels, owing in large part to the European Union’s policy of sourcing 10% of transport fuels from biofuels by 2012, never mind the policy’s ironic impact of causing massive deforestation and increasing carbon emissions.

Asia’s host countries are usually developing countries, where food insecurity levels are high and small

farmers are struggling: in the desire to provide a quick-fix to the problems of food insecurity and rural poverty, innumerable hectares of farmlands in the region are “up for grabs”. Investors are now coming from within the region—China, Japan, South Korea, and even Vietnam—and from the Gulf countries. These investments represent an influx of capital and technology transfers, and offer employment opportunities; hence, host governments receive these investments warmly. The foreign sources of these land acquisitions have helped them earn the labels “new colonialism” and “international land grabs”.

But several factors set the current wave of land investments apart from others. These investments are taking place at a rapid and unprecedented large scale, involving more than a million hectares of agricultural land across the region. In addition, these

new investments seek resources—land and water—as opposed to commodities and markets. These investors are increasingly engaged in actual production, rather than joint ventures and contract farming; agricultural products are for repatriation, not commercial export.

The new land investments are mostly government-led, rather than private-sector driven. As a matter of fact, host governments’ neoliberal policies often create an enabling environment for foreign companies and governments alike to acquire or lease land on a large scale. For example, the Indonesian government has pursued the expansion of plantation areas, providing private corporations with concessions to large tracts of state-owned land. Pakistan’s Corporate Agriculture Farming Policy allows for 100% repatriation of profits, the purchase or lease of land for up to

LAND GRABBING

A fairly recent trend is the rise in agricultural investments in the region, as manifested in large-scale leases or acquisitions of land—called “land grabbing”. Transnational companies are seeking large swathes of agricultural land for commercial production of food crops and biofuels, while foreign governments are exploring overseas farmlands to meet their own food security needs. Such investments are predominantly from within the region (China, Japan, South Korea, and Vietnam) and the Gulf countries. Cambodia, India and the Philippines, for instance, have entered into a growing number of bilateral agreements with China, giving the latter access to their natural resources. Pakistan is a hotbed of agricultural investments from Saudi Arabia and the United Arab Emirates, among other Gulf countries.

Host governments have welcomed and even encouraged such agricultural investments, since they promise to bring needed capital and technology. However, these investments have intensified competition for land, displacing communities, aggravating land conflicts, reversing gains from land reform programs, degrading natural resources, and threatening domestic food security. The complex issue raises concerns about who ultimately benefits from land investments, and government transparency and accountability (*see below, “The Rush for Asia’s Farmland”*).

POOR IMPLEMENTATION of EXISTING LAWS

Although the legal and institutional frameworks exist for land and agrarian reform, the reality across countries is that laws meant to enhance access to land are poorly implemented. This is in large part due to the lack of



99 years, and exemption from existing labor laws, among other enticing benefits. The Philippines has established the Philippine Agricultural Development and Commercial Corporation within its agricultural ministry, to scope out lands for investors.

Opposition to land grabbing stems from various reasons. Investments in agriculture are really investments in land, and land is a precious resource over which there are many competing claims. In many cases, governments tarry in land redistribution, but are quick on the draw to lease out farmland to TNCs and other governments. And in countries with land reform programs, foreign land deals threaten to reverse the gains of land reform. In the Philippines, for example, farmers are lured into leasing out their lands for long periods, spend all the money quickly, to eventually end up in debt

and forced to sell their lands. Re-concentration of land ownership also often occurs as a result of large-scale leases.

Land remains a major source of conflict in most of Asia’s countries that depend on agriculture; investments only increase—not decrease—the number of conflicts. Many rural communities have been displaced and evicted to make way for plantations, as is the bitter experience in Indonesia. Or small landowners are intimidated into leasing or selling their lands. Human rights violations are not uncommon where high-stake agricultural investments are concerned. Most always—land deals push through at the expense of the poor and marginalized. It is another issue that how land deals are transacted is often dubious and lacks transparency; public access to information is limited. The environmental impacts of these large-

scale land investments, which often entail mono-cropping—curtailing biodiversity—and the rampant use of chemical pesticides and fertilizers, are enormous.

Finally, the land grabbing phenomenon certainly provokes the question of whose food security these investments enhance, and in a broader sense, who actually benefits. As is often the case, poor rural communities stand to lose. Therefore, any consideration of large-scale land investments must strive to de-commodify land, and recognize it for what it is—inextricably tied to the lives and livelihoods of most of Asia’s rural poor. In this way, profits do not make the bottom line. ■

Source: Antonio Quizon. (2012). “The rush for Asia’s farmland: Its impact on land rights and security of the rural poor”. *Lok Niti: Journal of the Asian NGO Coalition*. Vol. 18/1, 2012.



political will, but also because of various competing pressures. The lack of governments' support for land reform is also reflected in inadequate (if any) budgets, which constrain implementation.

For example, according to the Land Watch Asia's initiatives to monitor land reform, most governments have shown dismal performances in land reform distribution. Only about 20% of Bangladesh's *khas* land has been distributed; whereas in the Philippines, the remaining balance for land distribution—some 1 million ha—comprises private agricultural lands, the very lands that are most difficult to overcome. Indonesian CSOs speak of the non-existence of agrarian reform, and the constant flouting of the 1960 Basic Agrarian Law by other succeeding laws.

OVERLAPPING POLICIES, CONFLICTING MANDATES of GOVERNMENT ENTITIES

Conflicts arising from competing land claims result from overlaps in scope between or among any number of laws or policies; varying interpretations of these laws; the lack of clear delineation of authority among government agencies that regulate land resource use; and laws or policies that favor certain sectors over others.

The Philippine government has tried to harmonize conflicting laws by convening dialogues and establishing joint agency mechanisms. To illustrate what the overlap in policy and agency mandates can result in: there have been cases where indigenous peoples have already filed claims for their certificate on ancestral lands, only for lowland farmers to later stake claims on the same piece of land. Sadly, the struggle of these two landless sectors over the same piece of land has sometimes ended up in violence, highlighting the urgency of the issue.

LAND MARKETS and LAND ADMINISTRATION vs. LAND REDISTRIBUTION

National land policies have shifted focus from land redistribution to the development of land markets. In aid of this policy bias, governments have launched their respective land administration programs. Donors have abetted this policy shift by choosing to fund programs that facilitate land administration and management, such as the computerization of land records and land registration.

Sri Lanka launched a Land Title Registration Programme in 2007 to provide secure titles to landowners. The Indian government has turned its attention to land

Climate Change and Natural Disasters: An Emerging Issue

A sign of the changing climate is the intensification of weather events, which the Asian region is experiencing. Rainfall patterns and temperatures are becoming more variable and extreme. Rains do not come as expected; or when they do, it is at extremely high levels. Farmers are noticing changes in water availability, water levels, and temperature, which can have adverse effects on cropping patterns and crop growth. Climate change can also trigger prolonged drought and desertification. Flashfloods ensuing from rain have damaged agricultural production and other assets,

destroying livelihoods in the blink of an eye.

Disasters happen not only because of a natural hazard (e.g., typhoon, landslides, earthquake, or volcanic eruption) has occurred per se, but because people's vulnerability exacerbates their risk to hazards. The poor and marginalized generally have higher levels of vulnerability to hazards, thus they tend to be disproportionately affected when a hazard occurs. Climate change and disasters also threaten land tenure, land use, and access to land. Disasters may **damage or even wipe out land records**, especially if the records

are manual. In Pakistan, people lost their property documents during the 2010 massive floods that inundated almost 70,000 square kilometers of farmland, destroying crops and livestock. The Sri Lankan government provided legal land documents following the 2004 Indian Ocean tsunami.

Climate change and disasters can lead to **loss of livelihoods**. Melting glaciers in Nepal's Himalayas and rising sea levels in archipelagic countries like the Philippines and Indonesia can cause flooding and affect irrigation in plains and coastal areas. As a coping mechanism for failed harvests, farmers

administration programs, sidetracking the agrarian reform effort. The Land Administration, Management, and Distribution Program was implemented in Cambodia, with the aim of strengthening land tenure security and promote land markets. Land reform in Indonesia has been nothing more than asset legalization and limited land redistribution.

Although land administration may facilitate land reform, it is not in itself the solution. In the same vein, asset legalization is not equal to land reform. Rather, needed are support services for land reform beneficiaries, and land to the landless.

At the same time, by commodifying land and promoting a “willing buyer, willing seller” approach, land markets fail to understand the social and cultural values that communities attach to their land. They do not replace redistributive land reform, and cannot operate effectively without a level playing field.

INFORMATION GAPS

At present, national datasets pertaining to land—land distribution, land tenure, and landlessness are patchy, dated, unavailable, or unreliable in several countries.

This becomes a challenge to monitoring and evaluating the impact of land reform advocacy as well as the impact of the reform programs themselves.¹⁰

CLIMATE CHANGE and NATURAL DISASTERS

Climate change and natural disasters have serious ramifications on land tenure in the region. Their impacts on agriculture—on soil quality, water availability, crop patterns, can deal especially heavy blows to smallholders. Land can also be lost due to inundation and coastal and soil erosion; or it can cease to be fertile, in the process displacing communities and requiring new land for resettlement. The boxed article below tackles a few key ideas on the nexus between climate change and land. Reactive ways of dealing with natural hazards and climate change will no longer work: it is imperative for communities to develop resilience in terms of climate change adaptation and disaster risk reduction.

LAND FRAGMENTATION and LAND RECONCENTRATION

Particularly in South Asia, in Bangladesh, India, and Nepal, land fragmentation is a concern. Parcels that are already small to begin with are sub-divided into



often have little recourse but to sell or lease their lands.

When the land can no longer support livelihoods like farming, when it is marginal and highly exposed to hazards, or when it has been affected by a disaster, what results is the **displacement** of communities, or waves of environmental refugees or migrants. Displacement requires the challenging task of **resettlement**. In the aftermath of disasters, governments try to provide land to affected families, but efforts are always inadequate.

Climate change and hazards demands new ways of approaching land rights. It

will continue to bring to bear on agriculture, influencing migration and affecting land use. Many CSO and government initiatives provide instructive lessons in dealing with climate change and hazards, from passing legislation to redistributing land for resettlement. In Bangladesh, a country that experiences seasonal flooding, legislation guarantees tenants’ land rights for *char* lands or lands lost due to erosion during flooding.

The best examples are those of communities enhancing their resilience by choosing to understand and live with risks. In view of this, climate change adaptation (CCA) and disaster risk

reduction (DRR) are critical for building resilience, but they must be implemented with meaningful community participation. More attention should be given to land use policies, given they determine judicious use of land, and can integrate sound CCA/DRR principles. Forests should also be protected; carbon sequestration in forests can be made through replanting. In trading carbon emission rights under the Reducing Emissions from Deforestation and Forest Degradation (REDD) initiative, communities are asked to exercise caution lest they encourage “selling” forests to polluting governments. ■



smaller parcels. In Nepal, for instance, plots of land, due to inheritance and housing, shrink to average parcel sizes of 0.24 ha (in 2001), and some landowners have disparate lands.

Meanwhile, land reconcentration is also taking place. The large-scale acquisitions of land lead to the concentration of landholdings: setbacks in enhancing access to land for the poor; and where agrarian reforms have been made, an utter reversal. This is the case in Cambodia and the Philippines.

Table 3. Issues in Access to Land in 8 Asian Countries

Bangladesh	
Access to and distribution of <i>khas</i> land	Agricultural <i>khas</i> (state-owned) land covers about 321,323 ha, 43.47% of which has reportedly been distributed to landless households. <i>Khas</i> lands are for landless peasants whose livelihoods derive from agriculture, but leakage has been as much as 17.2%. <i>Khas</i> recipients are supposed to pay government a minimal fee but in practice, have to pay exorbitant bribes even to low-ranking officials.
Access to and distribution of non-agricultural land	Influential and well-connected persons were able to claim ownership of non-agricultural land, usually based on forged documents, in the absence of guidelines for the management of non-agricultural lands. When the government in 1995 issued guidelines for the management and settlement of state land in urban areas, most of such lands had already been awarded to the rich and powerful.
Absentee landownership	About 13% of households own 58% of the country's land. Many of these do not engage in agriculture, but reside and make their living in urban areas. Such absentee land ownership encourages rent-seeking behavior.
Commercialization of agriculture and forestry	Because of shrimp farming's profitability over crop farming, various coastal lands, including rice farms and mangroves, have been converted into shrimp farms, leading to serious environmental problems like water quality decline and biodiversity loss. At the same time, rubber and fuel wood plantations have destroyed forests and displaced forest-dwelling communities, causing conflict between forest-dependent groups and the government's forestry department.
Displacement of indigenous peoples	The Chittagong Hill Tracts, which is home to many of Bangladesh's indigenous peoples, have been turned into a militarized zone. In 1997, a Peace Accord was signed between both groups, but conditions have not been fully met. The hill tribe population has dwindled from 75% in the 1950s to less than 40% today. Moreover, dams and hydropower projects have submerged about 40% of all cultivable land in the CHT under water, displacing over 85,000 people, while thousands of acres of cultivable land were distributed to settlers from the plains. Three-fourths of minority groups in the plains are landless; they are losing their access to land, because of widespread land grabbing.
Land conversion	Agricultural land has been considerably reduced due to forcible land acquisition for export processing zones, residential development, infrastructure development and other government projects. Much of the converted land is <i>khas</i> land, which the government ought to be distributing to landless peasants.
Cambodia	
Rising demand for land as an economic asset	Economic growth has spurred the privatization of public lands, mega-development projects, and the establishment of special economic zones (SEZs). Land is being grabbed for tourism purposes, allocation to the military, speculation and unregulated

Table 3. (con't.)

Cambodia	
Rising demand for land as an economic asset	granting of economic land concessions. The increasing demand for land has also led to skyrocketing land values.
Poor land governance	The Cadastral Commission set up in 2002 as a dispute resolution mechanism is plagued with bureaucracy and corruption, and has only been able to address small conflicts. Land registration has proceeded too slowly, and has tended to concentrate on non-disputed areas. Also, parallel and overlapping operations in the Cadastral Commission, the court, and the National Authority of Land Dispute Resolution (NALDR) have resulted in many legal ambiguities.
Poor implementation of the Land Law of 2001	According to NGOs in Cambodia, only 10%–20% of the Land Law has been enforced. In several cases, government itself has violated Land Law decrees, particularly regarding protection against eviction, fair compensation for eviction, and ceilings for economic concessions. Also, a sub-decree of the Land Law yet to be adopted by the government is that which recognizes and provides for the registration of indigenous peoples' land rights.
India	
Forest Act and Wildlife Protection Act	These acts emphasize conservation of forestlands and the establishment of “human free” wilderness sanctuaries and national parks. However, no survey was conducted prior to delineating these as protected areas; current occupants (about four million) and their land rights were not considered. Thousands of communities have consequently been displaced.
Special Economic Zones (SEZs)	Land expropriation for establishing SEZs is covered by the “public purpose” clause of the 1894 Land Acquisition Act. Seen as the necessity of the moment, SEZs are being actively promoted by the Indian government. However, much of the land set aside for SEZs is either tribal or prime agricultural land, and has resulted in the displacement of tribal communities and other rural communities.
Corporate/contract farming	Several Indian states are promoting contract/corporate farming, as emphasized by the National Agriculture Policy (NAP). However, corporate farming threatens the food security of India's farmers, who are mostly landless or own very small landholdings, because it has pushed farmers and peasants from the land. In addition, the increasing cultivation of biofuels on scarce agricultural land is another threat to food security.
Indonesia	
Expansion of plantations	Plantations, notably for oil palm production, are rapidly expanding in Indonesia, clearing swathes of forests and grabbing land from peasants. The government is promoting a “partnership model” of contract farming, to defuse tension between plantation companies and peasants. However, the model has benefitted only plantation owners and foreign investors; the conditions of the poor have barely improved.
Indiscriminate awarding of forest and timber concessions	The exploitative practices of forest and timber concessions have contributed to the rapid rate of deforestation in the country. Through the Basic Forestry Law (Law No. 5) of 1967 and Government Regulation No. 21 of 1970, large-scale investments in the forestry sector have been facilitated and all commercial forestry has become the preserve of private investors with forest concessions. Forest communities are prohibited from logging within concession areas, and can do so only if they have a permit from the concessionaire. Conflicts between communities and forest concession holders have thus ensued.



Table 3. (con't.)

Indonesia	
Mining on indigenous peoples' lands	Article 33 of the Indonesian Constitution grants the state exclusive rights to the country's mineral resources. The Law on Mining provides that all mineral deposits are state-controlled assets. These two laws have given the state blanket authority to conduct its own mining operations and grant mining concessions, which encroach on IP lands and have had injurious effects on IP communities.
Nepal	
Centralized land governance	Decisions related to land management are made at ministry level: people in remote areas have to bring their case all the way to Kathmandu, or wait for the ministry's decision to be handed down to district offices. Local government agencies usually do not have authority to settle issues and are frequently biased against the poor. Land administration is procedurally complex, deterring the poor from dealing with it.
Abolition of collective rights	Indigenous and ethnic groups are rapidly being displaced from their land, as a result of state-supported lucrative activities such as oil exploitation, mining, construction of dams, logging, cash crop cultivation, cattle ranches, and development of tourism infrastructure.
Absence of a national land policy	The lack of a national land policy constrains efforts to push land and agrarian reform.
Pakistan	
Corporate agriculture farming (CAF)	The CAF policy is a neoliberal policy allowing corporations to lease huge tracts of land for corporate farming. Corporate agriculture endangers national sovereignty and threatens agrarian reform: government leases surplus land instead of redistributing it to landless peasants. CAF is usually between Pakistan's feudal elites and corporations in other countries. The government has identified state lands to lease for export processing zones. In addition, the country's seed sector has been privatized, and extensive measures are in place to promote agriculture export processing zones in various parts of the country.
Land grabbing by the military	The military is the biggest land grabbing entity in Pakistan, notorious for acquiring millions of acres of land for distribution to serving and retired armed forces personnel as reward. During British colonial rule, the military acquired large tracts of land in both urban and rural areas as military farms. Post-independence (1947), these lands were taken over by the Pakistan armed forces, who now control some 12 million acres or 12% of state land, seven million acres of which is agricultural land valued at Rs700 billion. Most of the land was given as rewards to army personnel (at highly subsidized rates); only 100,000 acres are directly owned by the armed forces. To this day, many cases exist of the military wielding absolute authority to suppress landless peasants in areas where they control the land directly.
Poor governance	Because of the lack of political will, policy and action plans including land reform proposals remain unimplemented. Regardless of who is in power, decisions are influenced by powerful elements in the civilian bureaucracy, secret service agencies and other countries
Philippines	
Implementing CARP with reforms	Providing more funds for the implementation of CARPER, particularly for acquiring the remaining private agricultural lands, is critical for the completion of the program's land acquisition and distribution component. However, support services like credit and post-harvest facilities are poorly targeted.

Table 3. (con't.)

Philippines	
Lack of political will	The government has not shown enough political will to implement CARP and other land-related laws (Forestry Code, IPRA, Fisheries Code, and UDDHA). Its agencies lack the capacity as well as the funding for effectively fulfilling their mandates and implementing the laws.
Lack of a national land use plan	The lack of a national land use plan to establish national priorities and harmonize all existing land-related laws has resulted in: land conflicts over differing land uses among stakeholder; environmental degradation; and the conversion of prime agricultural lands for non-agricultural purposes.
Overlapping tenurial instruments, overlapping land claims	IP claims over their ancestral lands are being contested by the agrarian reform claims of lowland farmers (with the support of the Department of Agrarian Reform). In more and more areas, this has led to conflicts between indigenous communities and farmers. To complicate matters, LGUs represent another group of competitors to indigenous peoples' community land claims.
Snail-paced ancestral domain titling	Fifteen years after IPRA was passed, only 20% of the targeted area has been awarded to indigenous communities, while government support has been limited. Meanwhile, the NCIP has been inefficient in fighting for indigenous peoples' rights.
Development strategy based on resource extraction and Public-Private Partnerships	On one hand, the previous administration aggressively promoted timber and mining to propel the country's economy forward, which increased the pressure on the natural resources. These extractive operations often take place on lands inhabited by forest communities and indigenous peoples. On the other, the present administration has emphasized public-private partnerships, encouraging big agribusiness to make large land leases.
Mixed roles and policy reversals among agencies implementing land programs	Similar to the overlap in policies and tenure instruments, many land-related laws require joint implementation and coordination among government agencies. However, this has resulted in backlogs, confusion regarding accountability, conflicting implementation, problems with funding and human resources, and conflicts on land reclassification and land conversion.
Sri Lanka	
Centralized administration/non-implementation of 13 th Amendment	The provisions of the 13 th amendment to the Constitution have only been partially implemented, as the provincial council in Northern Province has not yet been established. The central government fears devolving powers will loosen its grip on the provinces: powers between provinces and the central government on agrarian development and internal security are not clearly defined. The government has also failed to establish the National Land Commission which would formulate the national land policy; attempts to formulate a national land policy by any other ministry or agency have been confronted with questions on constitutionality.
Civil war/internally displaced persons	The civil war (1983–2009) resulted in about 300,000 internally displaced persons (IDPs). Although the government initiated the post-war resettlement process in 2010, many IDPs have returned only to find their homes damaged or destroyed. Most of the returnees' economic assets were lost, and they have thus had to rely on external support, including temporary shelter. The war destroyed land demarcations and landmarks, making it difficult for returnees to identify their land boundaries. Many have also lost legal documents (e.g., birth certificates, land deeds, and identity cards). The process of retrieving land deeds from registration offices is tedious and complicated.



Table 3. (con't.)

Sri Lanka	
Confusion on Customary Laws	Sri Lanka's three main customary laws (<i>Kandyan</i> ; <i>Thesavalamai</i> ; and the Muslim law of Intestate Succession), did not provide for a unitary form of inheritance in the case of intestate succession. These customary laws conflict with the Land Development Ordinance that accords equal inheritance rights for men and women. <i>Thesavalamai</i> was enacted to give force to the customs of the <i>Malabar</i> residents (Tamils) and preserve the caste hierarchy. The law obliges a landowner to concur with adjoining landowners before selling or transferring his/her land. This has inadvertently inhibited other ethnic groups from acquiring land. However, ethnic sensitivities prevent proposals to repeal the <i>Thesavalamai</i> .

Actors IN THE Land Sector

STATE ACTORS

The onus of implementing agrarian reform rests on the shoulders of governments. In the eight Land Watch Asia countries, government support for access to land and agrarian reform has waxed and waned according to political expediency. However, the one thing that has remained true in the various country contexts and under changing circumstances, is that governments have consistently failed the test of will to undertake the task of agrarian reform.

- Cambodia's Prime Minister Hun Sen has owned up to his government's failure to put an end to land grabbing, land speculation, and illegal logging and fishing, and acknowledged that these problems could spark a revolt against his government. Although the government has progressed significantly toward developing legal frameworks required for land reform, majority of rural farmers have yet to benefit from the country's economic growth. The government has acknowledged that building tenurial security is the first step toward improving the poor's conditions.
- The Indian government has long been riven by agrarian unrest—instigated by the Naxalites in earlier years, and highlighted in 2007, though much more peacefully, by the Janadesh Campaign—and survives each time by promising reform, which it conveniently sets aside once the protesters have gone

home. Janadesh forced government's hand and led to the establishment of a National Land Reform Commission (NLRC) mandated to recommend measures to address the grievances of landless groups, such as tribal peoples and Dalits (untouchables). The Committee on State Agrarian Relations and the Unfinished Task of Land Reforms was created to draft a national land reform policy, but the NLRC has never met to discuss this.

- Though it passed comprehensive reforms on land access, the landlord-dominated Philippine government has always been half-hearted in implementing these reforms, to the detriment of the landless and poor majority.
- Indonesia's present government—which is determined to make the country a model for infrastructure development—is unapologetic about its indifference to agrarian reform, and will no doubt confirm an Indonesian economist's declaration that “in Indonesia's history, no government has succeeded in undertaking land reform”.¹¹ The Indonesian government abandoned the agrarian reform effort when Sukarno took over its reins, and its leaders (with the exception of Wahid) have not since taken it up again. Instead, Pres. Yudhoyono has passed Presidential Regulation No. 36 of 2005 to relax regulations concerning land leases and concessions. Also, the government's agrarian and agricultural policies are enshrined in the Revitalization of Agriculture, Fisheries and Forestry (RPPK).

- Despite the mention of land issues in the electoral manifesto of Bangladesh's governing party, the Awami League, *khas* land distribution is still wanting.
- Nepal recognizes land reform as an integral part of the Constitution, but the failure of the Constituent Assembly to deliver a new Constitution in May 2012 has inevitably stalled any land reform from being implemented.
- Pakistan has not made serious efforts to address land reform. The Corporate Agriculture Farming (CAF) policy under President Musharraf's government runs counter to land reforms, opening the country's farmlands to investments from multinationals and Gulf countries. In addition to the lack of support from politicians, the events of 11 September 2001 meant that Musharraf could not implement the promised massive land reforms, given that he needed the support of feudal lords to face Islamic extremists.
- In Sri Lanka, the state owns more than 80% of land. The government has failed to establish the National Land Coalition, meaning that its national land policy is yet to be formulated. At the same time, government agencies play a vital role in land administration and management, but this has been marked with inefficiencies and malpractices, and even corruption.

POLITICAL PARTIES

Political parties are a fundamental part of the political landscape, where they exist and where ideological lines are clearly defined. Some of them maintain conservative positions on land reform, like India's Bharatiya Janata Party, with others focusing instead on modernizing agriculture.

A few parties' electoral manifestos state land reform as a clear objective. Bangladesh's Awami League, its ruling party, mentions land reform in its electoral manifesto. The socialist and pro-poor Pakistan Peoples Party, also the ruling party, unequivocally talks about putting an end to feudalism.

Yet others are actively involved in pushing for pro-land reform legislation. The Indian National Congress has formulated laws on land reform, directing state

governments to pass laws to enhance access to land for the landless. The Muttahida Qaumi Movement (MQM) in Pakistan is pushing for the Land Reform Bill, proposing for lower land ceilings.

Nepal is currently struggling with its Constitution, but most political parties state land reform as a priority concern.

CIVIL SOCIETY

Civil society—encompassing NGOs, farmers' groups, indigenous peoples' groups, community-based organizations, and social movements—have sustained land rights advocacy throughout the decades. These groups have employed various strategies, and adapted these in response to the needs of their partner communities, their readiness to make demands on government, and the prevailing policy and legal environment. Most NGOs working on land have devoted their efforts into heightening awareness of communities on their land rights, and empowering them to secure their land.

The Land Watch Asia (LWA) campaign is a coming together of NGOs actively engaged in access to land and agrarian reform initiatives from eight countries (*see page xii for the list of LWA partners and see page 57 for the list of major accomplishments of the campaign*). Campaign partners, like the Community Self-Reliance Centre (CSRC) in Nepal, focuses on land rights advocacy, helping smallholders and the landless poor lobby for land reform. Indian and Philippine NGOs have followed parallel tracks in advancing the agrarian reform agenda, including networking at multiple levels, mobilizing farmers to launch nationwide campaigns, participation in policy-making bodies, and lobbying for the enactment of enabling laws. Ekta Parishad is at the forefront of efforts to demand the Indian government to address land reform, organizing Jan Satyagraha, a month-long non-violent march in 2012. Finally, recent years have seen the formation of coalitions of peasant organizations such as the National Land Rights Forum (NLR) of Nepal and the National Peasants Coalition of Pakistan (NPCP).



Table 4. Actors Affecting Access to Land in 8 Asian Countries

Bangladesh	
Government	<ul style="list-style-type: none"> • The Ministry of Land (land management and administration, collection of Land Development Taxes (LDTs), land records maintenance, policy formulation on land management, land use planning, and land reform implementation). It comprises the following: <ul style="list-style-type: none"> → Land Reform Board; → Land Appeal Board; and → Directorate of Land Records and Surveys. • The Office of the Inspector General of Registration under the Ministry of Law, Justice and Parliamentary Affairs registers ownership arising from the sale and other forms of land transfer, reports changes to the Ministry of Land, and collects the Immovable Property Transfer Tax.
Civil society	<ul style="list-style-type: none"> • Around 200 NGOs are working to promote the land rights of landless people: <ul style="list-style-type: none"> → The Association for Land Reform and Development (ALRD) has 260 local and national NGO partners which mobilize policy makers, public representatives, politicians and media, to initiate positive pro-poor policy formulation and effective implementation initiatives. → Nijera Kori works on issues related to land tenure, agricultural wages, khas land distribution, lobbying with government, grassroots mobilization, capacity-building and awareness building. → Samata works to assist landless people gain access to khas land and water bodies. → The Land and Agrarian Network for Development (LAND) engages in social mobilization around land rights and related local administrative reform.
Cambodia	
Government	<ul style="list-style-type: none"> • The Ministry of Land Management, Urban Planning and Construction oversees land management, including the development of the policy and regulatory framework, and coordination of land use planning, and land registration and administration. • The Ministry of Agriculture, Forestry and Fisheries organizes and operates development policies in the agriculture sector. • The Ministry of Rural Development integrates all rural development work at household, village and commune levels with a focus on poverty alleviation.
CSOs	<ul style="list-style-type: none"> • National NGOs include Adhoc, Licadho, and Legal Aid of Cambodia; network organizations are the NGO Forum on Cambodia, STAR Kampuchea, and the Cambodian Human Rights Action Committee. The Pagoda (monks) is also involved in political affairs. • These groups are concerned with: forced resettlement to make way for commercial interests; the allocation of economic land concessions without regard for regulatory standards that are intended to protect local communities including indigenous peoples; the insecurity of land tenure of rural dwellers, their loss of access to natural resources and the lack of alternative income sources.
Private sector	<ul style="list-style-type: none"> • Groups from the private sector are concerned with resolving land disputes only to protect their own investments. • Public and private sector interests are frequently at odds with each other.

Table 4. (con't.)

Cambodia	
Private sector	<ul style="list-style-type: none"> • Private sector groups are also disinclined to negotiate directly with affected communities and leave the task of conflict resolution to public authorities.
Development partners (donors/IFIs)	<ul style="list-style-type: none"> • The international donor community issued guidelines to be complied with by the government to receive funding support, but these have yet to be implemented. Donors have resisted calls by national CSOs to use their influence to keep government in check. They work in technical working groups (TWGs) with relevant government ministries, but in general pay little attention to local CSOs.
India	
Government	<ul style="list-style-type: none"> • The central government directs state governments to enact ceiling surplus laws and redistribute these lands among marginal and landless farmers. It has amended Constitution 13 times to remove legal obstacles to land reforms. • The Department of Land Resources of the Ministry of Rural Development promotes land reforms. • The National Land Reform Commission (NLRC) is mandated to recommend measures to address the grievances of landless groups, such as tribal peoples and Dalits (untouchables), and review the draft of the national land reform policy; but so far it has not met to discuss the policy draft. • The Committee on State Agrarian Relations and the Unfinished Task of Land Reforms was formed after Janadesh 2007 to draft a national land reform policy.
Political parties	<ul style="list-style-type: none"> • The two main parties in India: <ul style="list-style-type: none"> ➔ The Indian National Congress (informally referred to as the Congress Party) has formulated laws on land reform and has directed state governments to enact laws that would enhance land access for the landless, including tribals. Its Economic Agenda stipulates that land reforms must receive high priority alongside the consolidation of fragmented landholdings. ➔ The Bharatiya Janata Party (BJP) in its electoral manifesto in 2004 worked out specific steps to implement land reforms and decried that fertile land was being lost to development; but it remains a conservative party with a conservative position on land.
Civil society	<ul style="list-style-type: none"> • NGO networks in India operate at the national and regional level: Association of Voluntary Agencies for Rural Development (AVARD) and the Voluntary Action Network of India (VANI) • POs working on land issues and supporting the land rights movement generally have a non-formal structure: Wada No Todo Abhiyan, Ekta Parishad the Campaign for Survival and Dignity, and the National Campaign for Land and Livelihood (NCLL).
Private sector	<ul style="list-style-type: none"> • The private sector is increasingly involved in corporate farming, prompting a land buying spree. It has already acquired vast tracts of land and has entered into agreements with farmers with major investments to tap the potential of Indian agriculture.
Development partners	<ul style="list-style-type: none"> • Donor agencies like the Ford Foundation, ActionAid and Christian Aid have played an important part in supporting India's land reform movement. • International financial institutions (IFIs) and other donor agencies under the neo-liberal framework have pushed for market-assisted land reform models.



Table 4. (con't.)

Indonesia	
Government	<ul style="list-style-type: none"> • The National Land Agency (BPN) is responsible for land reform. • Since 2007, the government has been preparing approximately 9.25 million ha of land for agrarian reform.^{ix} But land distribution has not materialized, and has been limited mostly to asset legalization. • The government has encouraged through its policies the expansion of plantations.
Civil society	<ul style="list-style-type: none"> • CSOs conduct advocacy work in response to their analysis of Indonesia’s agrarian crisis. • Since the 1990s, NGO networks and progressive intellectuals have promoted land rights: <ul style="list-style-type: none"> → Bina Desa → KPA → Wahana Lingkungan Hidup Indonesia (WALHI) → Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) • Some CSOs are demanding the cancellation of debt and infrastructure projects, such as: <ul style="list-style-type: none"> → Alliance of Agrarian Reform Movement (AGRA) → Serikat Tani Nasional (STN) → Aliansi Petani Indonesia (API) → Petani Mandiri → Other social movements • The peasant movement is demanding an end to state violence directed at their sector and the release of peasant leaders jailed due to anti-peasant laws.
Private sector	<ul style="list-style-type: none"> • The private sector is partly responsible for the unprecedented clearing of forests and displacement of communities to make way for more oil palm plantations, timber and mining operations.
Development partners	<ul style="list-style-type: none"> • These groups are increasingly involved in integrating free trade and the allocation of agrarian resources in the country, as exemplified by the Land Administration Project (LAP) that seeks to establish land markets. • Big infrastructure projects funded by the World Bank and ADB have resulted in human rights violations.
Nepal	
Government	<ul style="list-style-type: none"> • National Planning Commission (NPC) has overall responsibility for setting up development policy and strategies. • Ministry of Land Reform and Management implements the agreed policies on the ground.
Political parties	<ul style="list-style-type: none"> • All major political parties have the following common points in their electoral manifestos: land reform is a priority concern; land reform is a vital aspect of overall agricultural development, and not only in regard to the management of land ownership; and the abolition of dual land ownership.

^{ix} ANGOC. (2011). *Highlights of the Proceedings. Monitoring land reform in Asia: Status check. A regional workshop + dialogue under the CSO land reform monitoring initiative. Jakarta, Indonesia. 13–14 July 2011.*

Table 4. (con't.)

Nepal	
Civil society	<ul style="list-style-type: none"> • Community Self-Reliance Centre (CSRC) is one of the NGOs at the forefront of advocacy for the land rights of the poor. • National Land Rights Concern Group (NLRCG) was established as a broader civil society alliance including media groups, human rights advocates and social activists. • National Land Rights Forum (NLRF) is a membership based national people's organization of land deprived people including marginalized groups.
Development partners	<ul style="list-style-type: none"> • Development partners are key actors in establishing the policy framework for development in Nepal. • A number of agencies have shown interest in a certain type of land reform and have been trying to steer government in that direction, but Nepali land rights advocates are debating the pros and cons of such approaches. • There are only a few international agencies supporting the land rights movement undertaken by the tillers, peasants and CSOs.
Pakistan	
Government	<ul style="list-style-type: none"> • The government has not made serious efforts to undertake land reform. • President Musharraf announced in 2000 to carry out massive land reform, even issuing a report entitled <i>Decentralization and the Devolution of Power</i> calling for rapid land distribution for the empowerment of landless peasants. However, he has not been serious about its implementation, as this would cause conflict with the country's "most astute politicians". • The "fight against terrorism" implied that Musharraf could not antagonize feudal lords, as he needed their support to counter Islamic extremists. • Policy and action plans, such as land reform proposals in the National Conservation Strategy (NCS). • The Federal Land Commission (created under the Land Reforms Regulation, 1972), has not implemented land reforms.
Political parties	<ul style="list-style-type: none"> • The Pakistan Peoples Party (PPP), the ruling party, has a socialist and pro-poor outlook. Its election manifestos are clear about ending feudalism, and a few have addressed agricultural modernization. • The Pakistani Muslim League–Nawaz (PML–N) commits to reclaim and irrigate land for allotment to landless <i>haris</i> and tenants, as well as undertake a land consolidation program to create viable units for modern agriculture. • The Muttahida Qaumi Movement (MQM) has been moving the Land Reform Bill, proposing lower limits on landholdings: 36 acres (15 ha) on irrigated land and 54 acres (22 ha) on rainfed areas.
Civil society	<ul style="list-style-type: none"> • CSOs in Pakistan are engaged in various advocacy areas relating to land: women's empowerment, food security, tenure security, farmers' rights, globalization, sustainable land management, bonded labor, to name a few. CSOs have renewed their interest in land rights advocacy. • CSOs still lack a collective voice, access to information, research capacity, and financial resources needed to address land issues



Table 4. (con't.)

Pakistan	
Development partners	<ul style="list-style-type: none"> • The Asian Development Bank (ADB) and the World Bank have indicated the importance of land reform as a poverty reduction strategy.
Philippines	
Government	<ul style="list-style-type: none"> • The Department of Agrarian Reform (DAR) implements the agrarian reform program with regulatory powers in the ownership of agricultural lands and the conversion of agricultural lands to non-agricultural uses. • The National Commission on Indigenous Peoples (NCIP) implements the IPRA and has the mandate to process and approve IP claims over their ancestral domains, coordinates with the Department of Environment and Natural Resources (DENR) in surveying the subject lands. • Local government units (LGUs) implement the Urban Development Housing Act (UDHA), regulate the use of their municipal waters, prepare their Comprehensive Land Use Plan, and impose land taxes among others.
Civil society	<ul style="list-style-type: none"> • Civil society and social movements are actively involved in land rights advocacy. • Agrarian reform has received strong civil society and even Catholic Church support. • Civil society groups provide support for indigenous peoples' Certificate of Ancestral Domain Claims (CADCs), as well as legal assistance and awareness-raising on resource rights as support for the fisherfolk sector.
Private sector	<ul style="list-style-type: none"> • Private commercial interests have generally been a major obstacle to basic sectors' access to land or tenurial security. • Private investments in the form of mining, timber production, pasture lease agreements, plantations and orchards, and other large-scale commercial enterprises are being implemented, affecting forest dwellers and indigenous communities. • As an effect of tourism and countryside industrialization, fishers are also being stripped of tenure rights over the lands they have lived in for many years. • Although not primarily driven by commercial interests, landlord resistance is one of the greatest bottlenecks to agrarian reform implementation.
Development partners	<ul style="list-style-type: none"> • Japan, ADB and the World Bank are the Philippines' major donors that have provided significant funding to land access programs. • Overseas development assistance (ODA) for CARP has been limited to support services delivery; donors have shied away from land acquisition.
Sri Lanka	
Government	<ul style="list-style-type: none"> • Departments of the Land Commissioner General's Survey, and Agrarian Development • Several state-owned enterprises deal with land: <ul style="list-style-type: none"> → Sri Lanka Land Reclamation and Development Corporation → Urban Development Authority → Land Reform Commission → State Plantations Corporation → National Water Supply and Drainage Board

Table 4. (con't.)

Sri Lanka	
Government	<ul style="list-style-type: none"> • Provincial authorities established in accordance with the 13th Amendment to the Constitution: provincial commissioners and provincial directors
Civil society	<ul style="list-style-type: none"> • Plays a limited role in land administration and management, managing a small extent of lands in helping the poor and under-privileged • NGOs may take leasehold rights on state lands, as in the case of Sarvodaya and Seva Lanka. • International NGOs assumed a prominent role after the tsunami.
Private sector	<ul style="list-style-type: none"> • Like civil society, has a limited role in land management • Highly active in real estate land transactions, particularly in urban areas • Private sector agencies acquire large blocks of land and sub-divide these into smaller parcels for sale; sometimes they come into conflict with encroachers with whom various deals are devised.

Powering Ahead

Advancing the agenda of access to land for the poor in Asia is fraught with formidable challenges, requiring a set of specific and concrete measures at the national level. Land Watch Asia members and partners in Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines and Sri Lanka have put forward recommendations, encompassing the following areas: policy advocacy and dialogue; implementation and monitoring; facilitating an enabling legal environment for land and agrarian reforms; strategic networking; and strengthening civil society capacities.

The LWA campaign is calling for a series of policy reforms that are critical to enhancing access to and ownership of land for the poor in all eight countries. In terms of policy recommendations, national land use policies to maximize and rationalize use of land and other natural resources in the case of Bangladesh, India, and the Philippines, and a national land policy or common land law in Sri Lanka, are in order.

Further, land policies should be rights-based and inclusive. India proposes a people's land policy that will overhaul discriminatory land laws to accord equal rights to women, castes and indigenous groups. Indonesia

is calling for revocation of anti-peasant land laws, whereas Bangladesh is asking for amendment to the law of inheritance to grant women equal rights to land.

At the same time, the LWA network should seize the opportunities for policy advocacy and dialogue that are presented by existing legislation (e.g., Indonesia's RPPK policy) and mechanisms (India's Committee on State of Agrarian Relations and the Unfinished Task of Land Reforms).

Other recommendations are the creation of legal frameworks and support systems such as high-level land authorities (e.g., national land commissions in Bangladesh, Nepal and Sri Lanka), and provision of legal aid for the poor.

In addition to formulation and implementation of policies in support of land reforms, corresponding monitoring and accountability mechanisms stand out as topmost priorities. To name a few such laws that need to be closely monitored: Cambodia's Land Law, Bangladesh's Peace Accord and the Vested Properties Return Act, and the Philippines' CARPER.

Because increased civil society participation in governance is needed to push forward reforms, CSOs



need to strengthen their capacities in policy advocacy, monitoring, and knowledge management. CSOs have come to recognize the need for evidence-based advocacy through monitoring. They also need to continually build understanding of access to land interventions, cases and strategies; scale-up their research to inform their advocacy; and find effective ways to share knowledge and lessons with others.

A recurring theme was recognizing the value of coming together. At the national level, this means building CSO/NGO coalitions or alliances in support of land reform and the land rights struggle, as well as organizing strong

social movements among peasants, indigenous peoples, fishers, forest dwellers, minority castes, and other landless groups. CSOs should aid in the development of strong peasant-based organizations, empowering them to raise their own voices in various forums concerning land.

Partnerships with other development partners, the private sector and government can be explored, through mechanisms like technical working groups and platforms for inter-sectoral dialogue. The LWA campaign serves as venue for strategic networking of CSOs active in land rights advocacy, and elevates national land issues to the regional and global levels.

Table 5. Proposed Actions to Address Access to Land Issues in 8 Asian Countries

ACTIONS NEEDED	
Bangladesh	<p>1. Institutionalize policy reforms for the land rights of rural poor sectors.</p> <ul style="list-style-type: none"> a. Comprehensively implement the Peace Accord, with special attention to critical yet neglected provisions, such as the activation of the Land Commission. b. Formulate a National Land Use Policy to maximize and rationalize the equitable use of natural resources. c. Institutionalize a legal support system to ensure the speedy resolution of problems on land ownership rights of the poor, and strengthen existing legal aid support from NGOs and other institutions. d. Enforce the Vested Property Repeal Act to protect the land rights of religious minorities and to release vested property under the government’s custody to the real owners or their legal heirs who are permanent residents of Bangladesh, pending the final settlement of individual cases; e. Amend the law on inheritance to make provisions for women’s equal right to own land. f. Enact separate laws to promote and protect the customary land rights of indigenous peoples. g. Improve the land rights and living conditions of tea plantation workers. <p>2. Enhance CSOs’ capacity to advance land rights.</p> <ul style="list-style-type: none"> a. Encourage greater/more effective representation of peasants and landless groups in the national Khas Land Management Committee. b. Create a social land watch platform to campaign against land-related corruption and the non-implementation of pro-poor and pro-women laws and policies regarding land rights and agrarian reform. c. Scale-up research and customization of knowledge on access to land interventions, cases and strategies.
Cambodia	<p>1. Form equal and effective land reform partnerships.</p> <ul style="list-style-type: none"> a. Land partnerships with government and other stakeholders are important to improve people’s access to land: the Land Action Network for Development, cited as a successful partnership model of Cambodian NGOs, should have more regular meetings to gain support from international NGOs and government representatives.

Table 5. Proposed Actions to Address Access to Land Issues in 8 Asian Countries

	ACTIONS NEEDED
Cambodia	<ul style="list-style-type: none"> b. Include the private sector, given its increasingly influential role in land concerns, in the Technical Working Group on Land. c. Increase civil society participation. d. Partnerships should have clear goals. e. Form regional or local partnerships that prioritize project implementation and specific cases. <p>2. Launch a national campaign on Land Law implementation.</p> <ul style="list-style-type: none"> a. Strengthen NGO networks' capacity to analyze and strategize on critical land issues, such as land titling and land management, applications on land concessions, encroachment on forest communities, and land conflicts. b. Engage development partners and relevant public institutions that can encourage implementation of land laws and resolution of conflicts, and enhance the voice of civil society. <p>3. Build/strengthen alliances on land reform.</p> <ul style="list-style-type: none"> a. Establish strong networks and linkages among NGOs that cooperate rather than compete, understand the benefits of networking, find ways for mutual support, and recognize which among them is best able to represent their sector in dealing with government.
India	<p>1. Pursue reforms in land laws and implementation across India.</p> <ul style="list-style-type: none"> a. Create a "People's Land Policy" that overhauls land laws and the administrative system to accord equal rights to women, castes and indigenous groups and uphold sustainable use and management of common natural resources like land and water. b. Draw up a long-term national land use policy which involves all stakeholders and considers national food and water security, food and livelihood needs of the poor, protection and expansion of the country's forest cover. c. Push for the enactment of the Land Acquisition, Rehabilitation and Resettlement Bill to replace the antiquated Land Acquisition Act of 1894. d. Formulate policies on land ceilings, prevention of absentee landlordism, confiscation of fallow land, joint issuance of entitlements, land registration and tenancy (i.e., to establish fair terms between landowners and tenants), and prevention of agricultural land conversion. e. Restore all alienated tribal land and regularize all agricultural land held by tribals in forest areas. f. Provide support services (i.e., infrastructure, credit, inputs, marketing and agro-processing facilities, etc.) <p>2. Create Participatory Spaces for Land Advocacy</p> <ul style="list-style-type: none"> a. Maximize policy level spaces such as the Committee on State of Agrarian Relations and the Unfinished Task of Land Reforms. b. Set up Land Tribunals in all States to facilitate land-related cases. c. Enhance CSO awareness of events happening at the national and international levels that could provide impetus for the resurgence of the land agenda. d. Pursue non-violent, multi-level and multi-pronged mass actions and increase public awareness activities through mass media and electronic media. e. Develop a systematic information system on land with relevant details of all holdings.



Table 5. Proposed Actions to Address Access to Land Issues in 8 Asian Countries

	ACTIONS NEEDED
Indonesia	<ol style="list-style-type: none"> 1. Revoke anti-peasant land laws. <ol style="list-style-type: none"> a. Push for the enactment of TAP MPR No. IX/2001 (which gives government the mandate to implement land reform) to resolve conflicts, in response to the passage of laws that contravene the intent of TAP MPR No. IX/2001, such as the law on plantations and on capital investments that have worsened the conditions of Indonesian peasants. 2. Develop a strong and democratic peasant-based organization. <ol style="list-style-type: none"> a. Undertake advocacy to promote the agrarian reform agenda, especially among the peasantry. Peasant protests and struggles have significantly influenced the dynamics of Indonesian social movements. 3. Build a coalition to support the land rights struggle. <ol style="list-style-type: none"> a. Progressive NGOs and committed international organizations can become catalysts in helping grassroots peasant and landless movements organize and press their demands for land. They can advance land reforms advocacy at all levels. 4. Maximize opportunities created by RPPK policy. <ol style="list-style-type: none"> a. The RPPK defines the government's strategy to address challenges affecting farmers, farm workers, fishers, forest dwellers and other poor communities; it can move forward more fundamental reforms in the agrarian sector, but needs various government departments to work in tandem.
Nepal	<ol style="list-style-type: none"> 1. Formulate inclusive policies and implement them. <ol style="list-style-type: none"> a. Repeal current land-related acts and policies and formulate new ones on behalf of landless, poor tenant farmers. b. Ensure the new Constitution will guarantee and support land reform implementation. 2. Restructure land administration. <ol style="list-style-type: none"> a. Simplify and decentralize land administration, delegating the authority over land reform to district development committees (DDC) and village development committees (VDC), with the District Land Reform Office (DLRO) serving as secretariat to these units. b. Establish a separate land court at the DDC and VDC levels to expedite settlement of land issues concerning the poor. 3. Establish a high-level land authority. <ol style="list-style-type: none"> a. Establish a high-level land authority to look into: claims of the state, land-related problems of the people; and ways to address these problems. b. Such an authority should have representatives from the poor and marginalized groups. 4. Educate and organize the poor and landless. <ol style="list-style-type: none"> a. Raise awareness of the poor and landless on their deprivation and oppression. b. Organize them to make the fight constructive and logical, and mobilize them in peaceful resistance. 5. Allocate a budget for comprehensive land reform and agriculture. <ol style="list-style-type: none"> a. Invest in comprehensive land reform; and invest revenues from land taxes in land management i.e., land productivity. (Efforts to enhance agricultural productivity will only be meaningful following a progressive land reform program). 6. Make land reform a common concern. <ol style="list-style-type: none"> a. Transform national perception of land reform, by letting the public understand that land reform reduces social unrest and is a condition for enhancing agricultural productivity. b. Forge a broader alliance among political parties, the private sector and civil society to reach a mutually acceptable position on this issue.

Table 5. Proposed Actions to Address Access to Land Issues in 8 Asian Countries

	ACTIONS NEEDED
Pakistan	<ol style="list-style-type: none"> 1. Continue with land rights advocacy and maximize opportunities to pursue land rights. <ol style="list-style-type: none"> a. Sustain the campaign on land rights with the active involvement of grassroots groups. b. Maximize opportunity from the growing concern on food security and poverty alleviation, to call policy experts' and opinion-makers' attention to land reform and agricultural development. 2. Pursue strategic linkages to influence policy and implementation on land issues. <ol style="list-style-type: none"> a. CSOs must build a common platform and pursue strategic alliances with various stakeholders (tenants, landless agricultural laborers, media, political parties, academe, and international partners) to effectively influence policy development and implementation on land issues. b. Promote dialogue, using effective tools to mobilize public opinion in favor of agrarian reforms such as: conferences at the district, provincial and national levels; rallies, seminars and demonstrations; field days; and walks.
Philippines	<ol style="list-style-type: none"> 1. Pass critical legislation to enhance tenurial rights of farmers, fishers, indigenous peoples and forest communities. <ol style="list-style-type: none"> a. Pass: the National Land Use Act (NLUA) to regulate the interests of various stakeholders; the Forest Resources Bill to protect forests and ensure wise use of forest resources; and the Minerals Management Bill to repeal the Mining Act and promote conservation and effective use of non-renewable mineral resources. 2. Monitor CARPER implementation. <ol style="list-style-type: none"> a. Closely monitor the implementation of the land acquisition and distribution targets. b. Enhance farmers' knowledge on CARPER and strengthen their capacities to resolve agrarian reform-related issues in their local communities. 3. Safeguard indigenous peoples' rights to land. <ol style="list-style-type: none"> a. Strictly enforce IPRA by strengthening the capacities of the National Commission on Indigenous Peoples, the IPRA's agency. b. Revise free, prior, and informed consent (FPIC) procedures to conform to traditional decision-making processes of the respective groups, and ensure the strict implementation of tribal decisions based on FPIC process. c. Establish conflict resolution mechanisms. 4. Preserve and protect the forests through collaborative forest management. <ol style="list-style-type: none"> a. Promote collaborative forest management (local government units and other sectors) and strong people's participation. b. Clarify the DENR's primary mandate: whether it is to protect the environment or promote the utilization of natural resources. c. Map forest lands to determine extent and location of forest areas and document overlapping claims; adopt an environment and natural resources accounting in national income accounts. 5. Implement the Fisheries Code. <ol style="list-style-type: none"> a. Speedily implement the Fisheries Code and amend Section 108. Revise guidelines on fishpond lease agreements (FLA) to prioritize applications of small fisherfolk, and make FLAs more affordable. 6. Engage in cross-sectoral actions. <ol style="list-style-type: none"> a. Organize inter-sectoral dialogues for CSOs to build consensus and learn from each other. b. Participate as a coalition in education initiatives towards electoral and political reforms. c. Monitor and disseminate information on cases on land-related human rights violations. d. Document, consolidate and disseminate alternative reports assessing implementation and effectiveness of land and water tenure reform legislations and programs.



Table 5. Proposed Actions to Address Access to Land Issues in 8 Asian Countries

	ACTIONS NEEDED
Sri Lanka	<ol style="list-style-type: none"> 1. Push for a National Land Commission and a National Land Policy. <ol style="list-style-type: none"> a. Establish the long overdue National Land Commission. b. Put in place an effective and clean land administration system. c. Undertake land development, striking a balance between state and private land ownership. d. Draft a common land law; however, in the north it may be best to respect ethnic sensitivities. 2. Develop Land Information Database for Land Development. <ol style="list-style-type: none"> a. Equip agencies (Land Commissioner's Department, Survey department, and Bim Saviya [Land Title Registration Programme]) with technical capacity to develop a sound land information system or database to facilitate decision-making on land policy. 3. Streamline land administration. <ol style="list-style-type: none"> a. Devolve powers to provincial councils to prevent highly politicized decisions on land, and to avoid corruption. 4. Secure land rights for peasants. <ol style="list-style-type: none"> a. Confer freehold rights to peasants under leasehold or tenancy arrangements. 5. Maximize benefits from the peace dividend. <ol style="list-style-type: none"> a. Address specific needs of war-affected families (including widows and the disabled), including gender-related land issues. b. Pursue definitive plans on land allocation, land use and agriculture.

Conclusion

The next phase of the Land Watch Asia Campaign aims to intensify policy dialogues with national governments and regional institutions by strengthening and building consensus among its constituency. Specifically, the campaign objectives are:

- At the regional level, to increase platforms, dialogue and common action on land-related issues among CSOs, governments and intergovernmental organizations linked at national and regional levels; and
- At the national level, to develop improved mechanisms and conducive policy environment for policy dialogue and partnerships among CSOs, governments and IGOs/donors on land issues.

In this context, LWA reaffirms its commitment to advance the land rights of farmers, indigenous peoples, women, forest dwellers, fishers, pastoralists, Dalits, and other impoverished sectors in the rural areas.

Endnotes

- ¹ Updated and edited by Catherine Liamzon, and reviewed by Nathaniel Don Marquez. The original regional summary was written by Teresa Lingan-Debuque and Catherine Liamzon in 2008.
- ² IFPRI (2007), as cited by G. Thapa & R. Gaiha. (2011). *Smallholder farming in Asia and the Pacific: Challenges and opportunities. Conference on new directions for smallholder agriculture. 24–25 January 2011. Rome, IFAD HQ.* International Fund for Agricultural Development. Rome: Author.
- ³ Philippine Partnership for the Development of Human Resources in Rural Areas. (2010). *Systematizing Access to Land Monitoring in the Philippines.* Monograph submitted to ANGOC.
- ⁴ Sajoygyo Institute & Konsorsium Pembaruan Agraria Consortium for Agrarian Reform]. (2011). *Land issue and policy monitoring initiative: Indonesia report.* Report submitted to ANGOC.
- ⁵ Conceptual differences may exist between “land reform” and

agrarian reform”—with the latter regarded as broader in scope, entailing structural changes in land ownership, including fisheries and forestry, and encompassing social services. Nonetheless, for the purposes of this paper, we use these terms indistinctly.

- ⁶ See G. Thapa & R. Gaiha. (2011). *Smallholder farming in Asia and the Pacific: Challenges and opportunities. Conference on new directions for smallholder agriculture. 24–25 January 2011. Rome, IFAD HQ.* International Fund for Agricultural Development. Rome: Author.
- ⁷ Barkat, A. (2011). *Land reform monitoring report: Bangladesh.* Report submitted to ALRD and ANGOC.
- ⁸ See ANGOC and ALRD. *Asian Regional Workshop on Women and Land Rights. Workshop Proceedings. 25–26 October 2010. Dhaka. Quezon City: ANGOC.*
- ⁹ Human Rights Watch. 2011. *Cambodia: Revise or abandon draft NGO law.* 23 December 2011.
- ¹⁰ ANGOC and the Land Watch Asia campaign have spearheaded the CSO Land Reform Monitoring Initiative, which seeks to strengthen the capacities of CSOs in monitoring the implementation of land reform—focusing on land tenure and access to land—in seven Asian countries.
- ¹¹ Ahmad Erani.

In other cases it also draws from other studies and reports published by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and its members and partners.

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References

This paper, as a regional synthesis, draws primarily from the Land Watch Asia country studies contained in this book:

Country	Abridged title (as contained in book)	Unabridged title
Bangladesh	The Backpedalling Stops	Land Watch Asia campaign: Bangladesh status report
Cambodia	Overcoming a Failure of Law and Political Will	Country paper Cambodia on land issues
India	Riding the Crest of People’s Movements	Access to land and tenurial security in India; land and tenure security in India
Indonesia	The Persistence of Popular Will	
Nepal	Asserting Freedom from Central Control	The inequality of agrarian structures and its impact to the rural poor livelihoods
Pakistan	Fighting the Pyramid of Power	Land tenure study of Pakistan
Philippines	Defending the Gains of Tenurial Reform	Taking common action for access to land
Sri Lanka	Land Ownership and the Journey To Self-Determination	



Land Watch Asia Campaign Declaration 2008



OUR ALLIANCE

The Land Watch Asia Campaign comprises 17 Social Movements and Civil Society Organizations (CSOs) from Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines, which work to increase access to land of poor women and men in the rural areas and to empower these communities to realize their own development.

OUR URGENT CONCERNS

Asia has 75% of the world's farming households, 80% of whom are resource poor small-scale farmers and producers. Yet, today, the region accounts for 505 million hungry people or two-thirds of the 800 million severely undernourished people in the world.

The majority of Asia's rural poor are landless or lack access to productive land. These landless poor are marginalized farmers and tenants, *adivasis* or indigenous peoples, women, *dalits* and minority castes, pastoralists and herders, fisherfolk, and internally-displaced persons.

For nearly two decades, small farmers and producers in Asia have been heavily affected by the adverse impact of trade liberalization policies that skewed commodity prices, escalated acquisition of productive lands by commercial interests, and privatized common property resources (i.e., forests, minerals, water, etc.).

Growth-led and market-driven policies that neglect smallholder agriculture and land rights of the poor, have been promoted by governments and multilateral organizations, leading to food insecurity, loss of livelihoods, rising social tensions, and degradation of natural resources. In many cases, competition for land has erupted into open conflict between sectors and communities, causing insecurity and socio-political instability.

Many governments still need to deliver on their past land reform programs and targets. Meanwhile, market-assisted land reform (MALR), under the principle of "willing buyer, willing seller" has not been effective in redistributing land in favor of the poor, who cannot afford high land prices. Also, in a number of Asian countries, "land administration" projects are conducted to ensure a more efficient titling system. While important, such projects run the risk of "legitimizing" historical injustices, including land grabbing and eviction of tenants and occupants.

The global food crisis has renewed attention to the disastrous effects of continued land conversion favoring commercial and industrial interests (e.g., large plantations, golf courses, mining, special economic zones, real estate speculation) as well as the declining investments for agriculture. Rising fuel prices have increased competition for land and diverted raw materials (wheat, soybean, maize, sugarcane, and palm oil) for bio-fuel production, to the disadvantage of poor farmers and consumers.

OUR COMMON CONVICTION

Agrarian reform and land tenure security should be an integral part of national development strategies. Sustained food self-sufficiency and development in rural Asia will only be achieved with more equitable land redistribution, together with support services, sustainable resource management and community empowerment.

Food self-sufficiency requires access to land by small food producers. Studies show that smallholder farms have greater yield per hectare than large farms due to greater labor intensity, more efficient use of land and inputs, and greater incentive for enhancing farm productivity and practicing conservation and sustainable management. Other studies also confirm that access to land is linked to better food sufficiency, improved health and the overall well-being of farming households.

Land is more than an economic asset or commodity. Access to land not only brings a source of survival but also increases one's sense of human dignity and security and the opportunity to break out of poverty. More

equitable access to land reduces resource conflicts and rural outmigration, and improves overall peace for greater economic and political stability.

OUR COMMON ACTION

Given this backdrop, the Land Watch Asia (LWA) campaign from July 2008 to July 2011 commits itself to advance the land rights of farmers, indigenous peoples, women, forest dwellers, fisherfolk, pastoralists, *dalits* and other impoverished sectors in the rural areas by:

- Protecting and promoting the gains of progressive legislation and initiatives on access to land;
- Working for the passage of laws for national land use;
- Upholding smallholder agriculture, promoting community-based resource management, and establishing protected areas for sources of food (agriculture, forests and waters);
- Empowering communities and civil society organizations (CSOs) for common action towards food sovereignty and sustainable livelihoods.

To achieve this goal, LWA shall enhance the capacities of civil society organizations to:

- Engage national governments, intergovernmental (IGOs) and regional organizations and international financial institutions (IFIs) in constructive policy dialogue to uphold the rights of communities to land and food, especially on policies and programs that affect the equitable distribution of land to Asia's rural poor;
- Monitor the status and processes of landlessness, resolve/mediate land conflicts, conduct land use planning and mapping, facilitate post-distribution services;
- Build solidarity and alliances with social movements, community-based organizations, and other sectors towards common action on these issues, and develop a new generation of land rights advocates.

Table 1. Gains of Land Watch Country Campaigns

Country	Campaign issues	Gains of the campaign
Bangladesh	<ul style="list-style-type: none"> • Implementation of the Chittagong Hill Tracts Peace Accord • Reform of the Vested Property Return Act of 2011 • Proposed land law for indigenous peoples 	<ul style="list-style-type: none"> • Expanded networking and alliance building beyond CSOs and NGOs (IWGA, CHT commission) • Interest to reactivate CHT Land Commission within government • Resolution of contentious provisions/clauses in the Vested Property Act
Cambodia	<ul style="list-style-type: none"> • Social and economic land concessions • Addressing land conflicts 	<ul style="list-style-type: none"> • Increased awareness of communities on land rights • Opening space for dialogue with government and international organizations
India	<ul style="list-style-type: none"> • Implementation of the Forest Rights Act of 2006 • Implementation of the recommendations of the Bihar Land Reforms Commission • Engaging the National Land Reforms Council and Committee on State Agrarian Relations and the Unfinished Task of Land Reforms 	<ul style="list-style-type: none"> • National Land Reforms Council was created as a result of the Janadesh march organized by Ekta Parishad • New impetus on implementation of unfinished land reforms in Bihar (from <i>Bhoodan</i> Land to homestead to sharecropping, and administrative reforms)



Table 1. (con't.)

Country	Campaign issues	Gains of the campaign
Indonesia	<ul style="list-style-type: none"> • Land conflicts and land grabbing, particularly for plantations • Piloting of agrarian reform in selected districts 	<ul style="list-style-type: none"> • Creation of Karam Tanah (People's Coalition Anti Land Grabbing) • Increased public and media awareness on land issues
Nepal	<ul style="list-style-type: none"> • Inclusion of land reform in the Constitution • Passage of a national land law 	<ul style="list-style-type: none"> • Land use policy is being finalized • Initiated the process for formulating a national land policy
Pakistan	<ul style="list-style-type: none"> • Corporate agriculture farming • Implementation of land reforms 	<ul style="list-style-type: none"> • Renewed interest among advocates to pursue land reforms • Initiated the formation of a National Peasant Coalition of Pakistan
Philippines	<ul style="list-style-type: none"> • Monitoring the implementation of the extension of the Comprehensive Agrarian Reform Program • Passage of a national land use act • Addressing land conflicts 	<ul style="list-style-type: none"> • Passage of CARP Extension with Reforms (CARPER) Law • The national land use act is pending in Congress • Establishment of a national platform for cooperation and policy dialogues on IP issues

The Backpedalling Stops

BANGLADESH Country Paper
Land Watch Asia





Acknowledgments

This paper is an abridged version of the Bangladesh Land Watch Country Paper “Land Watch Asia Campaign: Bangladesh Status Report” on the status of access to land and water, and opportunities and strategies for civil society advocacy. This is a collective effort of many civil society organizations, including members and partners of the Association for Land Reform and Development (ALRD), the Society for Environment and Human Development (SEHD), and other individuals in Bangladesh.

The principal author is Dr. Abul Barkat, Professor of Economics at the University of Dhaka and Chief Adviser of the Human Development Research Centre (HDCRC). He is also well-known internationally as a researcher with a difference. Sohel Ibn Ali, a freelance researcher, also made immense contributions in incorporating the feedback of the National Workshop participants and in rearranging the chapters in accordance with the priorities of ANGOC guidelines. The paper was prepared under the guidance of ANGOC and in accordance with the strategic objectives of ALRD, which acts as the focal point for Land Watch Asia in Bangladesh. Philip Gain, SEHD director, also provided significant inputs and suggestions to the country paper.

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Acronyms AND Abbreviations

ADB	Asian Development Bank
ALRD	Association for Land Reform and Development
ASEAN	Association of Southeast Asian Nations
CHT	Chittagong Hill Tracts
DF	district forest
EBSATA	East Bengal State Acquisition and Tenancy Act
EPA	Enemy Property Act
kCal	kilocalorie
LAND	Land and Agrarian Network for Development
LDT	Land Development Tax
NCCLRP	NGO Coordination Council for Land Reform Program
NGO	non-government organization
RF	reserved forest
ROR	Record of rights
SAARC	South Asian Association for Regional Cooperation
Tk	Taka
VPA	Vested Property Act



Glossary

Char	Accreted land; alluvial land or land deposits from the river silt on the riverbed created by flood or sedimentation
District	Geo-administrative unit; presently there are 64 districts in the country
Jalwahal	Government-owned fisheries
Khas land	Government-owned land
Khatian	The form in which the record of rights is prepared showing all the details relating to any particular “interest”
Tehsil	Lowest revenue unit, comprised of several <i>mauzas</i> (village as per revenue unit)
Thana	The lowest local administration office of the government, established during the British Period. Renamed as Upazila during 1982–1990. Thana is divided into a number of units.
Union Parishad	Elected council for administration and development activities at the union level
Union	Lowest self-government unit comprising of several villages
Upazila	Literally means Sub-district, the new administrative unit that contains the same territory of the Thana but acts as a local administrative center as the District.



Quick Facts

Land ownership is highly skewed:

- Large landowners make up 2.1% of the total, owning 17.3% of all agricultural land.
- 13% of households own 58% of total agricultural land.
- Landless and marginal households comprise the majority—70%—owning 15% of total agricultural land.

The average landholding size is 0.3 ha.

According to the Center for Policy Dialogue: 48.5% of the country’s rural population lives below the lower poverty line; 53.1% below the higher poverty line.

Land ownership is a determinant of rural poverty:

- The bigger the land owned, the greater its daily food intake.
- Landless households spend almost 2.3 times less on health care, and 4.7 times less on education than large landowners.

BANGLADESH

Overview of Access to Land

There is an acute shortage of land in Bangladesh. Its population of 150 million—still growing at an annual rate of 1.54%—makes Bangladesh the ninth most populous country in the world, as of the 2001 Population Census. With a land area that is just a little over 15 million hectares (ha), its population density (839 people per square kilometer) is also one of the highest in the world.

Sixty percent of the country’s land, about 9 million ha, is devoted to agricultural use, and 56% of this land, some 5 million ha, is privately owned (see Table 1). It is estimated that households own an average of 0.3 ha of land.

Table 1. Basic Features of Land and Population in Bangladesh, 2007

Land/Population	Amount
Total land (in million ha)	15.1
Population (in millions) <i>(Extrapolated based on Population Census 2001)</i>	150.0
Households (in millions) <i>(2007, extrapolated based on Population Census 2001)</i>	30.0
Land under agriculture (in million ha)	9.1
Privately owned <i>(rural-urban, disputed, non-identified khas land including community forestry)</i> (in million ha)	5.1
Land under government use <i>(rail, port, road, office, industry, educational institutions, health, utility service, etc)</i> (in million ha)	4.1
<i>Khas</i> land and <i>khas</i> water bodies (million ha) of which:	2.1
Agricultural <i>khas</i> land	0.5
Water bodies <i>(closed and open)</i>	0.5
Non-agricultural land	1.1
Enemy Property Act/Vested Property Act <i>(government as custodian)</i> (in million ha)	0.9
Abandoned <i>(government as custodian)</i> (in million ha)	0.4

In Bangladesh, the opportunity to use land is frequently determined by either ownership or access to state-owned land, known as *khas* land. More broadly, it can depend on ownership, use (usufructory right), right of entry proportionate to population size, and accrual of benefits. Accordingly, the history of land reform in the country is little more than a record of past and current attempts to distribute *khas* land to the landless poor.

Khas land and *khas* water bodies cover some 2.1 million ha, 24% of which (0.5 million ha) are agricultural. Past administrations have all adopted an agrarian reform agenda with the key strategy of distributing *khas* land to the poor, but all have made little progress in land reform.

While *khas* lands have been given to poor peasants under past programs, large numbers of these recipients have either been forced or tricked into giving up their holdings, due to alleged collusion among village leaders, government officials, and urban-based groups. Land speculation and widespread grabbing of *khas* land are two other major issues hindering land reform in Bangladesh.

Meanwhile, the absolute number of landless people in the country has doubled in the last 30 years, with a large section forced to migrate to the slums of big cities,

where they live in subhuman conditions. Studies have indicated that free and fair distribution of *khas* land could resolve this rural push-migration. Therefore, the equitable distribution of *khas* land and/or enhanced access of the poor to the same should be a major component of Bangladesh's poverty eradication agenda.

Land Ownership AND Distribution

LAND OWNERSHIP STRUCTURE

In 1960, 10% of households owned 37% of the country's largest parcels of land (3 ha and above). Thirty-six years later, in 1996, the percentage of owners of large landholdings had dwindled to 2.1%, owning 17.3% of total agricultural land. Meanwhile, the percentage of landless households (or those owning 0–0.19 ha) rose from 19% in 1960 to 56% in 1996. Land ownership remains highly skewed, as 70% of households who are landless and marginal farmers own only, at best, 15% of all agricultural land.

LAND OWNERSHIP as DETERMINANT of RURAL POVERTY

According to a recent report of the Center for Policy Dialogue, over 48.5% of the rural population of Bangladesh lives below the lower poverty line, and

Table 2. Land Ownership Structure, 1960–1996

	1960		1983–84		1996	
	% of HHs	% of land	% of HHs	% of land	% of HHs	% of land
Landless (0–0.19 ha)	19.0	1.0	46.3	3.1	56.0	4.9
Marginal and small (0.2–0.9 ha)	38.0	15.0	33.6	26.2	30.7	36.5
Medium (1–2.9 ha)	33.0	47.0	16.3	44.9	11.2	41.3
Large (3 ha and over)	10.0	37.0	3.8	25.8	2.1	17.3
All	100.0	100.0	100.0	100.0	100.0	100.0

Source: Government of Bangladesh 1999a, 1999c, 1993d, 1989; Government of East Pakistan, 1965.

Note: Measure for land size converted from decimal to hectare. 1 decimal is equivalent to 0.01 acre or 0.004047 hectare.

**Table 3. Land Ownership and Poverty Trends (in %)**

Land ownership group	Households living below the lower poverty line as % of all households within the land ownership group	Households living below the higher poverty line as % of all households within the land ownership group
No land (absolutely landless)	57.1	70.6
0.004–0.019 ha (near landless)	48.1	64.2
0.02–0.19 ha (functionally landless)	39.8	59.1
0.2–0.59 ha (marginal)	30.6	47.6
0.6–0.90 ha (small)	22.2	35.7
1–2.90 ha (medium)	12.5	24.4
3 ha and over (large)	4.1	8.1
All	37.4	53.1

Source: Ministry of Finance, 2003

Table 4. Income, Health Care Expenditure, Education Expenditure, Expenditure on Food and Valuation of Capital Assets (in \$, Based on 2003 Prices) and Per Capita Daily Food Intake (in kCal) by Land Ownership Categories

	Annual average income	Annual average health care expenditure	Annual average education expenditure	Annual average expenditure on food	Valuation of capital assets—2002(Tk)	Per capita daily food intake (kCal)
Landless (0–0.19 ha)	697	48	19	572	176,510	2,194
Marginal (0.2–0.59 ha)	826	56	28	590	478,769	2,278
Small (0.6–0.90 ha)	1,367	53.8	32	684	759,712	2,281
Medium (1–2.90 ha)	1,512	54	68	859	109,503	2,666
Large (3 ha and over)	3,490	111	85	1,278	2,791,959	2,880

Source: Government of Bangladesh, 2003

Note: 1 Bangladeshi Taka=0.01788 US Dollar (in 2003 prices)

53.1% below the higher poverty line. The report also indicated a strong association between land ownership and poverty, i.e., poverty is reduced with increased land ownership.

The amount of food consumed by a household, for instance, is directly related to its land ownership status: the bigger the land owned by a household, the greater its daily food intake (measured in terms of kilocalories/kCal). Among the landless, the daily per capita intake is 2,194 kCal, which is only slightly higher than the 2,122 kCal per capita food intake of persons living on the “absolute poverty line”.

Landless households also spend almost 2.3 times less on health care than large landowners. When it comes to education, landless households spend 4.7 times less than the land-rich. As a result, land ownership is a determinant of literacy. Landless households are 1.6 times less likely to be literate than land-rich households. Both the overall literacy and adult literacy rates improve with increases in land ownership. More importantly, the gender-divide in literacy is pronounced when correlations with land ownership status are made: only 37% of landless females are literate, compared to 53.2% of landless males. Moreover, the literacy gap between the landless and the land-rich is higher among females (36.9%) than it is for males (24.8%).

Issues Affecting Access to Land

ACCESS to and DISTRIBUTION of *KHAS* LAND

Agricultural *khas* (government-owned) land is a core issue in discussions on access of the poor to land in Bangladesh. Agricultural *khas* land covers some 321,323 ha. Of this, 139,691 ha or 43.47% of the total agricultural *khas* land has reportedly been distributed to landless households. In 1997, the government instituted a policy for distributing *khas* land to landless peasants. “Landless peasants” were defined to include landless families *with or without homestead* and are dependent on agriculture for their livelihood. The policy also prioritized certain groups, such as the families of freedom fighters, families that lost their land to erosion, divorced women with adult sons, landless families without homestead, and families whose lands were expropriated by the government. However, a study conducted in 2001 reported that while 82.8% of *khas* recipients fit into the above-mentioned categories, as much as 17.2% of *khas* recipients do not even own close to a quarter of a hectare of land.

Khas recipients are supposed to pay government a fee of 1Tk (\$0.01, in 2008 prices) per acre of *khas* land received. In practice, however, *khas* land recipients have to fork out bribes for as much as \$105–\$150 (in 2008 prices) per acre. Bribes are exacted by the

Table 5. Overall Literacy and Adult Literacy Rate by Land Ownership Groups

	Overall literacy rate (age 7 and above) (%)			Adult literacy rate (%)		
	Male	Female	Both	Male	Female	Both
Landless (0–0.19 ha)	51.2	41.3	46.6	53.2	37.3	45.9
Marginal (0.2–0.59 ha)	65.3	53.0	59.2	65.9	50.2	58.5
Small (0.6–0.9 ha)	72.5	52.1	62.9	77.3	55.6	67.4
Medium (1–2.9 ha)	74.2	60.3	67.9	77.0	62.1	70.4
Large (3 ha and over)	78.4	70.0	74.6	78.0	74.2	76.4
Average rate	62.2	49.8	56.4	64.6	48.6	57.3



assistant land officer, the chair of the union *parishad* (the lowest tier of government), and even by minor officials at the land offices.

ACCESS to and DISTRIBUTION of NON-AGRICULTURAL LAND

Before March 1995, there were no guidelines for the management of non-agricultural land. In the absence of a regulatory mechanism in this area, influential and well-connected people have been able to claim ownership of non-agricultural land through a court ruling that is usually based on forged documents. In March 1995, the government issued detailed guidelines for the management and settlement of state land in urban areas. By then, however, most of these lands had already been awarded to the rich and powerful.

ACCESS to GOVERNMENT-OWNED FISHERIES

Government-owned fisheries covering 1.2 to 8 ha, called *jalmahals*, are auctioned off by the districts to fisher cooperative societies. The lease, which is effective for one year, is awarded to the highest bidder. However, not all the bidders are fisher coops; many of them are fronts for moneyed people. The fishers therefore end up as laborers and are merely paid wages, while the profits go to the financiers behind the operations.

ABSENTEE LAND OWNERSHIP

Thirteen percent of households own more than half (58%) of the country's land. Many of these households do not engage in agriculture, but live and earn their living in urban areas, either by running their own business or by being employed in the government or the private sector. This encourages rent-seeking behavior.

COMMERCIALIZATION of AGRICULTURE and FORESTRY

SHRIMP CULTIVATION. One and a half million people are engaged in shrimp cultivation. In the early stages of this industry, shrimp culture was practiced in the household and on fallow and/or marginal land, to augment farm incomes. When shrimp culture became more profitable than crop farming, various coastal lands, including rice farms, mangrove areas and marshes were brought under shrimp cultivation. This has created serious environmental



problems, such as deterioration of water quality, loss of vegetation, loss of biodiversity, land degradation due to increase in soil salinity, and declining numbers of livestock and poultry.

Rubber and fuelwood plantations have destroyed forests, displaced ethnic and forest-dwelling communities and caused conflict between forest-dependent groups and the government's Forest Department.

LAND CONVERSION

The country's agricultural land has been reduced considerably due to forcible land acquisition to make way for export processing zones, residential development, infrastructure development and other government projects. Much of the land that has been converted thus is *khas* land which the government ought to be distributing to landless peasants.

Legal Framework FOR Access TO Land

The following is a summary of the features of laws and programs instituted by successive governments in Bangladesh to address the need for land reform.

LAWS

East Bengal State Acquisition and Tenancy Act (EBSATA) of 1950

- Aimed to make peasants direct tenants of the government, with rights to transfer, inherit, and cultivate their land as they saw fit;

- Sought to eliminate rent-seeking interests and absentee land ownership, by prohibiting the subletting of land;
- Fixed a ceiling of 13.3 ha of cultivable land per family (This ceiling was raised to 50 ha per family in 1961); and
- Guaranteed the rights of tenants and of their successors to land lost to erosion during the period when the land is flooded or under water, but not exceeding 20 years (Sec. 86).

Land Reform Policy of 1972

- Restored the ceiling of 13.3 ha of cultivable land per family;
- Gave government the mandate to acquire surplus land and to distribute it to landless peasants;
- Authorized the government to acquire flooded and accreted land, and to treat these as *khas* land; and
- Exempted land owners holding less than 3.33 ha from paying land tax.

Land Reform Ordinance of 1984

- Reduced the ceiling for landholdings from 13.3 ha to 8 ha;
- Prohibited the purchase or transfer of land in the name of another person to conceal the identity of the true landowner;
- Fixed the minimum wage of agricultural laborers at equal the value of 3 kilograms (kg) of rice;
- Prohibited the eviction of peasants from their *paternal* homestead;
- Instituted a three-way sharing of farm produce: one third to the landowner; one third to the sharecropper; and the remaining third to be divided proportionately between the landowner and the sharecropper on the basis of expenses incurred by each one;
- Weaknesses/problems in implementation:
 - ➔ Despite lowering the ceiling for landholdings, the government failed to recover surplus land, estimated at 1 million ha, because of the lack of political will.
 - ➔ The sharing of the produce proved to be inequitable. Sharecroppers bore all the costs, including input, while the produce was divided 50/50 between the landowner and the

sharecropper, with the former taking most of the by-products.

- ➔ The minimum wage (equivalent to the price of 3 kg of rice) could not support the needs of an average family of five members.

KHAS LAND MANAGEMENT and DISTRIBUTION POLICY

- Grants joint ownership of *khas* land to husband and wife.

Laws Related to Alluvion and Diluvion (i.e., flooded/inundated) Land

1. EBSATA, Sec. 86

Guaranteed the land rights of tenants and their successors to land lost to erosion during the period when the land is flooded or under water, but not exceeding 20 years.

2. Presidential Order No. 135 (1972)

Amended the EBSATA by authorizing the government to lay claim to alluvion and diluvion land when such resurfaces, and to redistribute such to landless families.

3. 1994 Amendment to the EBSATA

Mandated that in the case of landholdings lost to erosion, the right, title, and interest of the tenant or his/her successor in interest are retained during the period of loss through erosion, but not exceeding 30 years.

Vested Property Restoration Act of 2001

- Abolished the Vested Property Act (VPA)—formerly the Enemy Property Act (EPA)—which dispossessed the Hindu population of their ancestral land during the war between Pakistan (of which Bangladesh used to be part) and India in 1965. Even after Bangladesh had declared its independence from Pakistan in 1971, the EPA was retained—renamed as VPA—and resulted in the confiscation of some 800,000 ha of Hindu property. Around 0.75 million Hindu households were reportedly victimized by this law.
- Weakness/problem in implementation:
 - ➔ Even after the abolition of the VPA in 2001, the situation of Bangladesh's Hindu population

remains unchanged. Studies show that over a third of Hindu households have become landless and/or marginal land owners. Statistics also show a marked decline in the size of the Hindu population in Bangladesh: from 18.4% in 1961 to just 9.2% in 2001.

LAND RIGHTS and LAND MANAGEMENT PROJECTS

Cluster Village Program (1988)

- Aimed to rehabilitate landless families by providing them with homesteads on state land and by improving their socio-economic status. In some cases, plots of land were awarded to families, under the name of both the husband and wife. During the periods 1988–1997 and 2000–2007, European financing helped to resettle more than 50,000 households on public land with 65% of these receiving land titles.

Char Development and Settlement Project (1987)

- Started in 1987 in the *char* areas in southeastern Bangladesh;
- Aimed to settle landless people on newly accreted land by providing support to the settled households. The project distributed some 40,000 ha of *khas* land to 50,000 landless families in the greater Noakhali districts.

Computerization of Land Records Project

- Implemented as a pilot project to computerize land records in particular areas of Dhaka.

Modernization of Land Administration Project (1995–2003)

- Implemented through technical assistance from the Asian Development Bank (ADB);
- Aimed to (1) identify the technological and human resource constraints to efficient land administration; (2) computerize property records; (3) improve the speed and quality of the production of printed maps; and (4) automate the administration of the land development tax;
- The project showed that technical solutions alone are not enough to create a modern, transparent and efficient land administration system and that

fundamental legal and institutional changes are necessary to operationalize the desired system.

Access to Land of Marginalized Groups

ETHNIC GROUPS

Some 1.2% of the country's population is composed of ethnic minorities (GoB 1994a). According to government records, there are 27 ethnic or indigenous communities in Bangladesh; but different sources, including the leaders of the ethnic groups, estimate the number at 45 and above.

The ethnic minorities whom the Bangladesh government does not regard as indigenous to the country are classified into two groups, according to their geographic location—plains ethnic people and hill ethnic people. There are 21 distinct ethnic communities in the plains who live along the borders of the northwest, north, northeast and the north-central region of the country. The hill ethnic people live in the Chittagong Hill Tracts (CHT), which is divided into three districts—Rangamati, Khagrachari, and Bandarban.

Access of Minority Groups to Land in the CHT

Laws passed in 1865, 1875, and 1878 gave the state monopoly rights to different types of land and resources. In particular, a law passed in 1875 created two types of forest in the CHT, namely: reserved forest (RF) and district forest (DF). As a result of this law, 24% of the CHT was designated as RFs and off-limits to the hill people. However, at the start of the 20th century, hill people began to acquire private rights to land, especially after they had abandoned their practice of slash-and-burn farming. Later, private freehold rights (rights in perpetuity) and leasehold rights (rights for a specified period) were awarded to hill people operating timber plantations. The Regulation of 1900 defined the terms and conditions for these private and usufruct rights. The CHT Manual issued by the government conferred user rights to CHT land to hill and non-hill people. Rule 50–1 of this Manual specifically reserved the hill people the

right to occupy CHT land. Amendments to this 1900 regulation allow—at certain times—the allocation of large-size lands to the non-residents for the cultivation of rubber and for other business purposes.

In the 1970s and 1980s, however, the government settled nearly half a million Bengali people from the plains. In their attempt to resist the Bengali settlement in the CHT, hill communities, with the latent support of neighboring India, formed a guerilla force called *Shanti Bahini*. As a result of this resistance movement, successive governments turned the CHT into a militarized zone. The Bangladesh military and settlers have been accused of committing genocide against the hill people with silent support from the law enforcers. Following years of unrest, an agreement was reached between the Government of Bangladesh and the hill tribe leaders which granted a limited level of autonomy to the elected council of the three hill districts. A Peace Treaty was signed in 1997 between the then Sheikh Hasina Government and the *Shanti Bahini*, but this has not improved the lot of the hill tribes. The Land Commission, which the government promised to establish as part of the Peace Accord, and through which land disputes in the CHT could be resolved, has yet to be created.

As a result, the hill tribe population in the CHT has plummeted from 75% in the 1950s to less than 40% today. The construction of the *Kaptai Dam* and hydro-electricity projects have submerged 21,600 ha of land (or 40% of all cultivable land in the CHT) under water, and displaced over 85,000 people. Thousands of acres of cultivable land were distributed to settlers from the plain districts.

Access of Minority Groups to Land in the Plain Districts

Plains land ethnic minority groups have been losing their access to land at an even faster rate than the hill people. This is due to widespread land grabbing in the plain districts. Three out of four households belonging to plain-land minority groups are landless. Twenty-eight percent of them have no (agricultural) land and 48% have less than 0.2 ha. A 2004 study showed that the Santals, an indigenous group living in northeastern

Bangladesh, are rapidly losing their lands; 70% of rural based Santals are landless.

The tea plantation workers most of whom are lower caste Hindus (considered untouchables or Dalits in India) literally have no access to land. They live in housing called “labor lines”, where conditions are dismal. All the land in the tea zone belongs to the companies.

WOMEN

Women's right to inherit land is determined by religion: *Sharia*, for Muslim women; and *Daibhag*, for Hindu women.

Sharia Law grants Muslim women limited rights to inherit property. In practice, however, the patriarchal nature of Muslim society prevents women from claiming this limited entitlement. A woman, being “a good sister,” is expected to surrender her claim to paternal property to her brothers.

With few exceptions, *Daibhag* does not provide for inheritance rights for Hindu women. A Hindu woman benefits from the fruits of the land only insofar as she is taken care of by the males in her family while she is unmarried, and then by her husband, until her death.

The Government *Khas* Land Management and Distribution Policy confers joint ownership of *khas* land to husband and wife. The government Cluster Village Program also issues titles to homesteads to both husband and wife. However, sexual discrimination in regard to land inheritance prevails.





CHAR DWELLERS

Five percent of the country's population lives in *char lands*, or lands accreted from rivers and the sea. Government owned char lands cover about 170,000 ha. Ideally, char households should get an average of 1.88 ha each. However, as much as 60% of char households are absolutely landless.

FISHERS

Over 13.2 million people in Bangladesh (10% of the population numbering 130 million) are employed in the fisheries sector—1.2 million are employed directly, full-time; and 12 million work only part-time or on a seasonal basis. Counting family members, an estimated 38 million people (about 30% of the population) are involved in fishery activities.

Many fishing communities have limited access to water bodies. The Ministry of Land in each district auctions off lease rights (lasting one to three years) to water bodies. But while fishermen's cooperatives are supposed to be prioritized in such auctions, elite groups generally win the bidding, through a cooperative fronting for them. The fishers therefore end up paying rent to the leaseholder, while the latter racks up profits of up to 1,000% of the auction price.

Poor fishers are likewise unable to obtain lease rights to *khas* water bodies. Of the total 332,142 ha of *khas* water bodies in the country, only 5% has been leased



out to the poor under the *khas* Land Distribution Program. A program for single-year leasing of open water bodies has also failed to benefit the poor. The annual lease amount is Tk100,000 (or \$1,497, in 2008 prices), and this increases by 10% every year. Also, by the time the lease expires, the leaseholder usually will have exhausted the resource.

Actors Facilitating OR Impeding Access TO Land AND Tenurial Security

GOVERNMENT

Ministry of Land

The Ministry of Land has overall responsibility for the management and administration of land, collection of Land Development Tax (LDT), maintenance of land records, formulation of policies on land management, land use planning, land reform implementation, and various development programs related to land. Land management functions at the field level are carried out by the commissioner and deputy commissioner at the district level, the sub-district executive officer, the assistant commissioner (for land) at the sub-district level, and the assistant land officer at the union level.

Under the Ministry of Land are several offices that deal with land access concerns. The Land Reform Board operates at the *upazila* land offices and the union *tehsil* offices. It administers *khas* land and manages abandoned and vested property; updates maps and land records between surveys; sets and collects LDT; and is responsible for the implementation of land reform laws and tenants' rights.

The Land Appeal Board is the highest revenue court in the country. It serves as final arbiter in matters relating to *khas* land, changes in records, plot demarcation, and taxation, which cannot be resolved at lower levels; and rules on appeals of decisions of District Commissioners.

The Directorate of Land Records and Surveys carries out cadastral surveys, from which it produces maps showing individual plots of land and *khatian*, which is

used to prepare and maintain the record of rights (ROR) concerning every parcel of land in Bangladesh.

Ministry of Law, Justice and Parliamentary Affairs

Under the Ministry of Law, Justice and Parliamentary Affairs is the Office of the Inspector General of Registration, which registers ownership arising from the sale and other forms of land transfer; reports changes to the Ministry of Land; and collects the Immovable Property Transfer Tax.

NON-GOVERNMENT ORGANIZATIONS

There are around 200 NGOs working to promote the land rights of landless people in the country. The Association for Land Reform and Development (ALRD), a national civil society network, is an offshoot of the NGO Coordination Council for Land Reform Program (NCCLRP). The council was formed in 1987 to support the government's *khas* land distribution program by raising people's awareness of government regulations, policies and guidelines and by ensuring NGO participation. ALRD has 260 local and national NGO partners, which mobilize the principal actors of agrarian reform, namely: policy makers, public representatives, politicians, and the media, to initiate positive pro-poor policy formulation and effective implementation initiatives. ALRD is credited with the formulation of the National *Khas* Land Management and Distribution Policy, the *Khas* Water Bodies Management Policy, the enactment of the Vested Property Restoration Act 2001, the amendment of the Registration Act, and the development of the Citizen Charter for the Directorate of Land Records and Surveys.

Nijera Kori works on issues related to land tenure, agricultural wages, *khas* land distribution, *khas* water body distribution, and shrimp farming, among others; engages in awareness-building, training, provision of legal aid, and lobbying with the government; and focuses on mobilizing the grassroots with a view to influencing field, local and national level implementation.

Samata works in northwest Bangladesh, primarily to assist landless people to gain access to *khas* land and *khas* water bodies. With its Land and Agrarian Network for Development (LAND), Samata engages in social



mobilization around land rights and related local administrative reform. Samata and its LAND network NGO members come from the extreme poor, comprising 40% of the population living below the poverty line, including the rural landless, day laborers, and fishers. They also help the landless poor form groups and committees, and engage them in awareness building and training. These groups identify land and, with support NGOs' support, put together the documentation necessary to apply to various local officials responsible for verifying and distributing *khas* land. Samata and its partners have been able to mobilize 500,000 landless men and women, and to recover and redistribute around 40,000 ha of *khas* land and *khas* water bodies to 200,000 rural landless families.

Other NGOs include ARBAN, Banchte Chai, BFF, Caritas Bangladesh, CDA, CNRS, COAST Trust, Dulai Jono Kallayan Sangstha, Dwip Unnayan Sangstha, FDA, Gram Bikash Kendra, Jamuna, Karbala, LDO, Manab Mukti Sangstha, PPL, RDRS, RFS, RULFAO, Sagarika, SDS, SEHD, SHARP, Shusilan, Sromojibi, Sustain, SWALLOS. These groups apply a rights-based approach to land advocacy, which includes activities such as: (1) group formation, committee formation, and mobilization of landless men and women; (2) strengthening organizations that represent the landless poor or advocate for land rights on behalf of the poor; (3) land rights information and awareness campaigns and land literacy programs; (4) identification, information collection, information verification, recovery and redistribution of *khas* land and *khas* water bodies; (5) training for those involved in service delivery, including government land administration agencies and NGOs;

(6) promotion of participatory research and consultations in relation to laws and policy formulation and reformation to strengthen the rights of the poor, landless, women, and other disadvantaged and marginalized groups; (7) provision of legal representation for the poor to enable them to claim their land rights; (8) instituting local arrangements for land administration and systems for resolving land disputes in ways that are accessible and transparent to the poor; (9) involvement of civil society groups and community representatives in assessing and monitoring the performance of government in relation to land and agrarian reform; (10) representation of civil society groups and communities in land management committees, land boards, and land commissions; (11) investigation, fact-finding, video documentation and research on development projects in forestry, fisheries, and infrastructure projects funded by international financial institutions (IFIs), among others, affect marginalized communities; and (12) sharing and customization of knowledge.

Opportunities, Challenges AND Strategies TO Advance Access TO Land AND Tenorial Security

LESSONS from PAST INTERVENTIONS and INITIATIVES on LAND and TENURIAL SECURITY

- **Importance of Patience and Commitment**

Land rights involve complex issues, whose solutions require radical (i.e., long-term) structural changes in the country. Many of the movements that have succeeded, such as the Ranisankail Movement, and the Ghughudah Movement, took over a decade to bring to fruition. Therefore, land activists and landless communities should engage in the land rights movement with a long-term strategy and action plan.

- **Strong Participation of Landless Communities**

The involvement of landless communities in the planning and reflection process helps promote their sense of ownership of the movement, whether or not it succeeds. It also helps to enhance the movement's sustainability.

- **Mobilization and Coalition-building**

Coalition-building enhances the movement's chances of success and its potential to take on a life of its own. The coalition must have a broad base of support, and must be able to accommodate many opinions within the consensus framework.

- **Little Attention to Knowledge Generation**

Research for generating original and relevant information is very limited. The knowledge that already exists is not sufficiently customized and used to inform policy advocacy on land rights.

- **Spaces for Dialogues**

Following the free and fair parliamentary elections in December 2008, the Mahajote (Grand Alliance) Government headed by Sheikh Hasina was formed. A number of democratic institutions were restored (e.g., parliamentary standing committees, National Human Rights Commission, Anti-Corruption Commission), while a few of them were newly created.

RISKS and CHALLENGES

- **Lack of Political Will**

Successive governments in Bangladesh have not prioritized land reform policies, primarily because government and political party leaders come from rich, landed families, which may or may not have had a hand in grabbing state-owned land and water bodies. But even if the leaders may not themselves have been involved in such activities, they are



reluctant to prosecute the land grabbers, who are usually loyal and generous supporters.

- **Insufficient Capacity of Land Rights Organizations and NGOs**

Organizations working on land rights and other NGOs are still ill-equipped to clearly articulate their objectives and strategies, mobilize resources, engage in participatory planning, and communicate effectively with government. This lack of capacity has hindered the progress of the land rights movement in the country. These groups also have limited ability to analyze the issues related to land rights, and have therefore failed to communicate with other stakeholders. Pro-poor land reform advocates must have the ability to think strategically and to form strong alliances among other groups.

- **Lack of Livelihood Support for the Landless**

One of the challenges facing the land rights movement is the need to provide for and sustain the families involved in the movement. The land rights struggle is protracted; at the same time, the needs of the affected families are immediate. The challenge therefore is how to strike a balance between meeting the immediate needs of the people and their strategic (i.e., long-term) goals.

- **Unsupportive Donor Policies**

Donor policies and priorities sometimes change so quickly that land rights organizations find their funding source drying up all of a sudden. Moreover, many donors support project-based activities following an inflexible timeframe, which is inappropriate for conducting movements. The neoliberal and market-oriented policies adhered to by many donors also work against the interests of tenants and landless farmers.

STRATEGIES for ADVANCING ACCESS to LAND and TENURIAL SECURITY

- **Confirmation of Tenurial Security**

There is a need to confirm the tenurial security of land users. A variety of methods may be used, such as formal titling programs; formal recognition

and registration of customary and other informal rights to land and occupancy; and tenure registration, which involves updating land records and clarifying the tenurial status of land users and claimants. The government has tended to ignore the need to confirm the tenurial status of land users, or has approached the task by attempting to implement comprehensive land registration and titling programs. The process of tenure formalization requires careful planning, customization and integration into local contexts.

- **Redistributive Land Reform**

Redistributive land reform is relevant in highly unequal societies and in countries undergoing political and economic transition, such as Bangladesh. But it tends to take time, linked as it is to the processes of economic development and decolonization. Bangladesh has almost 2 million ha of state-owned land which it could recover from illegal occupants and redistribute to the landless poor in the country. The government could also strictly enforce the agricultural land ceiling, expropriate the surplus, and distribute this to the landless. The government, in partnership with other stakeholders, must also provide for basic infrastructure and social and agricultural support services, if land reform efforts are to succeed.

- **Improving the Capacity of Public Sector Land Institutions**

Capacity building of public sector land institutions and the use of information technology are essential to the success of land registration and titling programs.

- **Targeting Assistance to Civil Society Groups and NGOs Involved in the Agrarian Reform Debate**

Development partners can promote partnerships by targeting assistance to civil society groups and NGOs involved in the debate and implementation of agrarian reform. In Bangladesh, this is necessary because the government is either unwilling to make a commitment to implementing agrarian reform, or has its hands tied because of its links to the landed elite.



• Improving the Governance of Land Resources

The governance of land resources not only determines access to land, livelihood, and economic opportunities in the short-term, but also plays a critical role in resolving social conflicts between groups and in ensuring environmentally sustainable development in the longer term.

• Research, Knowledge Management and Lessons Learned from Pro-Poor Land Reform

There is a need to promote the effective use of research-generated knowledge in operationalizing land policies for pro-poor development. It is important to discuss and communicate the findings from research and practice with policy and decision-makers at all levels. A combination of high-quality, focused research and capacity to work within the policy formulation process are essential if land rights advocates are to make a contribution toward the improvement of land policies and their implementation. Research and networking activities must be conducted such that contact and feedback are established between and among a range of actors at various levels of decision-making in the country, as well as at the regional and international levels.

• Transparent Monitoring and Evaluation Systems and Process for Land and Agrarian Reform Programs

The key topics for evaluation and learning are: (1) the impact of different approaches and ongoing programs for land distribution and agrarian reform;

(2) formalization or regulation of land rights; (3) design of land institutions and linkages of land policy and land reform; (4) land administration programs; and (5) wider development strategies and poverty reduction, including questions of prioritization, cross-sectoral coordination, sequencing, and phasing.

RECOMMENDATIONS for COUNTRY, REGIONAL, and INTERNATIONAL LEVEL ADVOCACY and CAMPAIGN

At Country Level:

1. Representatives of peasants and landless groups should have a strong presence in the national *Khas* Land Management Committee, and the Distribution Committee at the district level;
2. A legal support system needs to be institutionalized to ensure the speedy resolution of problems concerning the land ownership rights of the poor, and their choice of crops to cultivate. Existing legal aid support from NGOs and other institutions needs to be strengthened;
3. The Vested Property Repeal Act of 2002 should be implemented immediately in order to protect the land rights of religious minorities;
4. All vested property under the government's custody should be leased out to the real owners or to their legal heirs who are permanent residents of Bangladesh, pending the final settlement of individual cases;
5. The law of inheritance should be amended to make provisions for women's equal right to own land;
6. Efforts should be made to implement the Peace Accord (signed between the Government and the indigenous peoples of the CHT in December 1997) in a comprehensive manner, paying special attention to critical provisions that have been left unimplemented, such as the activation of the Land Commission;
7. In order to resolve the deep-rooted problem of forcible occupation of hills lands, these issues must be addressed by an effective and empowered Land Commission, as stipulated in the Peace Accord;
8. Separate laws must be enacted and implemented to promote and protect the customary land rights of indigenous peoples;





9. Tea plantation workers should be given special attention vis-à-vis policy work;
10. To maximize and rationalize the utilization of land, a national land use policy needs to be developed;
11. Social movements and a social land watch platform needs to be created to campaign against land-related corruption and the non-implementation of pro-poor and pro-women laws and policies regarding land rights and agrarian reform; and
12. Research and customization of knowledge that already exists need to be scaled up.

At the Regional and International Levels:

1. Best practices in different countries in the region must be used for the campaign;
2. The campaign to recognize the customary land rights of indigenous communities has to be stepped up at the country and regional levels;
3. The campaign against encroachment and violation of the land and human rights of indigenous peoples has to be developed and conducted both at the country and the regional/international levels;
4. Networking among civil society actors and NGOs on issues concerning land, water, and forest rights needs to be strengthened at the national and regional levels;
5. Capacity building of CSOs, community-based organizations, and relevant government agencies has to be addressed;
6. Interactions among intergovernmental organizations on land and agrarian reform issues need to be enhanced, and the implementation of their programs

monitored at the country and regional/international levels; and

7. Advocacy and lobbying on land and agrarian reform issues should be done with governments at country level, and collectively, through forums, such as South Asian Association for Regional Cooperation (SAARC), Association of Southeast Asian Nations (ASEAN) at the regional/international levels.

Endnote

- ¹ Barkat, A., & Akhter, S. (2001). A mushrooming population: The threat of slumization instead of urbanization in Bangladesh. *The Harvard Asia Pacific Review*, Winter Issue 2001, Harvard, Cambridge, MA.

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Overcoming a Failure of Law and Political Will

CAMBODIA Country Paper
Land Watch Asia



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Acronyms

ADHOC	Cambodian Human Rights and Development Association	ILO	International Labour Organization
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development	JMIs	joint monitoring indicators
APSARA	Authority for the Protection and Management of Angkor and the Region of Siem Reap	K–NAN	Kampong Cham NGO Advocacy Network
CACA	Civil Society Advocacy Coordination Alliance	LAND	Land Action Network for Development
CC	commune council	LASED	Land Allocation for Social and Economic Development
CDCF	Cambodian Development Cooperation Forum	LICADHO	Cambodian League for the Promotion and Defense of Human Rights
CG	Consultative Group	L–LIN	Land Law Implementation Network
CHRAC	Cambodian Human Rights Action Committee	LMAP	Land Management and Administration Project
CIDA	Canadian International Development Agency	MAFF	Ministry of Agriculture, Forestry and Fisheries
CMDGs	Cambodia Millennium Development Goals	MLMUPC	Ministry of Land Management, Urban Planning and Construction
DCA	DanChurchAid	NALDR	National Authority of Land Dispute Resolution
ELC	economic land concession	NPA	Norwegian People's Aid
ICESCR	International Covenant on Economic, Social and Cultural Rights	OHCHR	Office of the High Commissioner for Human Rights
ILC	International Land Coalition	RCW	Ramsar Convention on Wetlands
		SEZ	special economic zone
		SLC	social land concession
		TWG	Technical Working Group
		UDHR	Universal Declaration of Human Rights
		UN	United Nations
		UNDP	United Nations Development Programme
		UNOHCHR	United Nations Office of the High Commissioner for Human Rights
		WFP	World Food Programme





Quick Facts

Poverty is primarily a rural phenomenon. In 2004, 91% of the poor lived in rural areas.

The agricultural sector generates about 29% of GDP, but provides to about 80% of country's labor force.

45% of rural households in Cambodia owned less than 1 ha per household.ⁱ

According to Amnesty International, an estimated 150,000 Cambodians are at risk of eviction due to development projects, land disputes and land grabbing. From 1990 to 2008, some 26,600 families were evicted.ⁱⁱ

21% of rural Cambodian households were landless in 2008.ⁱⁱⁱ

40% of households whose heads are engaged in agriculture are poor.

Incidence of land related conflicts: 1,551 land disputes between 1991 and 2004, covering over 380,000 ha and more than 160,000 farming families.

As of 2006, two-thirds of these cases remain unresolved.^{iv}

Land disputes are concentrated in areas with abundant lands experiencing economic growth.

In 2010, only about a quarter of total land parcels were secured by land certificates: most Cambodians own land not officially recognized by the state.^v

ⁱ Cambodian Development Resource Institute. 2008 as cited in STAR Kampuchea in cooperation with Ngo Sothath. Land Monitoring Report: Cambodia, September 2011. Submitted to ANGO as part of the CSO Land Reform Monitoring Initiative.

ⁱⁱ Amnesty International, 2008. Rights Razed: Forced Evictions in Cambodia, AI Index. Available from www.amnesty.org/en/library/asset/ASA23/002/2008/2n/b1328237-07c2-11dd-badf-1352191852c5/asa230022008eng.pdf

ⁱⁱⁱ Cambodian Development Resource Institute. 2008.

^{iv} LICADHO Report, 2006.

^v STAR Kampuchea in cooperation with Ngo Sothath. Land Monitoring Report: Cambodia, September 2011.

CAMBODIA

Overview of Access to Land

Land management and administration in Cambodia can be traced back to its French colonial history, particularly the Civil Code of 1920, which established the system of French land law that recognized private property rights.

Though Cambodia gained its independence in 1954, an adequate land management system was not in place until the 1960s. Initially, few landholders sought to have their lands titled, in order to avoid the taxes they would have had to pay as land owners. By the next decade, however, private property rights had started to be adequately documented, particularly through cadastral maps and land titles. By March 1970, when General Lon Nol's coup d'état successfully deposed Prince Sihanouk, many of the low-lying areas planted with rice had been claimed by private owners. Yet the change in government only resulted in the deterioration of the land management system for the next five years.

In 1975, the Khmer Rouge regime put all lands under state ownership, destroying all records, including cadastral maps and titles. Government employees involved in land management, registration and surveying who did not manage to leave the country were re-deployed to the countryside or executed. In 1979, the State of Cambodia organized the collective as the basis for claiming user rights to agricultural land: while residential use rights were allocated on the basis of occupation, ownership of land still remained in the hands of the State.

Only 10 years later, after the fall of the Khmer Rouge, did a 1989 amendment to the Cambodian Constitution provide for a new private property system. According to Article 15 of the Constitution, "Cambodian citizens shall enjoy fully the right to own, use, bequeath, and inherit land granted by the state for the purpose of living on it and exploiting it."

Later, private property rights were also awarded under the Land Law of 1992. However, this law failed to regulate the granting of land concessions and it was not until 1998 that the Ministry of Land Management, Urban Planning and Construction (MLMUPC) was established to oversee the development of the policy and regulate the awarding of land concessions. This ministry also coordinated land use mapping and cadastral surveys, implemented land registration, and administered land transactions. The Land Law of 1992 was also amended in 2001 to address the same regulatory concerns more directly. Yet the NGO sector in Cambodia is one in the opinion that the law has not been properly implemented.¹

According to the NGO Forum on Cambodia, “The inadequate enforcement of laws and executive regulations in relation to the management of land and

natural resources results in the spoliation of the natural and cultural heritage of Cambodian citizens, especially vulnerable groups living in remote areas, through the use of different practices, such as misinformation, intimidation, threats, land grabbing, illegal logging and illegal land sales.”²

NGO and donor representatives view this as part of bigger problems related to poor governance, such as the lack of rule of law; lack of transparency; and corruption.³ The institutions responsible for equitable land administration and conflict resolution are also overly bureaucratic. As a result, even if cases of land disputes proceed to the courts, the complainants frequently lose.⁴ In other words, responsible government agencies do not sufficiently recognize the increasing problem of landlessness.

CASE STUDY #1

The Killings in Kbal Spean

On 21 March 2005, a mass eviction took place in Kbal Spean, a village in Poipet commune, O’Chrov district, Banteay Meanchey province. In the ensuing scuffle, five villagers were killed and at least 40 others were injured. Three members of the military and police forces were arrested, but were later released without charge.

The eviction incident took place at the height of a land dispute between the community and the official village chief, Tin Oun, who is claiming the land for himself.

According to the villagers, the district authority had awarded the land to them in 1997. Yet, a year later, Tin Oun applied for ownership of the same land and received a title to it.

The evictees moved to another area, but soon after returned to Kbal Spean

to face an uncertain fate. Nobody was charged for what the villagers regard as an illegal eviction, nor for the deaths of the five villagers. No land titles have been distributed to the villagers.

Representatives of the Kbal Spean community came to Phnom Penh and camped for nearly four weeks in front of the National Assembly Building. They then sent a letter to the Council of Ministers to request a quick and peaceful solution to the land conflict they were embroiled in. On 21 December 2005, the community received a reply from the Council of Ministers, informing them that their case was under the jurisdiction of the provincial authority, the governor of Banteay Meanchey Province. Upon receiving this information, the community representatives returned to Kbal Spean.

In May 2006, the conflict was resolved following the Prime Minister’s intervention. Provincial authorities negotiated a settlement between the 218 families living on the land and their village chief. The settlement permitted the families, who had previously held 10-meter by 20-meter plots of land, to retain slightly smaller plots, and awarded the rest of the land to the village chief.

Until now, human rights organizations are urging the government to continue its investigation of the eviction and the killing of the five villagers of Kbal Spean. They argue that the resolution of the land dispute does not expunge the culpability of the murderers nor the victims’ right to justice. ■



Moreover, the traditional power structure that characterizes Cambodian society— based on concepts such as deference to authority and patron-client relationships— constitutes another effective deterrent to people’s attempts to demand their right to land. “Deference to authority” prevents a person from standing up to his/her superiors; doing so is considered not only unacceptable, but foolish, as the complainant is bound to lose his/her case.

“Patron-client relationships” have their origins in the Cambodian tradition of absolute rule. In the absence of public law, relationships are based on the patron’s role of offering physical protection and financial assistance and, conversely, on the client’s obligation to show loyalty and occasionally, render service, to his patron. The continuance of this traditional power structure is thought to be one of the reasons for the ineffectiveness of land dispute resolution mechanisms. The “patron-client relationship” is based on the assumption that the patron

would always act benevolently toward the client, for fear of losing power, influence, and authority. However, this assumption is true only if the client is able to exert sufficient influence on the patron. Observers have noted that majority of the Cambodian population are unable to exert enough pressure to force a resolution of land disputes.

Land Ownership AND Distribution

- In 1999, 5% of landowners held close to 60% of all privately held land. By 2003, their share had risen to 70%. This means that the top 5% of landowners are increasing their control of private lands by 2% per year.
- Farming households own an average of 1 ha of land.⁵ However, 45% of households own less than 1 ha.⁶
- The landless comprise 21% of the rural population.⁷

CASE STUDY #2

The Dispossession of Cambodia’s Indigenous Peoples

The rights of indigenous peoples are protected by a number of international declarations and conventions ratified by the Cambodian government. These guarantees, combined with provisions in the Land Law of 2001, should provide ample protection for traditional forms of land ownership. But reality provides a jarring contrast to what the law intended. In the 1990s, large tracts of ancestral lands of Cambodia’s indigenous peoples were allocated as forest and economic concessions by the government. In January 2008, it was found that “not a single indigenous community [had] received a title to its collective property”.

Even without a formal title, indigenous peoples have certain

property rights, for example, user rights, by virtue of the Forestry Law. However, from 2002 to 2008, there has been a rush of land transfers from indigenous communities to provincial and Phnom Penh-based elite interests. Despite the existence of laws meant to protect indigenous peoples’ culture and rights, the continuing failure to implement such laws has led to widespread dispossession of indigenous communities and poses a continuing threat to their way of life. The NGO Statement on the Monitoring of CG Indicators (June 2006) urges the government to declare that “all land transactions in indigenous areas are illegal and that buyers will not receive ownership titles to illegally acquired land”.

The failure to implement national laws is not the only problem. Until now the Government of Cambodia has not yet ratified Convention No. 169 concerning Indigenous and Tribal Peoples (1989) of the International Labour Organization (ILO). This convention seeks to protect indigenous peoples as a workforce on their land, and thus their way of life. An important provision of this convention, Article 14.3, obligates the state to take all necessary steps to fully implement international laws for the protection of indigenous peoples at the national level. If the Cambodian government were to ratify this convention, it would find itself in a bind; hence, it is wavering in signing the convention. ■

- In 2010, only about a quarter of total land parcels were secured by land certificates. This implies that majority of Cambodians possess land without official recognition from the state.⁸ To illustrate, as of 2007, 36% of Cambodian households who own lands have government-issued land titles. In 2004, only 22% possessed lands with official state recognition.⁹

The landless in Cambodia are increasing over time. Landlessness is a key indicator of vulnerability to poverty. The following landless groups are especially vulnerable:

- female-headed households (The rate of landlessness among female-headed households is 21.2%);
- rural families, especially female-headed ones, that rely on common property resources, such as public land and water (They are more likely than most to fall victim to land grabs, insecure land tenure, and food insecurity);
- people who live in or next to concession areas;
- residents of informal settlements in urban areas; and
- indigenous peoples.

Issues Affecting Access to Land AND Tenurial Security

RISING DEMAND for LAND as an ECONOMIC ASSET

Because of economic growth and development, the demand for land is increasing and land values are going through the roof. Even if overall population densities are fairly low in Cambodia compared to its neighbors, land speculation and the unregulated allocation of land concessions are putting increasing pressure on the land. The rising demand for land is also attributed to the privatization of public lands, mega-development projects, the establishment of special economic zones (SEZs), land grabbing, and the allocation of land to the military. The price of land has skyrocketed, especially along the national borders, coastal areas, urban centers, and roads being rehabilitated. Settlers in Anlong Veng District, Oddar Meanchey province, near the Thai border, have reported that the price of land along the main road to

Thailand has tripled, in anticipation of the boom in tourism and business. As a result, land grabbing has run rampant throughout the country. The culprits are mostly military officials, businessmen, and politically influential persons. Land grabbing has become the main cause of land dispossession in both urban and rural areas in Cambodia. These property thefts are made easier because local people rarely have titles to their land.

Land speculation is the main motivation behind the recent barrage of applications for economic land concessions (ELCs). In 2004, some 2.4 million ha of land were allocated as ELCs, many of which cover areas beyond the ceiling set by the ELC sub-decree of 2005. ELCs are held by concessionaires for as long as 99 years, during which time the land would have appreciated in value many times over. This might explain why many ELCs, which cover huge tracts of land, are not immediately put to productive use by concessionaires; they are eventually sub-leased to other companies or to subsistence cultivators.

Unfortunately, the indiscriminate awarding of ELCs has taken away large agricultural areas from many small farmers. At the same time, what should have been productive land goes unused for a period of time after the concessionaire gets hold of it.

POOR LAND GOVERNANCE

Governance of the country is generally marred by shrinking democratic space, lack of the rule of law, legal impunity, lack of transparency, incompetence, corruption, a judicial system that cannot assert its independence of the executive, and the ruling political party that is more concerned with consolidating its power rather than governing well.

In regard to land governance, Cambodia has performed as badly. The Cadastral Commission, which was set up in 2002 as a dispute resolution mechanism, is plagued with bureaucracy and corruption. The NGO Statement on the Monitoring of CG Indicators, issued in June 2006, noted the commission's general weakness and lack of resources. It reported that while the commission has improved its ability to address small conflicts, "it is

not very successful in addressing more complicated cases that involve powerful people because of the pressure and threats it [is subjected to] when dealing with such cases.”

Elin Enge, advisor on Land and Resource Rights, Norwegian People's Aid (NPA), observed that “land registration leads to speculative investment and more and



CASE STUDY #3

No Poor People Allowed in Angkor

Within the Protected Cultural Zone of Angkor and Siem Reap reside families that have been living there since the 1970s. Many members of this community were born there, and make a living from farming, growing palm sugar and other crops, and doing other kinds of wage work. These families do not hold titles to the land because lands in protected zones are state property. However, local authorities had generally left the villagers alone, allowing them to live and work in the area.

In the year 2003, the Authority for the Protection and Management of Angkor and the Region of Siem Reap (APSARA), the government agency tasked with overseeing the protection of urban and tourist development, started to impose restrictions on the activities of residents in the area. It listed the names of the villagers, took pictures of their houses, and forbade them to make improvements on the latter, or to build new ones. APSARA also prohibited the collection of firewood from the forest.

These regulations have caused many problems for the villagers. They could not repair their homes, when these were destroyed by rain or storm. Newly married couples could not build a home for their family. As a result, homes have become overcrowded; a number of families have left the area. It has also become harder to make a living, given the restrictions. In contrast, rich people continue to build new and bigger homes in Angkor, while the APSARA turns a blind eye. ■

better land being held by the elite.” Land redistribution is not a priority of the government and leading international organizations. To benefit the poor and marginalized people, land registration needs to be participatory and should include the poor in all decision-making processes. Other rights, especially collective land rights, in regard to indigenous communities, need to be considered.

Land demarcation has also led to many technical problems that work to the advantage of rich and powerful individuals. Donor organizations have reported that many demarcation projects are conducted all over the country using different technical systems of mapping and demarcation.

The registration process has proceeded too slowly, and has tended to concentrate on non-disputed areas, when it should be prioritizing areas where land grabs and illegal operations have been reported. ELCs are allegedly prioritized over SLCs, which benefit the poor, and the former are sometimes allotted in areas that should be awarded to indigenous peoples through a collective title.

The parallel and overlapping operations of the Cadastral Commission, the court, and the National Authority for Land Dispute Resolution (NALDR) have resulted in many legal ambiguities. At the eighth meeting of the Government–Donor Coordination Committee in October 2006, the then Ambassador of Germany, Pius Fischer demanded that “[NALDR’s] relationship and jurisdiction vis-à-vis the cadastral commissions and the courts be clarified, as the lack of clarity is causing general legal

concerns.” The NGO Statement on the Monitoring of CG Indicators (June 2006) also raised the concern that the NALDR might be undermining “the capacity of existing judicial institutions mandated to resolve land disputes”.

Other problems indicative of poor land governance are as follows:

- Inconsistencies between different state demarcation and registration processes;
- Slow and difficult process of identifying land for community forestry to be covered by social land concessions (SLCs);
- Lack of transparency in the allocation and monitoring of ELCs by the Ministry of Agriculture, Forestry and Fisheries;
- Overlapping categories and uses of land, forestry, and fishery resources in the Tonle Sap; and
- Lack of clarity on the status of state land which has been grabbed by rich individuals.

INSUFFICIENT IMPLEMENTATION of the LAND LAW

There is general agreement on the “progressive character” of the Land Law of 2001. However, this law and its supporting sub-decrees have yet to be fully implemented. NGOs in Cambodia report that only 10% to 20% of the law has been enforced.

For example, Article 5 of the Land Law provides protection against eviction and, where eviction is unavoidable, fair compensation for the evictees. In 2005, more than 70 families were illegally and forcibly removed from Koc Pich Island, Phnom Penh, in the Tonle Bassac River. The island would be developed as a “satellite city”, with the land valued at \$25 per square meter. After a long negotiation, the island’s residents agreed to sell their land at \$5.25 per square meter, and thereafter left the island. Other families were able to get \$12 per square meter.

Article 18 and 19 of the Land Law set a ceiling of 10,000 ha for concessions. However, the government continues to grant ELCs for areas that are beyond the mandated ceiling.

Another sub-decree of the Land Law yet to be adopted by the government is that which recognizes and provides for the registration of the land rights of indigenous peoples.

Lack of Access to Land AS A Determinant of Poverty

Farming households that own a hectare of land, or less, are unable to earn enough income for subsistence. In Cambodia, 45% of households own less than 0.5 ha.

Women and female-headed households are especially vulnerable to poverty. Women make up half of Cambodia’s agricultural workforce. The Land Law of 2001 provides that land titles be put under the name of both spouses, and that land sales must be approved by husband and wife. However, such legal protections often prove to be ineffectual in a patriarchal society which subjugates women’s rights to those of the men. Hence, portions of jointly owned property are routinely sold without the woman’s knowledge or assent.

In addition, the Land Adjudication Guideline was created in 2004 in response to the challenges implied by joint ownership in the case of separation, abandonment and divorce. For instance, according to the guideline, the land registration officer should record the land in the name of the spouse who lives on and takes care of the land, even if this was acquired together. However, the guideline is not clear in terms of timeframe and also comes into conflict with a provision in the Constitution—therefore thwarting its effective implementation.¹⁰

The increasing incidence of landlessness and near-landlessness among the rural poor, combined with the latter’s diminishing access to common property resources, especially forests, which are awarded to private interests through a concession, have reduced many of Cambodia’s poor to dire straits. Chronic starvation is a real concern. Female-headed households used to be able to fend for their families by gathering snails, shellfish, firewood, weeds and other non-timber forest products. Today, because of the concessions, this alternative source of livelihood has been closed to them.



Legal AND Policy Framework FOR Access TO Land AND Tenurial Security

LAWS

Constitution of the Kingdom of Cambodia (1993)

- Provides that “all persons, individually or collectively, shall have the right to ownership. Legal private ownership shall be protected by law. The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law, and shall require fair and just compensation in advance” (Article 44);
- Provides that the control, use, and management of state land should be protected by law. (Article 58); and
- Declares the Kingdom of Cambodia’s adherence to the United Nations Charter, the Universal Declaration of Human Rights, Article 17(2) which states that, “No one shall be arbitrarily deprived of his property”.

Land Law of 2001

- Guarantees the inalienability of land, which is recognized by Cambodia’s Constitution;
- Creates a status of registerable ownership of land, which specifically puts women on an equal footing with men (Article 168);
- Establishes the legal framework for a collective ownership arrangement, which is specifically designed for the protection of indigenous land and traditional ways of life (Article 23–26); and
- Provides for a land distribution policy to benefit the rural poor, specifically through the grant of social land concessions (SLCs) (Article 17).

Forestry Law of 2002

- Provides the framework for forest classification;
- Provides for the creation and management of community forests, such that communities are granted an area within the Permanent Forest Reserve to manage and derive benefit from;
- Guarantees the entry rights of local communities into forest concessions (Article 15,40);

CASE STUDY #4

Village Lost to Land Grabbers

The community living in the village of Knal Roveas, in Khun Riem Commune, Banteay Srei District, Siem Reap Province, is composed largely of former members of the Khmer Rouge army who came down from the mountains in 2000 and settled in Knal Roveas.

Knal Roveas is the poorest village in Banteay Srei, and is, in fact, not yet officially registered with the Ministry of Interior; thus, it gets no support from the government. At certain times of the year, the community runs out of food. During the dry season, water is a problem. There is a small lake located some distance from the village, but it is dirty, and mosquito-infested. Dengue

fever and malaria are common ailments among the residents.

Despite these conditions, the villagers are determined to stay, and have applied for official titles to their land. So far, none of them has been granted proof of land ownership.

In Tim, 45, and her husband grow rice on about a hectare of land. During the Khmer New Year in 2007, soldiers evicted In Tim and her family, along with 32 other villagers, to build a camp and private houses on the land. While Knal Roveas is a poor village, its land is highly prized because it is fertile and because it is located along a newly constructed road that connects Siem

Reap to Thailand.

Since the soldiers grabbed their land, In Tim’s husband, like the other men in the village, have been left with nothing to do. He has started drinking and, when drunk, would pick fights. He and the other villagers make some money by cutting down trees in the forest for a private company.

In Tim’s husband wants to leave the village and to go to Thailand to find a job. Other families have left already. Because they could not earn enough to pay for their living expenses, some couples have divorced and gone back to their birth families. One family reportedly had to give a baby away. ■

- Prohibits the logging of certain trees valuable to local communities, such as resin producing trees, or trees likely to produce resin; as well as trees and areas of cultural or religious significance, such as spirit forests (Article 45); and
- Mandates the sustainable logging of natural and plantation forests (Article 10).

SUB-DECREES of the LAND and FORESTRY LAWS

Sub-Decree on Social Land Concessions of 2003

- Puts large tracts of wasteland to productive use for the benefit of the poor through the award of Social Land Concessions (SLCs). SLCs could serve as a tool to develop remote areas, provide homes for the urban and rural poor, encourage the relocation of workforces on ELCs; and provide land for displaced people or families of war veterans and casualties.
- Problems in implementation:
 - ➔ The commune councils (CCs) are responsible for submitting the local SLC plan. In the absence of mechanisms for independent monitoring of CCs, the system has been marred by corruption and nepotism;
 - ➔ The process of allocating land for SLCs has been too slow. Donors have attempted to put pressure on the government to hasten the process by making the release of funds contingent on the issuance of a target number of SLCs, but donors have relented anyway despite the lack of progress in this regard.

Sub-Decree on State Land Management of 2005

- Describes the principles and mechanisms for the identification, registration, and classification of state land, including regulations on its allocation, management and re-classification. Determining which are state lands is necessary for the allocation of SLCs and ELCs.
- Problems in implementation:
 - ➔ Many government agencies are involved in the various steps for identifying, mapping, and demarcating land. Hence, progress, especially in demarcating land, has been slow. Unless lands are properly demarcated, the process of

determining which lands could be awarded as concessions will take longer. Civil society groups believe that once land has been completely demarcated, disputes concerning concessions will be significantly reduced.

Sub-Decree on Economic Land Concessions of 2005

- Provides the criteria for awards of ELCs, and sets a ceiling of 10,000 ha on ELCs;
- Defines what purposes ELCs could serve, for example:
 - ➔ Intensive agro-industrial production;
 - ➔ Job creation;
 - ➔ A magnet for foreign direct investment (FDI);
 - ➔ Other revenue generating activities for the state.
- Requires public consultation with the local community prior to the grant of ELCs (Article 35);
- Requires the concessionaire to comply with safety measures, such as environmental impact assessments, etc. (Article 4);
- Problems in implementation:
 - ➔ Despite the legally mandated ceiling on the size of ELCs, the government continues to grant ELCs beyond the maximum allowable size, and inside protected areas, without consideration of the social and environmental impact. Because any activity could be portrayed as having the potential to earn revenue for the State, the grant of an ELC is like giving the concessionaire a blank check to do with the land as he wills.
 - ➔ While the sub-decree requires public consultation prior to the award of concessions, the community is invariably represented at such consultations by the CC members, who are frequently corrupt. In any case, the high literacy requirements for candidates to the CC effectively exclude certain groups, such as indigenous groups and the poor, who are often short of education.
 - ➔ Provisions for compliance with safety measures in the ELCs are routinely ignored with impunity.

Sub-Decree on Community Forestry of 2003

- Establishes the procedures through which local communities could be granted temporary control of forest resources on which their livelihood depends.



Sub-Decree on Land and Property Acquisition and Addressing Socio-Economic Impacts Caused by State Development Projects [draft as of November 2007; has not been passed]

- Outlines the legal procedure for the acquisition of land by the state for the purposes of state development projects;
- Lays down the procedures for the conduct of environmental and socio-economic impact assessments for all cases of expropriation, and the mechanisms for compensating the displaced persons;
- Problems in implementation:
 - ➔ Although the intent of the law is to protect persons against unlawful eviction, the breadth of allowable reasons for state appropriation of land (i.e., in the general public interest) could make such action highly arbitrary. Only indigenous peoples are specifically protected against involuntary acquisition, through their veto power which only the Prime Minister can revoke (Article 10[e]).
 - ➔ The law does not provide for mechanisms to ensure that displaced persons are fairly compensated. It is not even clear which persons are considered as eligible for compensation.

DEVELOPMENT PLANS

Royal Government of Cambodia's Rectangular Strategy for Growth, Employment, Efficiency and Equity

- Launched in 2004 and updated in 2008, it is now in its second phase;
- Focuses on four growth “rectangles”, one of which is “Enhancement of Agricultural Sector”. This covers:
 - ➔ improved productivity and diversification of agriculture; land reform and clearing of mines; fishery reform; and forestry reform.

In the chapter on land reform and mining, the government promises to strive for the implementation of the Land Law as well as land distribution for the benefit of the poor. It sets forth the aim of “strengthen[ing] an equitable and efficient system of land management, distribution, and utilization, including land registration and distribution, land

tenure security, eradication of illegal settlements and land grabbing, and the control of land ownership concentration for speculative purposes.” It also gives priority to the strengthening of the land tenure rights of people who need small lots for settlement and family production within the SLC framework.

The chapter on forestry reform emphasizes sustainable forest management, protected area management, and community forestry.

Cambodia Millennium Development Goals (CMDGs)

- Goal 1 of the CMDGs is the eradication of extreme poverty. However, as updated by the government in 2005, Goal 1 does not directly include pro-poor redistribution of land.

INTERNATIONAL CONVENTIONS

The Universal Declaration of Human Rights (UDHR) [directly incorporated into the Cambodian Constitution]

- Declares that “everyone has the right to own property...No one shall be arbitrarily deprived of his property.” (Article 17);
- Compliance by the government: Both urban and rural Cambodians have been deprived of their property in a manner which could be considered as arbitrary.

International Covenant on Economic, Social and Cultural Rights (ICESCR) [ratified in 1972]

- Provides that “in no case may a people be deprived of their own means of subsistence.” (Article 1.2);
- Compliance by the government: The allocation of ELCs in indigenous peoples’ land and outright land grabs, particularly by the military, contravene this provision.

The Ramsar Convention on Wetlands (RCW) [ratified in 1999]

- Aims to protect wetlands and waterfowl, and requires signatory countries to choose which of their wetlands would be included in the RCW protection list. The wetlands would then be protected as national parks.
- Compliance by the government: Efforts to demarcate protected land are hindered by the government’s

failure to delineate state public and state private land. State public land is land which has a public interest use, while state private land is neither state public land nor privately or collectively owned land. The distinction is important because only state private land could be awarded as ELCs or SLCs.

International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) [ratified in 1992]

- Requires that “husband and wife shall enjoy the same rights...in respect [to] the ownership, acquisition, management, administration, enjoyment, and disposition of property...” (Article 16[1]);
- Compliance by the government: While the Land Law of 2001 (Article 168) provides for joint ownership by spouses of property, this is often ignored especially in remote rural areas.

Actors Facilitating OR Impeding Access TO Land AND Tenurial Security

CIVIL SOCIETY and NATIONAL and INTERNATIONAL NGOs

National Civil Society Organizations (CSOs)

According to the NGO Statement to the 2007 Cambodian Development Cooperation Forum, Cambodia’s civil society groups are concerned with the following issues:

- The forced resettlement of people to make way for commercial interests. In particular, the urban poor, who hold land titles, are removed from their homes and resettled in places where they have no access to basic services, such as water and sanitation.
- The allocation of ELCs without regard for regulatory standards that are intended to protect local communities, especially indigenous peoples living in Cambodia’s northeast region, from land alienation.
- The insecurity of land tenure of rural dwellers, their loss of access to natural resources on which their livelihood depends, and the lack of alternative income sources.

National CSOs have called on international donors to use their influence with the Cambodian government to address these issues. With roughly half of the national budget coming from international aid, donors carry a lot of clout with the government. However, while the government makes declarations of implementing the necessary reforms prior to donor meetings, these come to naught afterward and the government goes back to “business as usual”. Yet the pressure that international donors could bring to bear on the government is real enough and national civil society groups intend to continue to take advantage of it.

National civil society groups acknowledge that they have less power and influence than international organizations, and that they need to augment their financial and human resources and expand their geographical presence in order to get the government’s attention. Nonetheless, they still provide an important service to groups involved in land disputes, particularly by performing the role of negotiator between the affected people and high-ranking officials and the private sector. Civil society groups are also able to elevate local issues to the national level through their membership in national networks.

The National NGOs in Cambodia include Cambodian Human Rights and Development Association (ADHOC), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), and Legal Aid of Cambodia. The network organizations are NGO Forum on Cambodia, STAR Kampuchea, and the Cambodian Human Rights Action Committee (CHRAC). Buddhist monks are also involved in the political affairs of the country.

INTERNATIONAL DONORS

In 2004, the international donor community issued guidelines which the Cambodian government must comply with in order to receive the promised funding support. The guidelines have yet to be implemented, yet every year international donors increase their funding support to the government. In 2006, international donations to Cambodia amounted to \$601 million, excluding support given by China. The World Bank has frozen some of these funds following reports of misuse, yet in 2007 its own funding support to Cambodia rose to \$689 million.

International donors have resisted calls by national CSOs to use their power to keep the government in check. However, donors did acknowledge the importance of preserving the country's biodiversity and natural resources, as well as the significant contribution of agriculture to the Cambodian economy. International donors do most of their work through Technical Working Groups (TWGs) on agriculture, water, forestry, and natural resources.



CASE STUDY #5

Private Interests vs. Local Needs

In January 2000, Pheapimex, the local partner of the Chinese company, Wuzhishan LS Group, was granted two successive 70-year economic land concessions (ELCs) on over 300,000 hectares of land in order to grow eucalyptus trees and to operate a paper mill. The concession area is located in Pursat and Kampong Chang provinces in west-central Cambodia.

Local villagers only became aware of the concession when Pheapimex began its preliminary operations. As a result of an advocacy campaign led by the affected communities, who sent petitions to local authorities, national and international organizations and institutions, the company's activities were suspended in late 2000 and villagers were allowed to remain on the land. During a follow-up visit to the site by the Office of the High Commissioner on Human Rights (OHCHR) Cambodia Country Office in May and July 2003, it was found that the company was still not operating in either province.

In November 2004, the company restarted its activities after securing a permit from the Ministry of Agriculture, Forestry and Fisheries. Once again, the

affected residents were not informed by the company or by the local government of the resumption of Pheapimex's operations.

Protest marches, including a blockade of National Highway 5, were undertaken by the communities. The conflict came to a head when a grenade was thrown at a group of 600 protesters who had taken refuge in the compound of the local mosque. Yet, in spite of continued police harassment, the protesters kept up their campaign.

Meetings were set with government officials and company representatives, but neither showed up. At the beginning of 2005, the incidence of violence was reduced. An opposition political party declared their support for the villagers. The community members also appealed directly to the King for his intervention. The King forwarded the complaint to the Prime Minister, but the latter took the side of Pheapimex, saying that its operations would be beneficial to the area and to its residents, and chided the protesters for allowing themselves to be used for propaganda purposes by the opposition party.

In March 2005, the village resumed its protest, but this time adopted the

strategy of active non-violence. Following this, Pheapimex's operations suddenly stopped.

A resolution calling for the establishment of a community forestry group among the affected communities has been submitted to the provincial office in Pursat. The resolution was formulated with the help of STAR Kampuchea and the Civil Society Advocacy Coordination Alliance (CACA), and the commune council.

This case highlights four important aspects. Firstly, companies make decisions without consulting the affected communities, and often despite opposition from the latter. Secondly, companies make only token efforts to resolve a conflict¹¹ (including public dissemination of relevant information). Thirdly, government officials, at all levels, tend to ignore even the most obvious violations committed by private companies.¹² Fourthly, affected people and villagers need the help of NGOs to develop their advocacy skills, to utilize non-violent resolution mechanisms, and to increase their awareness of their rights. ■

Donors also work with relevant government ministries, but pay little attention to NGOs.

Among the international development organizations working in Cambodia are the United Nations Development Programme (UNDP), UN Office of the High Commissioner on Human Rights (UNOHCHR), World Food Programme (WFP), the World Bank, and Asian Development Bank (ADB).

World Vision, Plan, Oxfam GB, GiZ, and Danida are a few of the international donors with a presence in Cambodia. Other groups include international media organizations, as well as the embassies and consulates of foreign governments.

THE PRIVATE SECTOR

Private sector groups are concerned with resolving land disputes only to protect their investments. Public and private sector interests are frequently at odds with each other. Private sector groups are also disinclined to negotiate directly with affected communities and leave the task of conflict resolution to public authorities.

NATIONAL and LOCAL GOVERNMENT

The following line ministries and government offices have a direct influence on land issues:

- **Ministry of Land Management, Urban Planning and Construction**

Responsible for land management, including the development of the policy and regulatory framework, and coordination of land use planning and land registration and administration;

- **Ministry of Agriculture, Forestry, and Fisheries**

Responsible for organizing and operating development policies in the agriculture sector, including monitoring and management of natural resources, promoting the development of technical skills and knowledge, and improving the work of concerned professional organizations, NGOs, and other associations involved in the agriculture sector;

- **Ministry of Rural Development**

Responsible for integrating all rural development work at household, village, and commune levels, focusing on poverty alleviation through rural infrastructure improvement.

Prime Minister Hun Sen has declared that the Cambodian government has made significant progress toward developing legal frameworks required for land reform.¹³ However, the government has also acknowledged that the majority of rural farmers have yet to benefit from the country's economic growth (8.4% per year from 1994 to 2006), and that building tenurial security is the first step toward improving the economic conditions of the poor. Although the agricultural sector contributes an estimated 29% to the country's GDP, it employs about 80% of the workforce.

Hun Sen has also announced the tightening of criteria for granting ELCs and cited the need to allocate land to the landless by allocating SLCs. He blamed the country's politicians for abetting the illegal occupation of state or privately owned land for political ends, and thus for hindering the process of SLC distribution.¹⁴ He also pointed to the difficulty in identifying the genuinely landless households.

On 6 March 2007, Hun Sen declared a “war on land grabbers”, and outlined strategies to deal with them. He expressed concern that continued land grabbing by rich and powerful land speculators would lead to a farmers' revolt against the government. Taxes have been imposed on unused land to discourage land speculation.

The Prime Minister has acknowledged that “poor land reform along with the failure to address falling fish stocks and rampant illegal logging” have been the three biggest political mistakes he has made. He has said that once these problems have been addressed, corruption in the country would be reduced.

However, even on prodding by donors, the government is still loathe to release information concerning the allocation of concessions to private interests and the



military, thus raising doubts about the sincerity of Hun Sen's declarations.

JOINT MONITORING INDICATORS

Joint monitoring indicators (JMIs), previously called “benchmarks”, are targets agreed between the government and the donor community during the annual Consultative Group (CG) and Cambodian Development Cooperation Forum (CDCF) meetings. These sector-based targets are divided into actions the government must achieve before the next CDCF meeting and are considered to be a good indication of progress made within the relevant sector. Indicators have generally concentrated on good governance and reform implementation. Among the specific targets are: the government's adoption of strategy and regulations for indigenous peoples' land rights; public disclosure of information on ELCs and other concessions (mining and military development zones); establishment of SLCs; forest and protected area demarcation; implementation of a community forestry program; systematic land titling; and successful land conflict resolution. According to the 2006 Joint NGO Statement, majority of the JMIs have not been comprehensively met.

IMPACT of GOVERNMENT POLICIES

NGO network representatives have acknowledged that the Prime Minister holds the real power in the country. He has a strong incentive for resolving land disputes in favor of the poor, but he often fails to do so because of a poor governance structure. The ministries exercise little authority in comparison to the Prime Minister, but they are ultimately responsible for implementing government

policy and drafting laws. However, because not all of them are involved in land disputes, the ministries are regarded as “neutral” vis-à-vis land issues. Furthermore, even if they should choose to intervene in favor of the poor, the ministries are often powerless to act, and have to defer to higher-ranking officials. The courts have much more power, but are generally viewed as anti-poor.

Land Partnerships in Cambodia

Several land partnerships between NGOs and the government have been established in Cambodia. These are described as follows:

LAND ACTION NETWORK for DEVELOPMENT

The Land Action Network for Development (LAND) is modeled after the Land Law Implementation Network (L-LIN), and was formed following the National Workshop on Land Intervention Strategy held in Siem Reap in 2005. LAND aims to enable NGOs to cooperate in influencing government and donor policies and practices, and also to strengthen relationships and improve cooperation among NGOs working on land issues toward the betterment of poor communities.

The National Secretariat is run by the NGO Forum of Cambodia, which acts as a central contact point for NGOs working at the national level as well as a liaison between the NGOs and the LAND Steering Committee. The national level network is divided into three main groups: (i) technical NGOs [legal assistance and education]; (ii) operational NGOs [legal assistance and community development]; and (iii) supportive NGOs [international organizations]. Feeding into these national groups are five regional networks, each of which comprise at least three provincial networks. Regional secretariats act as contact points for all provincial NGOs, allowing them to take the concerns of the communities they represent to higher levels of the organization.

LAND is highly appreciated by Cambodian NGOs and is often cited as a successful example of partnership between NGOs. However, LAND's effectiveness is hampered by the refusal of government representatives to



attend its meetings. The infrequency of LAND meetings also works against sustaining the commitment of international NGOs.

LAND MANAGEMENT and ADMINISTRATION PROJECT

The Land Management and Administration Project (LMAP) is a multi-donor funded project implemented by the Ministry of Land Management, Urban Planning and Construction (MLMUPC) from 2002 to 2009. It was spearheaded by the World Bank, and jointly funded by GiZ (then GTZ) and the Government of Finland. The Canadian International Development Agency (CIDA) later joined the project, infused additional funding, and extended the project's timeframe by two more years (from 2007 to 2009). LMAP was carried out in 11 provinces, and is credited with the issuance and registration of one million land titles under the systematic titling process, as well as the reinforcement of land administration staff at the provincial and national levels.

Stakeholders have acknowledged the LMAP's contribution toward making the process of land titling more systematic and transparent, and less expensive. However, the first phase of the LMAP has tended to concentrate on communities that are accessible and has shirked areas with big land conflicts.

LAND ALLOCATION for SOCIAL and ECONOMIC DEVELOPMENT PROJECT

LASED—or the Land Allocation for Social and Economic Development Project—is a joint effort between the World Bank and GiZ, to be implemented from 2007 to 2012. Its objective is to distribute land to at least 10,000 landless households.

TECHNICAL WORKING GROUPS

TWGs are partnerships between the government and international donors with some civil society representation. There are 18 TWGs covering different development priority areas, including TWG–Land.

The TWG–Land had helped to ensure that the sub-decrees on ELCs and State Land Management were developed in consultation with TWG members and the

public. However, the private sector is not represented in the TWG, despite its increasingly influential role in land concerns. In addition, NGO and civil society representatives in the TWG have so far played only a limited role. Coordination within and between the different TWGs also needs improvement.

NATIONAL AUTHORITY on LAND DISPUTE RESOLUTION

NALDR was created by the government in March 2006 to complement the work of the courts, and to resolve land disputes beyond the jurisdiction or capacity of the Cadastral Commission. Civil society groups have declined to join the NALDR for fear that the institution is biased, that they would be exploited by the government and would lose their independence. NALDR, made up of high ranking officials has been criticized as unsuitable for resolving sensitive land dispute cases as these usually involve police and military officials.¹⁵

As an alternative to formal membership in the NALDR, the NGOs would provide support and act as an independent monitor. However, since the NALDR was formed, its representatives have not met with the NGOs, despite the latter's request. The institution also creates a parallel level of bureaucracy without a clear mandate or terms of cooperation with the Cadastral Commission. This has undermined the role and rule of the courts and the Cadastral Commission in adjudicating land cases.

Opportunities, Risks AND Challenges

OPPORTUNITIES

- **NGOs' Acknowledgment of the Importance of Land Partnerships**

There is general interest among NGOs in establishing partnerships to improve people's access to land. There are calls for the formation, initially, of regional or local partnerships that prioritize project implementation and specific cases. This would benefit from the effectiveness of lower levels of administration in resolving land disputes.



- **Donor Interest in Working with the Government**

According to the Paris Declaration on Aid Effectiveness (2005), building long-term partnerships with the government is the core strategy of international and development organizations. All donors also acknowledge the government's ownership of development projects and strive to harmonize efforts.

RISKS and CHALLENGES

- **Lack of Equitable and Effective Land Partnerships at the National Level**

This bears strongly on local level decision-making and must be addressed as a priority concern.

- **Limits and Constraints to Progress of Land Partnerships in Cambodia**

In order to promote land partnerships in the country, strong networks and linkages among NGOs need to be established. Dwindling sources of funding are forcing NGOs to compete rather than cooperate. NGOs need to understand the benefits of networking and partnerships, find ways to support each other, and even to recognize which among them is best able to represent their sector in dealing with the government.

A number of existing partnerships of NGOs do not have clear goals, or have goals that overlap with those of other institutions or partnerships. Other partnerships have also been criticized for focusing too much on “talking” and too little on “doing”.

NGOs perceive themselves as being at a strong disadvantage when dealing with the government. Important government information continues to be inaccessible, and the government often ignores recommendations put forward by NGOs. Partnerships with the government have not been effective because the political environment precludes transparency on the part of the state, and largely because of this, there is no trust between the two groups. The government has little regard for NGOs and often tries to intimidate them and restrict their rights.

A clear example of the government's unwillingness to work with NGOs is its lack of interest in joining the land partnership study conducted by STAR Kampuchea and the NGO Forum of Cambodia. These

two networks believe that government's reluctance to participate in the study epitomizes the current problems of lack of communication and trust, which hinder opportunities for partnership on land issues.

- **Disharmony between Donor and Government Programs**

While international donor organizations declare their intent to work in harmony with the government, the uncoordinated donor support for different methods of land use mapping in Cambodia is proof to the contrary.

- **Political Apathy of Donors**

International donor and development organizations are primarily oriented toward providing technical support. The majority of them avoid getting enmeshed in controversial or political issues. They have never used their political clout to pressure the government to improve its human rights record, and observers believe they will not become land advocates anytime soon.

- **Constraints to Strengthening NGO–Donor–Government Relationships**

Firstly, there is a power imbalance between national NGOs and international development and donor organizations, and this is tilted against the former. Secondly, donors feel that the inherent mistrust between the government and NGOs restricts progress for tripartite cooperation in regard to land and natural resources management, and believe that land distribution would be more effective if the government and the private sector were to team up instead. Thirdly, donors and development organizations question the legitimacy of NGOs to represent affected communities and vulnerable groups, since the latter do not normally elect which NGOs would speak on their behalf. Donors prefer increased direct representation and organization by affected peoples. Donors are also concerned that a number of NGOs are not genuinely interested in empowering people, but operate more as private enterprises concerned with turning a profit.

Endnotes

- ¹ Cristina Mansfield, *Advocacy in Cambodia: Increasing Democratic Space*, 2002, Phnom Penh, Cambodia
- ² See NGO Forum on Cambodia: Rethinking Poverty Reduction to protect and promote the rights of indigenous minorities in Cambodia: A Human Rights approach to land and natural resources management. April 2005, p. 7.
- ³ STAR Kampuchea's Land Partnership Study, conducted from October 2006–March 2007.
- ⁴ Report of the Special Representative of the Secretary–General for Human Rights in Cambodia, Mr. Yash Ghai, February 2006, Paragraph 39.
- ⁵ NGO Forum on Cambodia.
- ⁶ Cambodian Development Resource Institute. 2008.
- ⁷ CDRI. 2008
- ⁸ STAR Kampuchea and Ngo Sothath. Land Monitoring Report: Cambodia, September 2011.
- ⁹ This increase of 14 percentage points can be attributed to the Land Management and Administration Project (LMAP), which sought to issue one million titles to Cambodians.
- ¹⁰ Asian Regional Workshop on Women and Land Rights. 2010.
- ¹¹ It was reported to STAR Kampuchea interviewers that the company once approached the communities with an offer to settle the growing dispute but residents refused.
- ¹² Due to the large size and nature of the land it can be concluded that the concession must have been decided by the National Government and not only by the Ministry of Agriculture.
- ¹³ Prime Minister Hun Sen, “Address at the First Cambodia Development Cooperation Forum,” Phnom Penh, 19 June 2007: paragraph 38.
- ¹⁴ Prime Minister Hun Sen, “Address at the First Cambodia Development Cooperation Forum,” Phnom Penh, 19 June 2007: paragraph 40.
- ¹⁵ STAR Kampuchea, in cooperation with Ngo Sothath, Consultant. Land Monitoring Report: Cambodia. September 2011. Phnom Penh.

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Riding the Crest of People's Movements

INDIA Country Paper
Land Watch Asia



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Acronyms

AVARD	Association of Voluntary Agencies for Rural Development
BJP	Bharatiya Janata Party
CPI	Communist Party of India
CPI(M-L)	Communist Party of India (Marxist-Leninist)
CPM	Communist Party (Marxist)
CSO	civil society organization
DFID	Department for International Development
FD	Forest Department
IFA	Indian Forest Act
IFIs	International Financial Institutions
INC	Indian National Congress
MJVS	Manav Jeevan Vikash Samiti
NAC	National Advisory Council
NAP	National Agriculture Policy
NLRC	National Land Reforms Council
NDA	National Democratic Alliance
NSS	National Sample Survey
PESA	The Provisions of <i>Panchayats</i> (Extension to the Scheduled Areas) Act, 1996
SCs	Scheduled Castes
SEZ	Special Economic Zone
STs	Scheduled Tribes
UPA	United Progressive Alliance
UNPA	United National Progressive Alliance
WLPA	Wildlife Protection Act

Glossary

Baiga	A primitive tribe in India
Bataidar	Sharecropper
Bhoodan	Land gift
Dalits	Scheduled Castes
Janadesh	“The people’s verdict”; the campaign organized to retrieve people’s dignity through land and livelihood in India in October 2007
Mahalwari	A modified version of <i>Zamindari</i> system, with temporary settlement of land in favor of tenants village by village or <i>mahal</i> (estate) by

Naxalite Movement	An extreme Left movement believing in and using violence for socio-economic transformation or revolution
Panchayat	Local institution of self-government (in rural areas)
Revenue	Annual rent for the land paid by the farmer/tenant to the government directly or through an intermediary like Zamindar; it may be fixed or revised periodically. During the colonial period, it was a major source of ‘income’ to the government. The government has a revenue department for land record keeping and collection of land revenue.
Ryotwari	A system of land management in which there was direct settlement (temporary) of land by the state in favor of <i>ryots</i> (tenants/cultivators) recognizing them as owners subject to payment of the revenue to be revised periodically
Wasteland	Degraded land (waterlogged, marshy, affected by salinity/alkalinity, shifting cultivation area, degraded pastures/grazing land, under plantation crops, sandy, mining/industrial lands) that can be brought under vegetative cover, with reasonable effort, and is currently underutilized and land which is deteriorating for lack of appropriate water and soil management or on account of natural causes
Zamindari	A system of land management with <i>zamindars</i> (landlords) as intermediaries between the state and the tenants (tillers)

Quick Facts

India has a population of 1.21 billion—68.84% of which lives in rural areas.ⁱ

Most of the landholdings in India are small and marginal. The proportion of small and marginal landholdings—numbering 107.62 million—has increased from 63% in 1971–1972 to 83.29% in 2005–2006, covering 41.14% of India's total agricultural land.

In 1971–1972, large and medium-size holdings covering 54% of the total land area were owned by the top 10% of land owners. In 2005–2006, the proportion of owners of large and medium-size holdings had declined to 5.78%, and their combined area had been reduced to nearly 35% of all land.

The land distribution pattern reflects the country's socio-economic hierarchy, and shows that feudal society is still entrenched in large parts of the country.ⁱⁱ

Large land owners belong to upper castes. Ten percent of upper caste farmers' families own an average 15 acres of land.ⁱⁱⁱ

Cultivators belong to middle castes.^{iv}

An estimated 87% of landholders among Scheduled Castes (SCs) and 65% of landholders among Scheduled Tribes (STs) in the country are classified as small and marginal farmers.

Half (50%) of the population is still absolutely or near landless, owning less than 0.2 ha.

ⁱ 2011 Census.

ⁱⁱ Committee on State Agrarian Relations and the Unfinished Task of Land Reforms. Draft Report (Vol I, Chapter Four: Alienation of Tribal and Dalit Lands), 2010.

ⁱⁱⁱ ANGO. "Fighting for Land through Non-Violence". India Campaign Updates 2010–2011.

^{iv} Committee on State Agrarian Relations and the Unfinished Task of Land Reforms, Draft Report.

INDIA

Overview of Land Policy Formulation in India

Land management has been an important issue in India even in pre-British times. The land revenue system introduced by the Mughal Emperor Akbar (1556–1605) is widely believed to be the beginning of systematic efforts to manage the land. Akbar introduced a system of land survey and assessment that was adapted to local conditions. Succeeding Mughal Emperors continued and extended this land management and revenue system. Under the pre-British Mughal regimes, the state was regarded as the sole owner of all land, and all land revenues accrued to it.

When the British came, they made drastic changes in the above system and introduced a complicated, government controlled and operated land management and revenue system¹ based on a pattern imported from the West. The new system they introduced was basically of two types: *Zamindari* system²; and *Ryotwari* system.³

However, there was a third one, called *Mahalwari* system, which was a modified version of the *Zamindari* system. In all of these systems, excessive land revenue to be paid to the government was as high as 33–55% of gross production. In the permanent settlement *Zamindari* areas, it even reached 60%. It resulted in decay of



agriculture, heavy indebtedness of peasants and total loss of community autonomy and initiative. These three systems were in existence when India won freedom from British colonial rule in 1947.

LAND POLICY FORMULATION in INDEPENDENT INDIA

“Land to the tiller” was the promise of the National Freedom Movement. Accordingly, land policy formulation in independent India has gone through five phases:

Phase 1: Tenancy Reforms, Abolition of Intermediaries (1950–1955)

At the time of independence, land was concentrated in the hands of a few, while intermediaries proliferated and tenants were exploited. Land records were in extremely poor shape, leading to large-scale corruption and litigation.

Between 1950 and 1955, the government sought—through the enactment of laws and administrative measures—to tackle issues such as exploitation by *zamindars* and other intermediary right-holders, and to protect the rights of tenants of arable land. However, land reforms being a state subject, it was left to the states to enact their respective laws to address land related concerns.

ABOLITION OF INTERMEDIARIES

The Uttar Pradesh *Zamindari* Abolition and Land Reforms Act of 1950, which covered Uttar Pradesh, the most populous state in India, was the first state land reforms law to be enacted. While the law was in the process of being enacted and enforced, the *Zamindars* (intermediaries) sold or disposed of unassigned land, particularly by assigning it to relatives and family controlled trusts, or through *benami* (false-name) transactions, or to other influential persons for consideration due to certain loopholes in the law. The Act was struck down by the High Court of Uttar Pradesh as being invalid. When the Indian Constitution was amended for the first time in early 1951, the Act was incorporated in the Ninth Schedule of the Constitution, and thereby became immune and enforceable. By the end of 1955, all the states had enacted laws for the abolition of *Zamindari* and other intermediary interests.

THE *BHOODAN* MOVEMENT OF VINOBA BHAVE⁴

Land related violence had escalated between 1950 and 1955. The Tebhaga Movement, which called for the reduction of land rent by a third, had turned violent, and in Telangana in the state of Andhra Pradesh, rampant land grabbing had led to armed uprising. It was at this stage that Vinoba Bhave, a follower of Mahatma Gandhi, intervened and started the *Bhoodan* (“Land Gift”) movement. On 18 April 1951, Bhave went around violence-affected Telangana, and then other parts of the country, asking landlords to hand over to him part of their land, which he would thereafter redistribute to the landless. Bhave estimated that landless families comprised a sixth of the country’s rural population at the time. Hence, he demanded that all landholders donate to him a total of 20.23 million hectares of land, which, by 1957, made up one-sixth of the total cultivable area in the country. Reiterating this demand, he travelled all over India—over 80,000 kilometers—on foot, carrying a “beggar’s bowl”. Before his death in November 1982, the *Bhoodan* movement had collected some 1.94 million ha of land.

PHASE 2: Imposition of Land Ceilings and Review of Land Reforms (1955–1971)

The second phase of governmental land reform measures was significant in the imposition of ceilings on agricultural landholdings. This measure was endorsed by the Planning Commission based on its own review in 1955. West Bengal was the first state to impose a ceiling on agricultural holdings by enacting the West Bengal Land Reforms Act of 1955, which introduced a uniform family landholding ceiling of 10 ha. In the same year the law was implemented, some 0.35 million ha of surplus land reverted to the state. In 1957, the National Development Council directed the other states to enact their own land ceiling laws by the end of March 1959, and to implement such laws within the next three years.

By December 1970, about a million hectares of ceiling surplus agricultural land had reverted to the states for redistribution to the landless. Fifty percent of this land was redistributed to the rural poor—but not necessarily to the landless—because most if not all of the land



ceiling laws failed to provide clear eligibility criteria for recipients of surplus land.

From 1965 to 1969, India faced a severe food crisis, widespread agrarian unrest, armed movements by communist groups resulting in the killing of landlords and land-grabbing, as well as a split in the ruling Congress Party. The Ministry of Home Affairs categorically stated that the failure of land reform measures was directly responsible for the widespread agrarian unrest. This led to the third phase—comprehensive land reforms—which included lowering of land ceilings and imposing restrictions on exemptions from the land ceiling laws.

PHASE 3: Comprehensive Land Reform Program (1971–1985)

A conference of the chief ministers of states in New Delhi on 23 July 1972 marked the beginning of the third phase of India's land reform venture. At this conference, the government managed to push a proposal for a comprehensive land reform program, which included a lowering of land ceilings. A ceiling of 4–7 ha was imposed

on government-irrigated land; and 5–7 ha on privately irrigated land. However, the ceiling on other kinds of agricultural land was higher.

The new land ceiling law provided that landless agricultural laborers, particularly those belonging to Scheduled Castes (SCs) and Scheduled Tribes (STs), would be prioritized in the redistribution of ceiling surplus land. The states were directed to amend their respective laws in accordance with the new land ceiling law by 31 December 1972. Yet, in spite of the directive to the states and the implementation of a 20-point national Program (during the Indian Emergency of 1975–1977), which also included land reforms to be enforced in letter and spirit, no significant headway was made in the implementation of the land ceiling laws. According to data compiled by the Ministry of Agriculture, by the middle of 1986, only 1,850,447 ha of land had been declared ceiling surplus; of this, 1,312,536 ha had reverted to the states, and only 922,529 ha had been redistributed. Hence, the new land ceiling laws had yielded few improvements compared to the old ones:

Land Reform: Promising Peace in Bihar

During its fifth phase of land policy formulation, India has seen an increase in caste and class violence. The Naxalite movement in Bihar was fed by the age-old exploitation of agricultural laborers and by the latter's resentment and the apathy of the authorities. Left-leaning parties and other major political parties in the state believe that land reforms are the key to checking extremism in Bihar. Therefore, in 2006 the Bihar government appointed a Land Reforms Commission headed by D. Bandyopadhyay. In its comprehensive report submitted in 2008 to the state government of Bihar, the commission recommended sweeping land reforms such as providing legal

safeguards to *bataidars* (sharecroppers), improving the revenue administration, identifying and taking over ceiling surplus land still illegally held by landlords, and addressing the discrepancies in contract farming. In addition, it recommended:

- abolition of the distinction between agricultural and non-agricultural land;
- doing away with the general exemption given to plantations, fisheries, etc;
- a ceiling of 15 acres per family as well as per religious establishment and per sugar mill;
- recognition of 9 July 1949 as the cutoff date for the observance of the land ceiling law;

- giving absentee landlords the option of utilizing their lands either through personal cultivation or through government; and,
- the allotment of 0.24 to 0.41 ha of ceiling surplus land to 1.67 million households of landless agricultural workers and assignment of 10 decimals (1% of an acre or 40.46 square meters) of land to each of 584 thousand households of homeless rural workers.

The report also attributed the rural violence in Bihar to the failure of land reforms and inequitable, inequalitarian and exploitative agrarian asset holdings. ■

a 58% increase in ceiling surplus land; a 27% increase in land that reverted to the states; and a 10% increase in land redistributed to the landless.

PHASE 4: Land Development Program (1985–1995)

This phase was characterized by increased attention to land development programs. Soil and water conservation measures were implemented through the Drought Prone Areas Program (DPAP), the Desert Development Program (DDP), and wastelands development initiatives. A massive program was undertaken for watershed development by establishing a Watershed Development Authority.

PHASE 5: Impact of Liberalization Policy and Mainstreaming of Land Reform Agenda (1995 onwards)

Due to the liberalization policy adopted by the government, the relevance of a number of land laws has become the subject of debate, and proposals for the computerization of land records have been put forward. Land policies are being reviewed in the light of issues related to land fragmentation, among others, and the wisdom of opening up the tenancy market.

Under its fifth phase, the government has come under pressure from civil society organizations (CSOs), the leftist political parties and extremists to carry out the unfinished agenda of land reforms. (See previous page, “Land Reform: Promising Peace in Bihar” regarding Bihar’s efforts to address violence through instituting land reform.)



Legal AND Policy Framework ON Land

THE CONSTITUTION of INDIA

The Constitution of India guarantees fundamental rights. Equity and social justice are the basic tenets of the Constitution.

“Land to the tiller” is the guiding principle of India’s land reforms program. But the *right to property* is not provided for in Part III of the Indian Constitution. In other words, it is not a justiciable right. Nevertheless, the concept of equity is built into India’s Constitution. For instance, the 44th Amendment to the Constitution altered Article 38 to introduce the following clause: “The State shall, in particular, strive to minimize the inequalities of income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst the individuals but also among groups of people residing in different areas or engaged in different vocations.”

Article 38 falls within the Directive Principles of State Policy (Articles 36 to 51) that are non-justiciable but outline the philosophy that will guide policy, in the hope that these provisions will one day become law.

Article 39 of the Constitution provides “that the ownership and control of the material resources of the community are so distributed as best to subserve the common good”; and “that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.” Thus, the equitable distribution of assets and social justice are given emphasis in the Indian Constitution, which also stipulates that “The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood”.

It is important to note that the Constitution makers also gave each state, rather than the central government, the exclusive power to make laws with respect to land, including land reform laws.



STATE LAND REFORM LAWS

Every state has enacted its own land reform laws on subjects and issues as follows:

- abolition of the *Zamindari* system to eliminate intermediaries;
- ceiling on land holdings to do away with uneven distribution of land and for redistribution of ceiling-surplus land among the landless;
- tenancy reforms to ensure security of tenure for peasants, regularization of rent/revenue, and ownership;
- regulation of sharecropping to safeguard the interest of the sharecroppers;
- protection against alienation of land belonging to weaker sections such as SCs and STs;
- consolidation of fragmented land holdings;
- provision of homestead to the landless households;
- provision of government land to the landless on long-term lease including tree-lease; and
- statutory minimum wages to agricultural labor.

These land reform laws were included in the Ninth Schedule of the Constitution, which was introduced in the very first amendment in 1951 as a means of immunizing certain laws against judicial review.

FOREST RIGHTS ACT of 2006

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 recognizes and gives forest rights, as well as rights to occupy forest land, to STs and other traditional forest dwellers and provides the framework for recording forest rights.

As of September 2011, 1.2 million titles covering 1.6 million ha of forest land have been distributed in the country under the Forest Rights Act.

There are, however, several aspects of the law that leave room for doubt as to how effective it would be in terms of rectifying what the Government of India has conceded as “historical injustices” to the forest-dwelling STs and other traditional forest dwellers. Until these discrepancies are addressed and the loopholes in the act are removed, the land rights of forest dwelling communities will remain insecure.

CONSTITUTIONAL and LEGAL PROVISIONS for TRIBAL LAND RIGHTS

Article 244 and Fifth Schedule of the Constitution provide for making regulations by the Governor/State to prohibit or restrict the transfer of land by or among the members of the STs in such areas. The provisions under Fifth Schedule, of this Article are applicable not only to the administration of areas designated as “Scheduled Areas” but also to those assigned to original tribal owners.

In 1960, the Dhebar Commission, pursuant to Article 339 of the Constitution, recommended that all tribal land alienated since 26 January 1950—the day the Constitution came into force—be returned to their original tribal owners.

The Provisions of the *Panchayats* (Extension to the Scheduled Areas) Act (PESA) of 1996 came into force on 24 December 1996. It gives wide ranging powers to the *gram sabha*, or village assembly, for taking decisions on: (1) land acquisition within scheduled areas; (2) granting mining leases (for minor minerals); and (3) ownership of minor forest produce, etc. Section 4 (i) of PESA clearly states that the *gram sabha* shall be consulted before acquiring land in the scheduled areas for development projects, and before resettling or rehabilitating persons affected by such projects.

In the landmark Samatha judgment, in 1997, the Supreme Court further interpreted the Fifth and Sixth Schedules of the Indian Constitution as intending not only to prohibit acquisition and alienation of land in tribal areas by non-tribals, but to ensure that the tribals remain in possession and enjoyment of lands in scheduled areas for their dignity, social status and economic empowerment.

WOMEN'S LAND RIGHTS

It can be said that in general, gross gender inequity exists in India. Land reform laws have not adequately addressed the issue of unequal ownership of land between men and women. The Land Ceiling Act classifies the family unit as comprising husband, wife and three minor children. While adult sons are considered separate units, unmarried adult daughters are left out. Even the



Tenancy Act gives priority to males (from the father's side) in inheritance and to widows only in the absence of male heirs.

Hindus make up about 80.5% of India's population. The Hindu Succession (Amendment) Act of 2005 has been enacted to remove gender discriminatory provisions in the Hindu Succession Act of 1956, and make the daughter a coparcener in her own right by birth in the same manner as the son: Hindu women have equal rights to land. However, in practice, this is fraught with social complications.

Muslims comprise 13.4% of the population. According to their personal law, sons inherit 62.5% and daughters, 37.5%, irrespective of their number. Other minority religious groups are governed by their traditional laws and practices.

Impact of Reforms

As of March 1995, some 2.66 million ha—less than 1.5% of India's total agricultural land—had reverted to the states under the old and new land ceiling laws. Of the 4,949 million target beneficiaries, at least 5% had not actually received the allotted land. So far some 2.7 million ha—less than 1.5% of India's total agricultural land—has been declared ceiling surplus by the states under the old and new land ceiling laws. At present, 85% (about 2.3 million ha) of the declared ceiling surplus land has been taken over by the government. Of this, 1.9 million ha have been redistributed to 5.5 million

households including 37% to SCs and 16% to STs.⁵ However, of these beneficiaries, at least 5% have not actually received the allotted land. Moreover, much of the allotted land was of poor quality.

Little progress has been made in the implementation of potential of land ceilings surplus, estimated at 21 million ha. Unfortunately, many remaining lands are stuck in land disputes pending in revenue and judicial courts.⁶

As regards *Bhoodan* land, an estimated 989,000 ha, out of 1.928 million ha were redistributed to the landless, as only about 0.45 million ha were actually cultivable, and 0.73 million ha were unfit for distribution.⁷ The remaining lands could not be distributed for reasons that include opposition from the donors' heirs and the inefficiency of the distributing agencies.

The state of Bihar received 262,482.05 ha of *Bhoodan* land—one of the most sizeable collections—but thus far, of which only 104,144.48 ha have actually been found suitable for redistribution as per verification. Distributed land amounts to 103,348.23 ha, leaving a remaining 796.25 ha to be distributed. Some 20,000 ha may be added to the total distributable lands after further verification.⁸ Meanwhile, less than half a million beneficiaries received grants to improve the land that had been given to them. As a result, the general return from the allotted land was between Rs1,000 to Rs1,200 per acre per annum. In most cases, the beneficiaries received less than 0.3 ha of land each, and hence could not provide adequately for their families by farming alone. Forty percent of the holdings should have been allotted exclusively for women beneficiaries, with the remaining 60% allotted as joint holdings to husband and wife. This provision has not been implemented.

Therefore, considering the five phases of land reform measures, it can be said that, notwithstanding certain notable gains from abolition of intermediaries, redistribution of ceiling surplus land and other tenancy reforms, the promise of the national freedom movement—"land to the tiller"—has remained unfulfilled or only partly fulfilled so far. Landholdings are still skewed to a large extent.



SIZE of LANDHOLDINGS⁹

Government statistics show a drop in the number of large and medium holdings, and increase in the number of small and marginal holdings. In 1971–1972 large and medium holdings owned by the top 10% of landowners covered 54% of the total land area. By the time of the 2005–2006 Agricultural Census the proportion of owners of large and medium holdings had declined to 5.78%; however, their combined area had been reduced to almost 35% of total agricultural land. On the other hand, the proportion of marginal holdings has increased from 63% in 1971–1972 to 64.77% more than three decades after. The proportion of the area under marginal holdings has also increased from about 10% in 1971–1972 to 23% in 2003. Adding small and marginal holdings to the equation, the number of holdings swell to a staggering 83.29% of all landholdings in India, over an area that only comprises 41.14% of the total agricultural area. The proportion of marginal holdings to total number of holdings has increased in almost all states over the last ten years.

LANDLESSNESS among SCHEDULED CASTES and TRIBES

The incidence of landlessness is more pronounced among SCs and STs, the bulk of whom are agricultural laborers having miniscule holdings; sharecroppers; or other types of insecure tenants.¹⁰

Around 87% of the landholders among the SCs and 65% of landholders among the STs in the country belong to the category of small and marginal farmers.¹¹ According to the 1991 Census of India, 64% of the SCs and 36% of the STs are primarily agricultural workers. The poorest among the poor in Indian society are largely from these groups.

The National Sample Survey (NSS) conducted in 1992 reported that 13.34% of the SCs and 11.50% of the STs belong to the “absolutely landless” category. This report is inconsistent with the Ninth Five-Year Plan, 2002–2007, which reported a much higher incidence of landlessness among these groups: 77% among the SCs, and 90% among the STs. The discrepancy in the data on landlessness from different government sources

raises obvious questions of accuracy and reliability. The draft report of the Committee on State Agrarian Relations and the Unfinished Task of Land Reforms declares: “... the data of absolutely landless families proves that the feudal society is firmly anchored in large parts of India, notwithstanding claims to the contrary.”¹² This inconsistency calls for a detailed study of landlessness in India.

In addition to the abovementioned distributed ceiling surplus land, the *Bhoodan* land has also benefitted members of SCs and STs all over the country. Records show that of the 1,935,986 ha of land collected as “gifts” across the country, 989,000 ha (51%) were distributed to 709,209 poor households, most of them from Scheduled Caste and Tribe households. In Bihar, where the most land was received and redistributed, a survey in late 1960s revealed that about 75% of the beneficiaries of the redistributed *Bhoodan* land were in possession of the land as against less than 20% of the beneficiaries of government redistributed ceiling surplus land.

Access to Land AND Its Relationship to Poverty, Peace AND Development

The poor in rural India are found mostly among landless agricultural laborers and marginal and small farmers. NSS data indicate that landlessness is the best indicator of poverty in India.¹³ In the first quantitative study of its kind in India, Besley and Burgess¹⁴ investigated the relationship between land reforms and poverty reduction at the state level, using panel data for the 16 major states. Their main conclusion is that land reforms appear to have led to poverty reduction in India. In their analysis, the authors controlled for other factors that may be associated with poverty reduction, in order to rule out the possibility that land reform activity merely served as a proxy for other policies. Their detailed analysis showed that while skepticism is warranted with respect to the prospects for redistributing land through land ceilings, the abolition of intermediaries and other tenancy reforms (at least in some states) appear to have been more

successful in reducing poverty. These findings accord reasonably well with existing, empirical assessments of the relative success of Indian land reforms.

NAXALITE MOVEMENT

The Naxalite movement is closely associated with loss of land, forests, lack of any alternative livelihood, and an insensitive government.¹⁵ In early 2005, the government informed Parliament that 126 districts (from a total of 600) in 12 states were Naxalite-affected; of these, 76 districts in nine states were said to be “badly affected”. The reasons for the Naxals’ success are fairly straightforward. Naxals flourish where there are huge disparities in assets and incomes, and where injustice and violence by the privileged have run rampant. Prakash Singh, former Border Security Force chief and author of a book on Naxalism, wrote:

The Naxal movement is irrepressible because it draws sustenance from the grievances of the people which have not been addressed by the government... Regarding land reforms, even the Tenth Plan document admits, ‘the record of most states in implementing the existing laws is dismal.’¹⁶

There are a number of Naxalite groups, but originally it was spearheaded by the Communist Party of India (Marxist–Leninist) or the CPI (M–L). Even though the CPI (M–L) has now joined the democratic process and taken part in elections, the other Naxalite groups do not subscribe to parliamentary democracy. However, they have had an impact on the resolution of land access issues.

The Naxalite movement started in West Bengal, but it has now spread to several states. Big landlords, money lenders, and other groups closely associated with the state, besides the security forces, are targets for Naxalite attacks. Simultaneously, they mobilize the extreme poor in rural areas—laborers, SCs, and STs. The Naxalites still hold some of that base, but their agenda has widened. A number of them indulge in terrorism, or are known to have links with terrorist organizations in India and abroad. Yet, it cannot be denied that the Naxalite movement has resulted in a much more vigorous debate on agrarian reform.

Issues AND Trends

FOREST ACT and WILDLIFE PROTECTION ACT

The Indian Forest Act of 1927 (IFA) allowed the British colonial government to declare as reserved forest huge swaths of land inhabited by indigenous communities to serve their commercial interests. The Indian government is still misusing IFA to forcibly acquire land. Between

CASE STUDY

India’s Unprotected Forests

The eviction of members of the Baiga tribe from the village of Luri exemplifies the harassment suffered by many tribal communities at the hands of the Indian Forest Department (FD).

Luri, with a population of 700, is home to a number of tribal groups, namely the Baiga, Gond, Ahir, and Dhoba. These tribes had traditionally practiced shifting cultivation, but discontinued it following a ban imposed by the government. Prior to 1970, Baiga families had already been engaged in farming; seven Baiga families even held land titles. However, at the start of the 1970s, FD officers began to evict the tribals from the land. But the tribals were adamant and stayed put. They started to farm as a group—from sowing the seeds to harvesting their crops.

In July 1990, the FD launched a massive campaign to drive out the tribals from the land. The FD and members of the local police, together numbering 150, torched 22 houses and razed the tribals’ crops to the ground. They also hauled and arrested five bystanders at a nearby bazaar.

Through the efforts of Ekta Parishad, a people’s organization (PO), the Baigas have started farming again, in spite of threats from the FD. The tribals have pinned their hopes of regaining their rights to forest land on the Forest Rights Act of 2006. Despite the rejection of the tribals’ claim for forest rights, they continue to file their claims to the village-level forest rights committee. Their claims are now being processed. In the meantime, their lives and livelihood remain at risk. ■



1951 and 1988, some 26 million ha were brought under the control of the Forest Department (FD). Sixty percent of these lands are located in regions whose populations were predominantly indigenous groups and tribals.

From the 1970s onwards, the state, particularly the FD, shifted its emphasis from production-oriented forestry and forest management to conservation. This was facilitated by laws like the Wildlife Protection Act (WLPA) of 1972 and the Forest Conservation Act of 1980. Under the WLPA, large forest areas were brought under the Protected Area Network of national parks and wildlife sanctuaries, which were intended to be “human-free” wilderness zones.

Today, there are 94 national parks and 492 sanctuaries in India. About four million people reside in these areas and are regarded as illegal occupants. No survey was conducted prior to delineating these protected areas to take into account the current occupants and their land rights. Thousands of communities have been displaced. For instance, in Pench National Park in the state of Madhya Pradesh, eight villages composed of 16 households were resettled. There is no record of what became of the people from the other villages or where they have been relocated.

Between 1951 and 1981, a total of 4.238 million ha of forest land were cleared for purposes like river valley, infrastructure, and industrial development projects.

SPECIAL ECONOMIC ZONES

Land is acquired by the state for “public purpose” under the Special Economic Zones Act 2005 (SEZs) to set up free trade zones. These are special enclaves with their own infrastructure to churn out export products exclusively.

State governments have thrown their doors wide open to SEZs to be set up by big businesses and industries because they are thought to bring in jobs and investments, promote the export of goods and services, and finance infrastructure development. According to government figures, nearly 500 SEZ projects have been approved and approximately 59,685 ha of land have been acquired and allotted for the purpose.

Land acquisition for the purpose of establishing SEZs is covered by the “public purpose” clause of the colonial vestige that is the Land Acquisition Act of 1894, besides the above Act. Unfortunately, much of the land that has been acquired for the SEZs is agricultural land. Their acquisition affects the livelihood of the affected people, who protest the acquisition as arbitrary. Conflict has inevitably erupted.

SEZs enjoy several tax breaks and other exemptions, which, when totted up, would result—within five years of an SEZ’s operations—in a loss of revenue to the state of over Rs1,750 billion. Yet, the government remains undeterred. Prime Minister Manmohan Singh has repeatedly said that SEZs are the necessity of the moment. No wonder agricultural land, which is a scarce commodity, is suddenly available in abundance. The government continues to acquire any land it sets its sights on, using the draconian Land Acquisition Act. For the first batch of SEZ applications approved by the government, a total of 125,000 ha of prime agricultural land would be taken over. The second batch would require an area just as large.¹⁷

CORPORATE or CONTRACT FARMING

Under contract farming, a farmer agrees to put his land and labor to use by a company (contractor) to produce a particular kind of crop. In return, the contractor provides the material inputs and the required technology. The farmer is expected to provide a specific quantity of the produce for which he gets an agreed price.

The National Agriculture Policy (NAP) issued in July 2000 emphasized corporate farming. As a result, several states, including Karnataka, Andhra Pradesh, Punjab, and Gujarat are actively promoting contract farming. However, it has been found that in the long run, contract farming does not result in continuous growth in income—equitably distributed—among farmers. However, corporate farming threatens food security.

Although the above NAP has since been replaced by the National Policy for Farmers (NPF) of 2007, the latter also makes a reference, though subdued, to contract farming for symbiotic contracts which would confer

benefits to both producers and purchasers. Similarly, the Eleventh Five-Year Plan, 2007–2012 document refers to contract farming as another mechanism whereby the private corporate sector can establish linkages between farmers and markets, with adequate safeguards for farmers' interest and dispute resolution.

Actors

GOVERNMENT

While land reforms are under the jurisdiction of the states, the central government has taken measures to promote land reforms. It has:

- directed state governments to enact agricultural land ceiling laws, and to redistribute ceiling-surplus land among landless and marginal farmers;
- amended the Constitution 13 times to remove legal obstacles to land reforms; and
- formulated Five-Year Plans through the National Planning Commission that consistently emphasized land reforms and incorporated policy guidelines in this regard; the current Eleventh Five-Year Plan (2007–2012) has also incorporated the component of land reforms in all its dimensions.

The Ministry of Rural Development—Department of Land Resources as the nodal agency in the central government has since been active in promoting land reforms in various ways. The National Land Reforms Council (NLRC), chaired by the Prime Minister (comprising civil society representatives and chief ministers), as well as the Committee on State Agrarian Relations and the Unfinished Task of Land Reforms, chaired by the Minister of Rural Development was formed in January 2008, as a victory of Janadesh 2007 mobilized by Ekta Parishad.

The committee assisted the council with report and recommendations. The committee's eponymous report, subtitled "An Agenda to Reform Agrarian Relations for Equity and Efficiency in Contemporary India", tackled: land ceilings and the distribution of ceiling surplus, state and *Bhoodan* land; tenancy, sub-tenancy and homestead rights; governance issues and land-related policies;

alienation of tribal and Dalit lands; modernization of land management; common property resources and issues related to conversion of agricultural land to non-agricultural use; and land management in north-eastern states. More importantly, it submitted recommendations—numbering some 300—as well as a 20-point land reform agenda to the NLRC. However, as of October 2011, the NLRC has not yet met to discuss the draft prepared by the committee.¹⁸

An active and functioning NLRC would push for state governments to implement the provisions of the national land reform policy.

POLITICAL PARTIES

India has a multi-party system with the two largest parties alternatively leading coalition governments at the Center: the Indian National Congress (INC) and the Bharatiya Janata Party (BJP). The INC-led alliance is called the United Progressive Alliance (UPA), while the BJP-led alliance is called the National Democratic Alliance (NDA). The two formations—despite pulls and pressures from the alliance partners who have their own power centers in the states—have been generally stable. The third emerging alliance is the United National Progressive Alliance (UNPA), which would form a non-INC, non-BJP "third front."

The parties have articulated their position on land reforms in detail as follows.

Bharatiya Janata Party

The Bharatiya Janata Party (BJP)¹⁹ is regarded as rightist, but would rather be characterized as nationalist. The NDA, a coalition of which the BJP is the major partner, has carefully avoided the issue of land distribution through land reforms since it was formed in 1998.

However, in its election manifesto in 2004, the BJP spelled out specific steps to implement land reforms. Furthermore, in discussions on "land use and acquisition" at the party's National Council Meeting on 28–29 January 2008, the BJP decried that fertile land was being lost to development. It described the Land Acquisition Act of 1894 as "outdated," citing its misuse and the "mindless"



acquisition of land in the name of “public purpose”. The BJP proposed that this law be amended to ensure that the government does not acquire fertile irrigated land arbitrarily for private companies and that it should serve the public purpose. A BJP document on this matter stressed the need to define “public purpose” for which government forcibly acquires agricultural land from farmers. It said that the government should acquire land on behalf of private companies only in exceptional circumstances and that in such cases the farmer should be paid the prevailing market price for his/her land and made a shareholder in the company for which his/her land was acquired.

Indian National Congress

The INC²⁰ was the first national party to call for land reforms in the 1930s (before independence). As the first party to form a government following independence, the INC spearheaded land reforms and directed the state governments to enact similar laws in their states. The party’s manifesto for the elections in 2004 proclaimed that state governments would be urged to enact laws conferring ownership rights of minor forest produce on tribal people, particularly those dwelling in forests. Landless families would be given some land through the proper implementation of land ceiling laws. The manifesto also demanded more effective systems of relief and rehabilitation for tribal communities displaced by development projects.

The INC’s economic agenda stipulates that land reforms, particularly in states where progress has been slow in this regard, must receive high priority, along with the consolidation of fragmented and subdivided holdings. Tenurial reforms are given equal importance as the enforcement of land ceilings, and the computerization of land records is accorded the highest priority. All land holders, especially marginal farmers, must be given land titles.

The declarations of the INC’s President Sonia Gandhi represent its stand on various land related issues:

Prime agricultural land should not normally be diverted to non-agricultural uses...Industry requires land no doubt. But this must be done

without jeopardizing our agricultural prospects. Farmers must get proper compensation when their land is acquired. Could farmers also not become stakeholders in the projects that come up on the land acquired from them? Our resettlement and rehabilitation policies must be strengthened and implemented in an effective and credible manner which will inspire confidence in the people who are displaced.

She noted that no discussion on agriculture was complete without reference to issues concerning land rights and land access, particularly concerning SCs, STs and women. “Land alienation among the STs is very high and has certainly fuelled Naxalism,” said Mrs. Gandhi.

Communist Party (Marxist)

The Communist Party (Marxist), or CPM²¹ is India’s leading left-wing party, with 45 representatives in the Indian Parliament (2004–2009). It was formed after the split in the Communist Party of India (CPI) in 1964.

The CPM contends that even in states where land reforms had been implemented, the old relations of production continue. For instance, tenants who have benefitted from land reforms in Kerala and West Bengal are subject to the same laws as their counterparts in other states and regions. This has resulted in the growing number of landless and near landless, along with the emergence of the big and mid-size land owners.

The CPM has declared that “keeping in mind that 70% of the people of India live in the rural areas, the single most important step for rural transformation is the implementation of land reforms.” The CPM has also demanded that loopholes in existing laws be plugged; surplus land taken over and distributed to the landless, with priority to landless SCs and STs in land distribution; land records corrected; the tenurial security of tenants ensured; and land titles issued jointly to husband and wife.

The CPM called for the protection of indigenous communities and for the restoration of land that had been illegally taken from them. It sought to ensure

these groups' right of access to forests and forest produce, by amending the Forest Rights Act of 2006 and by recording the names of forest dwellers. The CPM protested against the implementation of projects that resulted in the displacement of tribal people without providing for a comprehensive and sustainable rehabilitation package. Such a rehabilitation scheme must be put in place before any displacement or work begins. Ultimately, CPM called for regional autonomy for tribal compact areas.

Donor Agencies and International Institutions

Donor agencies have traditionally played an important part in supporting India's land reform movement, and this has become more pronounced against the backdrop of a modernizing India and growing conflict on issues of land ownership, equity, and land acquisition for development. Among them are the Ford Foundation, ActionAid, and Christian Aid.

International financial institutions (IFIs) have made a deep impact on the country's land reform efforts. The neoliberal policies endorsed by IFIs endorse market-assisted land reform models. Several IFIs like the World Bank have large-scale programs in India.

The Private Sector

The involvement of the private sector in development is nothing new; it has invested in large-scale giant industries like manufacturing and mining. Its recent foray into corporate farming has prompted a land-buying spree. Using its money and connections, the private sector, with the government acting on its behalf, has sought to acquire large areas of land. Just a dozen companies are about to gain hold of 50,000 ha of land, which is over a third the size of Delhi. POSCO (Korean) and Salim (Indonesian) are just two of the companies that have joined the race for India's land.

According to officials in the Commerce Ministry, the land requirement of the SEZ applications that have been approved runs to 75,000 ha. This does not yet include large-scale projects, like the Tata Small Car Plant in West Bengal (since shifted to Gujarat) and Anil Ambani's Dadri Power Plant in Uttar Pradesh.

Corporate Interests in Agriculture

A number of corporate players have entered into agreements with farmers with major investments to tap the potential of Indian agriculture as follows:

- Skol Breweries India Ltd., the wholly owned subsidiary of SAB Miller India, has entered into a contract farming agreement with barley farmers in Haryana.
- Adani Agrifresh has lined up a \$251.77 million investment to create a supply chain from farms to retailers of fresh fruits and vegetables in the next three years.
- Cadbury India Ltd. has entered into an agreement with the Tamil Nadu Horticulture Department to promote cocoa farming in 50,000 acres.
- Mahindra Group intends to tap Punjab's agriculture potential by taking up potato seed development in the state through contract farming.
- Himalaya Drugs plans to solicit the help of farmers across southern Indian states to source at least 70% of its herbs.
- PepsiCo, after introducing farmers to high-yielding basmati rice, mangoes, potatoes, chillies, peanuts and barley for its Frito-Lay snacks, has launched a five-year program with the Punjab government to provide several hundred farmers with four million sweet-orange trees for its Tropicana juices by 2008.
- Reliance Retail plans to establish links with farms in Punjab, West Bengal and Maharashtra with a \$5.6 billion investment.

Civil Society

Non-government organization (NGO) networks in India operate at the national and regional level. The Sarva Seva Sangh, Association of Voluntary Agencies for Rural Development (AVARD) and the Voluntary Action Network of India (VANI) are among the networks working nationwide. Networks operating at the regional level are Mazdoor Kisan Shakti Sangthan, Manav Kalyan Trust, Dalit Land Rights Federation, Bharat Nirman, Disha, Janvikas, Janpath, CECODECON, Confederation of Voluntary Organizations (COVA), FIAN, and several others. A few NGOs focus on working on access to land, like AAK, Allahabad; Gorakhpur Environment Action Group (GEAG); ActionAid; Vikalp, and Banwasi Seva

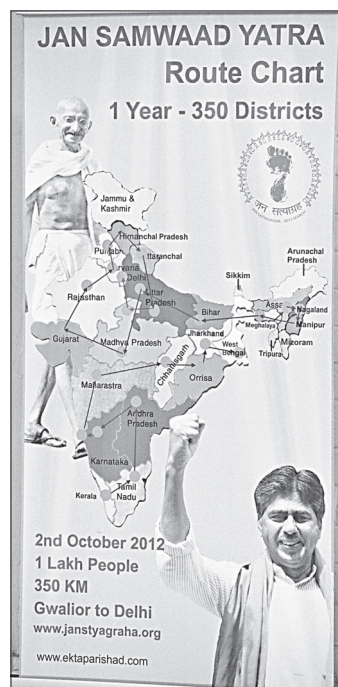
Kendra (UP); MGSA, NRSS, MJVS, Nayi Disha in Madhya Pradesh; Prayog, GVP in Chhattisgarh; PGVS, Prayas in Bihar; APVVD, Samata in Andhra Pradesh; NCAS, Pune; and Gandhi Peace Foundation (GPF).

People's organizations working on land issues in India generally have a non-formal structure. Some examples of such organizations are: Adivasi Mukti Sangathan (Madhya Pradesh), Bharat Jan Andolan (Madhya Pradesh), Chhattisgarh Mukti Morcha, Ekta Parishad (in eight states), Methchi People's Movement (Tamil Nadu), Narmada Bachao Andolan (Madhya Pradesh), Raigarh Bachao Sangarsh Morch (Chhattisgarh), Bhoomi Bachao Sangrash Morcha, Kusingar (Uttar Pradesh), National Alliance of People's Movements, Jamin Adhikar Andolan, National Committee on Rural Workers, National Forum of Forest People and Forest Workers, NCCRW, National Campaign for Land and Livelihood (NCLL), Wada Na Todo Abhiyan, Mazdoor Kisan Shakti Sangathan, Rajasthan; Uttar Pradesh Land Alliance (UPLA); Mushar Vikas Pahal (in the eastern part of Uttar Pradesh); The Campaign for Survival and Dignity; and CWLR.

JANADESH 2007

Ekta Parishad led a non-violent peoples' movement to ensure land and livelihood rights for the poor. Janadesh, meaning "the people's verdict" in Hindi, conducted a non-violent pilgrimage or people's march to force government to address the land and livelihood concerns of marginalized communities, such as the SCs, STs and indigenous groups. The march lasted for 28 days, starting from Gwalior and ending in Delhi. Some 25,000 people from the Scheduled Castes and indigenous communities participated. On the way to Delhi, they were joined by supporters from more than 250 CSOs. On 29 October 2007, the union rural development minister met with the marchers in Delhi and made a commitment to form a National Land Reforms Council and a Committee on State Agrarian Relations and the Unfinished Task of Land Reforms that would look into the marchers' demands.

Although the NLRC has been established, it has not met. Because the process has been slow, Ekta Parishad is mobilizing Jan Satyagraha 2012 to push for the activation of the NLRC. One hundred thousand people—



including farmers, youth, *adivasis*, Dalits, intellectuals, and the poor—are expected to peacefully march along the 350-km route from Gwalior to the capital Delhi, demanding the poor's access to and control over land, water and forest resources. It will begin on 2 October 2012, Mahatma Gandhi's birthday.

THE SINGUR STRUGGLE IN WEST BENGAL

Several independent activists, organizations, intellectuals and other groups showed their solidarity with the people of Singur, who were protesting the conversion of cultivable land in 2006 —abetted by the West Bengal government—to make way for a small car unit of the Tata company. The Singur protest had been violently put down by the state government. The movement that sprung out of this struggle demanded the relocation of Tata's car unit, censured the state government for resorting to violence, and denounced the massive human rights violations in and around the site. The movement succeeded and the car unit was relocated in Gujarat.

In a similar case, a people's protest has forced the West Bengal government to drop a SEZ planned in Nandigram by Salim Group.

Strategies to Advance Access to Land AND Tenurial Security

POLICY-LEVEL INTERVENTIONS

In his paper entitled "A Critical Evaluation of Land Reforms in India", Das Sukumar²² states that, based solely on the figures, it is possible to provide all the farm households of India with economically viable landholdings.

However, India would have to adopt the following land policies and programs, and implement these to the extent possible in order to complete the unfinished task of land reforms:

1. Abolish absentee landlordism by denying the right to own land to non-farming sectors or those who do not depend on agriculture for a living; acquire such land by paying compensation to their owners and distribute the land to the actual tillers and other eligible rural poor groups;
2. Confiscate all land that has been left fallow by their owners, following payment of compensation, and distribute the same to the landless poor;
3. Develop all cultivable wasteland²³ that lies idle and distribute it to the STs and SCs;
4. Complete the distribution of all ceiling-surplus land, other vested land, and *Bhoodan* land;
5. Restore all alienated tribal land; regularize all agricultural land held by the tribals in forest areas;
6. Legalize tenancy to promote the productive use of all lawfully held land, and enact laws to ensure that the tenant and the land owner (who is unable to cultivate the land) enjoy equal privileges to the land;
7. Conduct a special drive to fully record all tenants and sharecroppers and update the revenue records, incorporating the land rights of the government allottees;
8. Undertake legislative and administrative measures to prevent the conversion of agricultural land to non-agricultural uses, and to prevent the degradation of farm land through misuse of land, among others; and
9. Expedite the consolidation of landholdings and simultaneously develop irrigation and drainage facilities.

In addition to the aforesaid urgent land reform measures, the government may also extend support services, including the development of infrastructure, provision of credit and inputs, remunerative marketing facilities, and development of agro-processing. Rural industrialization will also prove helpful in utilizing additional workforce in non-farm activities so as to reduce the excessive pressure on land, and increase the incomes of farm households. These measures are necessary to gradually

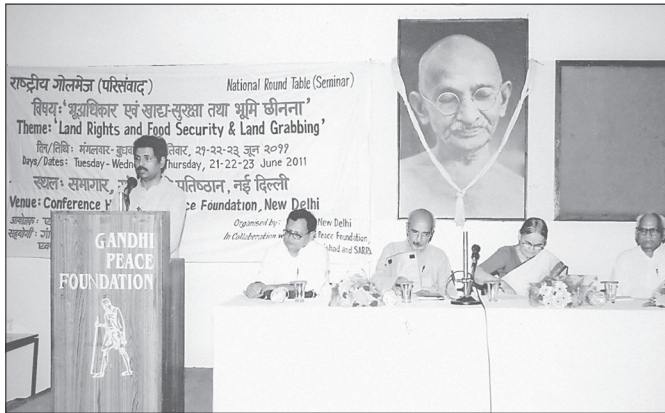
make farming viable in the future and also to meet the growing demand of the industrial sector by producing commodities both for domestic and international markets.

Unless and until about 70% of India's rural population that is engaged in agriculture and allied activities finds an economic holding of arable land and/or enhanced income from subsidiary sources, the country cannot achieve growth with equity and social justice.

POLICY-LEVEL INTERVENTIONS: FROM the PEOPLE'S PERSPECTIVE

These are summarized below:

- **The Government of India should formulate a “People's Land Policy” based on the following principles:**
 - ➔ As Mahatma Gandhi used to say, land should be considered a common natural resource, like water and air, for everybody's benefit.
 - ➔ Redistribution of surplus land and protection of the land rights of the poor, especially those belonging to STs and SCs, should be considered a national priority, to ensure the social, economic, and political empowerment of marginalized groups and to promote national food security.
 - ➔ Land should be considered a precious resource and its actual use should be systematically audited and monitored.
 - ➔ Protection and enrichment of the productivity of cultivable lands should receive the highest priority. Food security of the most vulnerable groups should be assured as much as possible through local production and distribution.
 - ➔ The land legislation and administrative system inherited from colonial times is unsuitable to the needs and aspirations of the poor in independent India, and needs to be completely overhauled. Women, SCs, and indigenous groups should be accorded the status and role of empowered partners in the just and sensible management of natural resources.
 - ➔ The destruction of established livelihoods and community life systems by unilateral demolitions and acquisitions should be banned. Land and



natural resource stress faced by the country should be reduced in a humane and planned manner with the participation and inputs from representatives of the poor, forest-dwellers, industry bodies, environmental experts, CSOs and peoples' movements.

- **Land reform should be aggressively regenerated and pursued across India by:**

- ➔ Formulating laws that promote land reforms, such as the West Bengal land reforms law to:
 - (1) plug loopholes that allow evasion of the land ceiling laws;
 - (2) prevent absentee landlordism;
 - (3) bring holdings of all trusts, industries, government and non-government institutions under ceiling restrictions; and
 - (4) ensure that entitlements are issued jointly to men and women;
- ➔ Formulating laws that provide for land registration, and that legalize tenancy across the country, on terms that are fair to both landowners and tenants;
- ➔ Setting up a centrally funded program for creating and displaying at a public place in each village, colored maps showing the different kinds of land (*panchayat* land, forest land, grazing land, etc.) along with details of all holdings;
- ➔ Formulating a program for detecting concealed surplus holdings and concealed tenancies, and demarcating all ceiling-surplus allotments, by holding camps at the block and village levels with the involvement of local people and NGOs in a three-to-five-year “campaign”;

- ➔ Setting annual land redistribution targets (in terms of area of land and number of beneficiaries) for all states, with financial incentives like higher allocation of funds for high performance; and
- ➔ Acquiring/transferring unused large holdings of big government, industry, and educational organizations for redistribution or for low-cost housing.

- **In the interim, land-related litigation should be fast tracked by:**

- ➔ Directing states that have not done so to set up land tribunals under Article 323-B of the Constitution; and
- ➔ Formulating an enabling centralized law to bar civil courts from hearing land ceiling cases. However, a long-term national land use policy has to be drawn up, involving all stakeholders and keeping in mind the following:
 - ➔ Food and livelihood needs of the poor;
 - ➔ Food requirements of the entire country;
 - ➔ Availability of adequate water; and
 - ➔ Protection and expansion of the country's forest cover.

On the Anvil: the Land Acquisition, Rehabilitation and Resettlement Bill (Bill No. 77 of 2011)²⁴

The Land Acquisition, Rehabilitation and Resettlement Bill—Bill No. 77 of 2011—has been introduced in the Lok Sabha (Indian Parliament) on 7 September 2011. It has been referred to the Standing Committee of Parliament for review and improvement. On the positive side, the bill provides for adequate compensation, prior consultation, social impact assessment, rehabilitation and resettlement. However, at the end of the day, its basic purpose is still to facilitate land acquisition for industrialization and urbanization under the neoliberal growth model. As yet, it does not have any vision of rational land use, or concern for rural people—even if the Ministry of Rural Development drafted and introduced the bill expecting it will improve the well-being of those in the rural areas.

The 1894 Land Acquisition Act has been notorious for the land grabbing done in its name. The principles of

“eminent domain” and “public purpose”, without adequate compensation or rehabilitation and resettlement, are used and misused at the expense of the poor. The Supreme Court and the high courts have criticized the act and quashed unjust land acquisitions.

When enacted, hopefully during the next session of Parliament, it will repeal and replace the antiquated Land Acquisition Act of 1894.

Opportunities to Pursue Land Reforms

SPACE for STRATEGIC INTERVENTIONS

The land issue is becoming more and more complex. Dealing with it requires patience, a step-by-step approach, and multi-level stakeholder involvement.

Land reforms should not be approached in isolation from other issues. The strategies need to consider land, water, and forest as a single unit and the direct link to livelihood issues.

Action plans would work only if they are undertaken in alliance with other stakeholders.

LEGAL INTERVENTIONS

The legal framework needs to be thoroughly understood and strategies adopted accordingly. Public interest litigation provides space to tackle land and tenurial security issues. To maximize this space however, CSOs and POs should have a solid grounding on the issues.

PARTICIPATORY SPACES

The land issue is triggering events all over the world, and there is growing awareness of this fact. Events happening at the national, regional and international levels could provide opportunities to bring back the land agenda at the national and international levels. To be able to use this space, activists must be able to look beyond their local concerns, and see how external events bear on the issues they are dealing with.

SPACE for NON-VIOLENT MASS ACTIONS

Non-violence is being increasingly practiced and talked about. More such actions need to be undertaken. Peace marches, signature campaigns, distribution of information materials, focused letter writing campaigns and sit-ins are a few examples of non-violent actions. There are many ways in which these actions can be conducted. What is important is conviction and follow-through. Sustained non-violent actions at all levels can create the conditions necessary to bring about a change in attitudes and to create harmony and synergy in society.

POLICY-LEVEL SPACES

Policy-level spaces such as conferences are available to land advocates. In 2008, the Government of India formed the Committee on State Agrarian Relations and the Unfinished Task of Land Reforms and National Land Reforms Council.

ADVOCACY

Effective political and social advocacy is needed. A joint massive campaign at the national level is a good example of this kind of advocacy. The campaign has to start at the grassroots level and build up towards the national level. The first step is to create awareness and enhance capacity. Advocacy tools, such as organizing and mobilizing; staging rallies, marches, and hunger strikes; and lobbying with government and other stakeholders need to be sharpened and used effectively. The space provided by sympathetic national, regional and international organizations should be explored and maximized for advocacy purposes.

MEDIA SPACE

Media can be a vital ally to influence policy, create awareness, and conduct advocacy. A letter writing campaign directed at newspaper editors/publishers, being interviewed in a radio or television program, and using the internet to launch an information campaign are a few ways in which the influence of media could be used to the advocates' advantage.

COMPUTERIZATION of LAND RECORDS

Land records are fundamental to land rights and land reforms. They promote transparency and efficiency in land management and administration, as well as

prevent land disputes. However, in many states they are incomplete, outdated and/or disorganized, impeding land reforms and leading to disputes. Recognizing that accurate updating and computerization of land records (including digitizing maps) in every state is critical, the government has embarked on the process of digitizing land records all over India. To date, computerization of records has been completed in Goa, Gujarat, Karnataka, Madhya Pradesh, Tamil Nadu, and Uttar Pradesh—other states will have to follow suit and learn from their best practices and experiences.²⁵

MORE SPACE for WOMEN and GENDER EQUITY in LAND RIGHTS

Giving women space and opportunity at all possible levels is important. To promote gender equity in regard to land rights requires raising awareness of the issue, empowering women, and lobbying for the enforcement of laws providing for equal rights to land between women and men.

RIGHT to LIVELIHOOD as a FUNDAMENTAL RIGHT

Land and livelihood is a theme that resonates all over the world. There is need for advocacy to make the “right to livelihood” a fundamental right. The efficient conservation and development of land through land management, aimed at promoting food security among small and marginal farmers, should be undertaken through various programs.

SPACE for DEMOCRATIC MASS ACTIONS

The number of CSOs has increased tremendously, while similar network groups have emerged. These groups are coalescing to harness the collective power of the common people. Multi-level and multi-pronged networking around a shared vision and program of action is needed to bring together different types of networks, such as those of farmers, NGOs, and others. Advocates need to keep their watch to spot and respond to incidents of land grabbing and forcible land acquisition, and diversion of agricultural land to non-agricultural purpose. To keep up the pressure on the target stakeholders, CSOs should organize community actions to secure land rights.

Concluding Remarks

In sum, India is rich in legislations and policies, but relatively poor in their implementation. Given the current political and socio-economic context in India, a line needs to be drawn between what is desirable and what is feasible. Accordingly, strategic interventions to enhance access of the poor to land and tenurial security will have to be planned, prioritized and pursued with utmost care, perseverance, patience and pragmatism.

Endnotes

- ¹ Majumdar, R.C., Chaudhuri, H., & Dutt, K.K. (1946). An advanced history of India (1st ed.). London: MacMillan.
- ² Under this system, land could be acquired mostly free of charge from the British colonial government. The landowner or *zamindar* did not cultivate the land himself but instead rented it out to cultivators.
- ³ There was no intermediary between the state and the cultivator under this system. The cultivator, or ryot, had the right to sell, transfer, or lease his land and his tenure remained secure as long as he paid the land revenue.
- ⁴ The *Bhoodan* (Land Gift) movement received millions of hectares of land. State governments enacted Bhoodan Yagna acts to legalize and facilitate gift and redistribution of *Bhoodan* land to the landless.
- ⁵ AVARD. “Country Land Reforms Monitoring Report” (India pilot monitoring report submitted to ANGO for the CSO land reform monitoring initiative). 2012.



- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ Bihar Bhoodan Yagna Committee. Bihar Land Reforms Commission report and recommendations. 16 June 2006–16 June 2008.
- ⁹ Department of Agriculture and Cooperation, Ministry of Agriculture, Government of India. Agricultural Census of 1971–1972 and 2005–2006.
- ¹⁰ Diwakar, D.M. “Dalit questions of inequality, exploitation and mobilization,” *Journal of Indian school of political economy*, Vol. 10 no.2, April–June 1998.
- ¹¹ Ministry of Agriculture, Government of India. Agricultural Census 1990–1991.
- ¹² Committee on State Agrarian Relations and the Unfinished Task of Land Reforms. Draft Report (Vol I, Chapter Four: Alienation of Tribal and Dalit Lands), 2010, p.2.
- ¹³ Rao, V.M. (1992, June 27). Land reform experiences: Perspective for strategy and programmes. In *Economic and Political Weekly*.
- ¹⁴ Besley, T., & Burgess, R. (1998). Land reforms, poverty reduction and growth: Evidence from India. In *London School of Economics, STICERD Research Paper No. DEDPS13*.
- ¹⁵ The Naxalite movement takes its name from a peasant uprising that took place in May 1967 at Naxalbari—a place on the northeastern tip of India situated in the state of West Bengal.
- ¹⁶ Bidwai, P., “Meeting the Naxal challenge, Rediff News, October 11, 2005, <http://www.rediff.com/news/2005/oct/11bidwai.htm>
- ¹⁷ Devinder S. and Goswami, B. “India’s new maharajas,” *InfoChange News & Features*, CCDS, Pune, December 2006, <http://www.Infochangeindia.org/analysis193>
- ¹⁸ Press Trust of India. “Land Reforms Council Meet Deferred by a Month.” 23 October 2011. <http://news.outlookindia.com/items.aspx?artid=739323> accessed March 2012.
- ¹⁹ Excerpts taken from <http://www.bjp.org>
- ²⁰ Excerpts taken from <http://www.congress.org.in>
- ²¹ Excerpts taken from <http://www.cpim.org>
- ²² Das, S. (2000). A critical evaluation of land reforms in India. In *Land Reforms in India* (Vol. 5). New Delhi: Sage Publications.
- ²³ Wasteland is degraded land, a major part of which can be reclaimed and developed, for distribution to the landless. India has some 63.85 million ha categorized as wasteland.
- ²⁴ AVARD. “Country Land Reforms Monitoring Report” (India pilot monitoring report submitted to ANGO for the CSO land reform monitoring initiative). 2012.
- ²⁵ Ibid.

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The Persistence of Popular Will

INDONESIA Country Paper
Land Watch Asia



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Glossary and Acronyms

ADB	Asian Development Bank	PP	<i>Peraturan Pemerintah</i> (Government Regulation)
APBN	<i>Anggaran Pendapatan dan Belanja Negara</i> (Indonesian national budget)	Rp	Indonesian rupiah
BPN	<i>Badan Pertanahan Nasional</i> (National Land Agency)	RPPK	<i>Revitalisasi Pertanian, Perikanan, dan Kehutanan</i> (Revitalization of Agriculture, Fisheries, and Forestry); an official policy document of the current Government of Indonesia under President Yudhoyono (2004–2014) on land, water, forestry, and food issues.
BPS	<i>Badan Pusat Statistik</i> (Statistics Indonesia or Central Bureau of Statistics)	Swapraja	Local kingdoms; <i>swapraja</i> lands refer to lands of ex-kingdoms or ex-sultanates,
Bulog	<i>Badan Urusan Logistik</i> (Bureau of Logistics or National Logistics Agency)	TAP MPR	Indonesian People's Consultative Assembly Decree
DPR	<i>Dewan Perwakilan Rakyat</i> (House of Representatives)	UUPA	<i>Undang-Undang Pokok Agraria</i> (Basic Agrarian Law)
FAO	Food and Agriculture Organization of the United Nations	UUPBH	<i>Undang-Undang Pokok Bagi Hasil</i> (Law on Sharecropping)
IMF	International Monetary Fund	WB	World Bank
MPR	<i>Majelis Permusyawaratan Rakyat</i> (Indonesian People's Consultative Assembly); one of the highest decision-making bodies in Indonesia		
NES	Nucleus Estate and Small Holder Scheme; a program for the expansion of large plantations supported by the World Bank in Indonesia from 1970–1980		
New Order	Related with Suharto administration in Indonesia (1966–1998)		
Old Order	Related with Sukarno administration in Indonesia (1959–1965)		





Quick Facts

In 1993, 10.8 million farming households owned less than a hectare of land. By 2003, this number had increased to 13.7 million, or an increase of 2.6% a year.ⁱ

The growth in the number of marginal households corresponds with a drop in the average size of landholdings: from 0.83 ha in 1993 to 0.5 ha in 2003.ⁱⁱ

Over half (52.7%) of the country's farming households were considered poor in 1993. A decade later (2003), the proportion was 56.5%.ⁱⁱⁱ

The number of families that make their living from agricultural activities increased from 20.8 million in 1993 to 25.4 million in 2003, or an increase of 2.2% a year.

Of the 25.4 million farming families recorded in 2003, 54.4% lived in Java, and the rest (45.6%) in outer Java. Poverty among Javanese farming families rose from 69.8% to 74.9% during the period 1993–2003. In outer Java, the number of poor farming families increased from 30.6% to 33.9% during the same period, representing an increase of 3.3% a year.

ⁱ 2003 data from Statistics Indonesia (BPS), cited by Faryadi, Erpan (2008) "Land Question and Food Crisis in Indonesia." Unabridged Indonesia Country Paper submitted to ANGOC for the Land Watch Asia campaign.

ⁱⁱ Sajogyo Institute and Consortium for Agrarian Reform (2011). "Land Issue and Policy Monitoring Initiative: Indonesia Report". Report on results of piloting indicators for the CSO Land Reform Monitoring Initiative led by ANGOC.

ⁱⁱⁱ Ibid.

INDONESIA

Overview of Agricultural Development in Indonesia

Indonesia's agricultural development has progressed in six phases. The first phase was the revolutionary phase (1945–1965), during which then President Sukarno sought to develop agriculture by nationalizing plantations and companies formerly owned by the Dutch and Japanese colonial governments. Until the late 1950s, food production had not increased enough to improve the conditions of households dependent on farming. Rice production and agricultural productivity began to improve only after intensive production was adopted broadly in the early 1960s as part of the Mass Guidance program. The new intensification movement gained momentum following the establishment of demonstration plots, organized by researchers and students at the Bogor Institute of Agriculture with the participation of farmers on the north shore of Java.¹

The second phase was consolidation (1967–1978). During this period, the agricultural sector grew 3.4%. Growth was primarily driven by the food crop and plantation sub-sectors. Rice production increased by more than two million tons during the 1970s, and productivity more than doubled since 1963, to more than 2.5 million tons per hectare.





Three key policies—intensification, extension and diversification—were adopted during the second phase and were supported by the ability to increase production and productivity in agriculture. During this phase, a strong foundation for high growth in the sector was established. Great attention was given by the government toward construction of infrastructure vital to agriculture, such as irrigation, roads, and supporting industries, e.g., cement and fertilizer.

The third phase was that of high growth (1978–1986). This period was significant in Indonesia’s agricultural economy. The agricultural sector grew by more than 5.7%, because of an economic development strategy based on agriculture. Production of food, plantation crops, fish, and livestock all increased, with a growth rate of 6.8%; research and technological development played a key role in this. The Green Revolution program and technological advancements led to a 5.6% increase in productivity and by 1984, the country had attained food self-sufficiency. Rice production was correlated with improved living conditions among rural communities.

In spite of this, the Green Revolution advanced largely via monoculture systems—which were forced upon all regions, despite their geographic diversity and different bases of subsistence, e.g., corn, sweet potato and other crops—making food security more susceptible to climate change and resulting in ecological degradation. The Green Revolution also highlighted the dependency of small-scale farmers and farm workers on their landlords and on expensive agricultural inputs, often imported, such as seedlings, fertilizers, and pesticides.

The fourth phase was deconstruction (1986–1997). As a result of policies which had been adopted previously, the agricultural sector contracted during this period, with a growth rate as low as 3.4% per year. Policymakers and economists neglected agriculture until the sector was in serious need of repair. The dark days of agriculture grew worse with the introduction of technocratic economic policies that aimed at a large-scale, though footloose, industrialization strategy in the early 1990s.

Since the mid-1980s, several components protecting industrial sectors had been in place, contributing to double-digit growth in the industrial and manufacturing sectors. At that time, the notion that Indonesia was already capable of transforming itself from an agrarian nation to an industrial nation gained currency. Policies which the government adopted at that point were geared toward channeling all the resources from the agricultural sector to industry, because the government believed that agricultural projects could not produce results as fast as industry or urban investments. A policy of subsidizing industry by stabilizing the prices of basic goods was adopted to pander to urban workers. This policy led to the destruction of farmers’ livelihoods and the deterioration of agricultural development in Indonesia.

The fifth phase was the crisis period (1997–2001). In this phase, the already struggling agricultural sector had to face the impact of the crisis, namely absorbing surplus labor from the informal and urban sectors, thus saving the Indonesian economy. The dependence of farmers on expensive productive inputs from abroad—a result of past policies—boomeranged on the farmers when harvests failed because of droughts. During the crisis, fertilizer subsidies were withdrawn and imported rice—either in the form of food aid or smuggled rice—flooded the domestic market.

The sixth phase is transition and decentralization (2001–present). This period is very uncertain for both economic players and the Indonesian agricultural sector. Despite decentralization, agricultural development has not moved forward because of the lack of regional autonomy and authority, which are essential to formulating strategies based on comparative and competitive advantages.

Left to regional governments, the agricultural sector is increasingly being neglected. A summary of the development path taken by Indonesian agriculture can be seen in Table 1.

During this phase of uncertainty, President Susilo Bambang Yudhoyono has propounded a model for agricultural development that does not address issues concerning land. Critics are saying that seeking to revitalize agriculture without land reform is like going through the Green Revolution for the second time.



Legal AND Policy Framework FOR Access TO Land AND Tenurial Security

LAWS

Indonesian Constitution

- Confers on the state the right to control all natural resources and wealth of the nation (Article 33).

Decree of the People’s Consultative Assembly IX/MPR/2001 on Agrarian Reform and Natural Resources Management (TAP MPR IX/2001)

- Seeks to correct the errors of agrarian reform implementation under the Basic Agrarian Law or Law No. 5 of 1960;
- Mandates the agrarian reform ministry to:
 - ➔ Conduct a study of various laws and regulations related to agrarian matters in order to harmonize the policies of the sectors;
 - ➔ Implement a land reform program based on the “land to the tiller” principle;
 - ➔ Conduct a land registration program through a comprehensive and systematic survey of the control, use, ownership, and exploitation of the land;

Table 1. Growth in Indonesia’s Agricultural Sector (% per year)

Phase	Food	Plantation	Livestock	Fisheries	Total agriculture
Revolutionary (1945–1965)	2.38	1.90	—	—	2.40
Consolidation (1967–1978)	3.58	4.53	2.02	3.44	3.39
High Growth (1978–1986)	4.95	5.85	6.99	5.15	5.72
Deconstruction (1986–1997)	1.90	6.23	5.78	5.36	3.38
Economic Crisis (1997–2001)	1.62	1.29	-1.92	5.45	1.57
Decentralization (2001–present)	2.81	5.85	5.19	4.59	3.83

Source: Calculated by Bustanul Arifin based on data of BPS and FAO, as cited in Sri Hartati Samhadi, op.cit., 16 August 2005, hal. 50.

Notes:

- Growth statistics for the revolutionary period (1945–1965) are taken from several sources, including Booth (1998), for food and plantation, and FAO for total agriculture.
- Figures for the modern periods (1967–2004) are calculated from GDP in the agricultural sector, from publication by BPS and FAO (several years).
- Forest subsector is taken out of the calculation because of different characteristics.

- ➔ Resolve all agrarian disputes, and forestall future conflicts by strictly implementing the law;
- ➔ Strengthen the institution responsible for implementing agrarian reform; and
- ➔ Seek out funding for agrarian reform implementation.
- Using the framework provided by TAP MPR No. IX/2001, the laws on mining (Law No. 11 of 1967), forestry (Law No. 5 of 1967 and amended by Law No. 41 of 1999), and plantations are contradictory to its provisions and should be revoked.
- Sets the ceiling for landholdings of families and legal entities to prevent monopoly ownership of land and directs ceiling surplus land to be turned over to the state upon compensation;
- Provides for the following agricultural land ceilings (*Table 2*):

Table 2. Agricultural Land Ceilings in Indonesia

	Paddy fields (in ha)	Dry land (in ha)
Non-densely populated areas	15	20
Densely populated areas		
• Low-density areas	10	12
• Moderate-density areas	7.5	9
• High-density areas	5	6

Law No. 5 of 1960 or Basic Agrarian Law of 1960 (UUPA)

- Authorizes the state to determine, allot, utilize, and preserve the earth, water, and space within the nation's borders; devolves the power to exercise state rights to control land to the province, regency, district, and village levels. The same rights could be exercised by communities practicing customary law. (Article 2)
- Provides that the exercise of rights conferred by this law must serve the public interest (Article 6);
- Authorizes the state to grant ownership/property rights to Indonesian citizens; prohibits/limits foreign ownership of the country's land, and provides safeguards against foreign expropriation of the country's natural resources; (Article 9, 21 [par.1])
- Prohibits absentee land ownership in agricultural land, because of its tendency to promote exploitative practices, such as bonded labor, unpaid labor, usury, and inequitable sharecropping. (Article 10 [par.1], 11 [par.1])
- Sets the minimum size for landholdings to ensure that the land owner has enough land to provide for his/her family. (Article 13)
- Exempts, however, long-term concessions granted by the government, and land controlled by legal entities.

Presidential Regulation No. 36 of 2005

- Provides for greater flexibility in regulating land leases;
- Biased in favor of investors and thus has provoked mass protests. President Yudhoyono was forced to withdraw planned projects based on this law.

Presidential Decision No. 30 of 1990

- Prohibits the conversion of irrigated agricultural lands to non-agricultural use.
- This law has been routinely flouted. In 2004, some 3.1 million rice fields covering a total of 8.9 million ha were proposed to be converted in accordance with regional land use plans. Majority of these plans have been approved by the regional parliaments and some areas have already been converted.

Law No. 56/1960 on Agricultural Land Ceilings

- Is an implementing law or regulation of UUPA
- Creates different kinds of rights that may be awarded to persons, groups, or legal entities: property rights, lease rights, right to build, user rights, right to rent, right to open the land and collect forest products, and water use rights;

Government Regulation (PP) No. 224 of 1961

- Defines the following lands as subject to land reform:
 - ➔ Lands in excess of the maximum limits set by Law No. 56/1960, and lands of violators of this law;



- Lands whose owners reside in another sub-district, and were thus expropriated by the government;
- *Swapraja* lands and former *swapraja* state lands that are automatically transferred to the state;
- Other lands controlled directly by the state and designated by the agrarian minister.
- The abovementioned lands are first taken over by the state before they are redistributed to land reform beneficiaries.
- Identifies the beneficiaries of land reform, in the following order of priority:
 - The tiller who has been cultivating the land;
 - The landowner's farm worker who had previously worked on the land;
 - Settled farm workers who had worked for the former landowner on such land;
 - The tiller who has been working on such land for less than three years;
 - The tiller who still works on the landowner's land;
 - The tiller who has been awarded land rights by the government;
 - The tiller who owns less than 0.5 ha of land;
 - Other peasants or farm workers.

Law No. 2 of 1960 on Sharecropping (UUPBH)

- Seeks to protect sharecroppers from exploitation by landowners;
- Provides that the share of the tiller and the landowner would be decided by the regent according to the type of crop, and land density. Deductions in compliance with religious and local custom are made before the shares are determined.
- Specified a ceiling of 3 ha for landholdings;
- Requires that sharecrop agreements between the land owner and the tiller be put in writing before the head of the village, and witnessed by one representative each of the contracting parties. Such agreements are effective for 5 years in dry land, and 3 years in rice fields.

GOVERNMENT POLICIES

Revitalization of Agriculture, Fisheries and Forestry (RPPK)

- Aims to revive the agriculture, forestry, and fisheries sectors, and thereby promote the recovery of the

national economy. Its main target is the achievement of food self-sufficiency by 2010.

- Outlines a number of policies, under a general strategy to revitalize the agriculture, fisheries, and forestry sectors, as follows:
 - Reduction of poverty and unemployment, along with increasing the economic scale of rural sector activities, particularly through agrarian-oriented land management and land use planning; facilitation of rural employment opportunities outside of agriculture, including the development of rural agro-industries; diversification of rural sector products; development of infrastructure; and developing the institutions of farmers, fishers and agro-foresters along with fulfilling their basic rights;
 - Increasing the competitiveness, productivity, value-added and independence of production and distribution in the sectors, primarily through better agricultural practices; developing new activities and multi-products; increasing access to services, and reducing or removing obstacles and high economic costs to productive activities; and protecting work activities against unfair competition;
 - A sustainable approach to the use and protection of natural resources, primarily through conservation management and an agrarian approach to land management and land use-planning; along with encouraging the development of activities, technology, and institutions which are environmentally friendly; and strengthening the rule of law.



Issues Affecting Access to Land AND Tenurial Security

THE ABANDONMENT of the AGRARIAN REFORM AGENDA by the NEW ORDER REGIME (1966–1998)

The Old Order era (1962–1967) and the New Order regime (1968–1998) operated under the same legal framework for implementing agrarian reform. But while the former was able to make some progress in redistributing land (as Table 3 shows)—even though it was ill-matched against anti-reform forces—agrarian reform under the New Order regime was an utter failure, in all respects—economic, political, and social—because it was reduced by Suharto to land administration that benefited elite interests.

Landlord opposition was the major stumbling block to the implementation of agrarian reform during the Old Order era. The other constraints were lack of political support for the program, weak land administration systems, policy flaws, lack of funding, and unavailability of agricultural lands for distribution.

In 1966, the anti-reform forces wrested power from then President Sukarno, and took over leadership of what was to become the New Order regime. The agrarian reform program was revoked, and the recipients of land under the Old Order, and who were identified with the Indonesia Peasant Front (BTI)—a left-leaning peasant

organization—became the targets of attack by the military. In fact, the land grabbing campaign subsequently launched by the military was facilitated by records of where land had been distributed, and to which families.

One by one, the New Order regime revoked agrarian reform regulations. In 1970 it abolished the land reform courts that were originally established to resolve land disputes. It also disbanded the land reform committees, which were tasked with assessing the total land for redistribution, as well as the beneficiaries.²

However, neither regime ever attempted to repeal or amend the Basic Agrarian Law of 1960, whose provisions are quite progressive, because their leaders knew that it would trigger mass protests.

Dr. Sadjarwo, Minister of Agrarian Affairs of Indonesia, has identified the following stumbling blocks in implementing agrarian reform in the country:

- The ineffectiveness of land administration made it difficult to determine how much land was available for distribution under the agrarian reform program. This opened up opportunities for many deviations—wittingly or not.
- The public has not fully appreciated the need for agrarian reform to complete the country's "revolution" for poverty eradication. Agrarian reform is blamed on any pretext.
- Committee members have shown little interest in agrarian reform, either because they are otherwise

Table 3. Comparative Accomplishments of Land Reform, by Political Regime

Political regime and Years of implementation	Lands redistributed (in hectares)	Number of Agrarian Reform Beneficiaries (families)	Average land size received (in hectares)
Old Order (1962–1967), 5 years	801,317	847,912	0.95
New Order and its Successors (1968–2005), 37 years	358,210	662,850	0.54
Total in 42 years (1962–2005)	1,159,527	1,510,762	0.76

Source: Calculated by Erpan Faryadi from Utrecht (1969) and the Indonesian Government Report at ICARRD (2006).



preoccupied or because it goes against their self-interest. This negligence on the part of committee members has been blamed for the tampering of land registration records, such that names of registrants have been deleted from the land lists, or addresses of registrants are mixed up.

- Peasant mass organizations that are supposed to provide support and oversight are not sufficiently represented in land reform committees at the regional level.
- The agrarian reform lobby is still not strong enough to withstand the psychological and economic pressure that landlords can bring to bear on them.
- The sheer number of impermanent tillers and changes in government administration have hampered the land reform committees' work of defining priorities.

PLANTATIONS: THE COLONIAL CURSE on INDONESIA

The operation of plantations expanded rapidly and broadly under Dutch colonial rule. During the revolution that led to Indonesia's independence, Indonesian peasants took over control of plantation areas. But following negotiations between the Dutch and Indonesian leaders, which resulted in the transfer of power to the new republic, the Dutch regained control of the plantations. The reinstatement of the Dutch did not last long, however, because of popular outcry. The government seized all Dutch assets, including the plantations. From 1966 to 1998 the army was in control of the plantations. When Suharto was forced to step down in 1998, the policy in regard to running the plantations remained unchanged. However, in May 2003, during the National Conference of Natural Resources Management held in Jakarta, then President Wahid made the uncharacteristic declaration that a number of plantation companies were guilty of grabbing land from peasants. He demanded the return of the lands to their former owners, as well as the restructuring of the plantation company. Unfortunately, Wahid met with formidable opposition from plantation owners, and the reforms he proposed were never implemented.

The latest incarnation of the plantation is what is euphemistically referred to in Indonesia as the

“partnership model”. This is nothing more than contract farming. During the administration of Suharto, this model was adopted in the World Bank-funded Nucleus Estate and Small Holder Scheme (NES) Project, which aimed to attract foreign investments in plantation companies in the country.

In such a “partnership model”, small holders are hired by big corporations to grow a specific crop that is designated in a contract agreement. The company buys the crop, provides some technical assistance, credit, etc., and takes charge of the processing and marketing.

The “partnership model” was intended to defuse the tension between the plantation companies and the peasants, and thereby forestall peasant resistance, by giving peasants the opportunity to get involved in the running of plantations. The model was also a sop to what the government regarded as “troublesome nationalists,” who remained wary of foreign interests in Indonesia. In truth, however, the model benefited only the plantation owners and their foreign investors.

Poverty enclaves that could be found near Indonesia's plantation areas show that this legacy from the country's colonial past has done little to improve the conditions of the poor.

Table 4 shows how much land is controlled by plantation concession holders and long-term lease holders. In December 2000, 1,880 individuals held such concessions covering 3,358,072 ha, or an average of 1,786 ha of plantation lands each.

The expansion of plantation areas has resulted in the rapid conversion of forest lands. In 1996, the government allocated 9.13 million ha of forest lands in Kalimantan, Sulawesi, and West Papua for the expansion of big palm oil plantations. In March 1999, some 8.55 million ha of forest lands were earmarked for conversion into palm oil and rubber plantations; of these, 4.6 million ha have already been converted. The biggest land conversions have taken place in Riau Province, Sumatra, where 1.53 million ha of forest lands have been cleared to make way for plantations.

INDISCRIMINATE AWARDING of FOREST and TIMBER CONCESSIONS

The rate of deforestation in Indonesia for the period 2000–2005 was the fastest in the world. During each of these years, around 1.871 million ha of forests (or the equivalent of 300 football fields) were lost every hour.

This is largely attributed to the exploitative practices of holders of forest concession rights. It could be said that the forestry sector has been offered up to the big conglomerates that hold forest concession rights, and to international institutions to which the government is indebted. One timber company (Barito Pacific Group) controls over 6 million ha—an area that is as wide as West and Central Java combined.

The Basic Forestry Law (Law No. 5) of 1967 facilitated large-scale investments in the forestry sector. Upon this law taking effect, the number of applications for timber concession permits skyrocketed. By 1970, 64 companies had received forest concessions covering some 8 million ha. From 1967 to 1980, 519 companies were given forest concessions covering 53 million ha. As of June 1998, 651 companies had been granted forest concessions covering 69.4 million ha.

As a result of the Basic Forestry Law of 1967 and Government Regulation No. 21 of 1970, all commercial forestry has become the preserve of private investors

holding forest concessions. Communities that live in or around forest areas are prohibited from cutting timber within concession areas, and could do so only if they have a permit from the concessionaire. Conflicts between communities and forest concession holders have thus erupted.

MINING on INDIGENOUS PEOPLES' LANDS

Article 33 of the 1945 Constitution of Indonesia grants the state exclusive rights to the country's mineral resources. Law No. 11 of 1967, also called the Law on Mining, provides that all mineral deposits are national assets under state control. These two laws have given the state blanket authority to conduct its own mining operations, or to assign the task to mining concessions.

PT Freeport is a large mining company based in the United States mining for gold in Irian Jaya. Freeport has been the



Table 4. Distribution, Control and Ownership of Plantation Lands, 2000

Scale of plantation (in hectares)	Number of plantation concession holders	Number of plantations of designated size
More than 48,000	4	209,251
24,000 to 48,000	7	212,948
12,000 to 24,000	29	521,513
6,000 to 12,000	111	996,543
Less than 6,000	1,729	1,417,817
Total	1,880	3,358,072

Source: National Land Agency (BPN), Republic of Indonesia (2000).



subject of protest actions because of the injurious effects of its operations on indigenous communities in Irian Jaya.

Freeport McMoran (US) and Rio Tinto (UK and Australia) are expanding their mining operations to Lorentz National Park, a mangrove forest, and other lowland forest areas. Freeport is licensed to mine an area of 2.6 million ha, which encroach on the lands of the Amungme, Ekari, and Komoro peoples. The Amungme have filed a suit in a US court demanding compensation for their lands being taken away.

OVERLAPPING RESPONSIBILITIES among GOVERNMENT AGENCIES

State institutions tend to protect their turf. Because they are addressing similar issues, overlaps in policies and implementation among the different agencies exist.

Since the regions were granted autonomy in 2001, the lines of responsibility between the central and regional governments have become less clear. This has brought about an era of uncertainty in Indonesian agriculture. Dams which were constructed by the Indonesian government (e.g., Jatiluhur, Kedung Ombo) to supply energy to industry and to irrigate farmlands, look more like empty football fields because of drought and the precipitous drop in water levels brought about by deforestation.

Irrigation channels deteriorate, while the central and regional governments insist that the other is responsible for maintenance and repair. Simply put, neither wants to take responsibility because of the huge cost of improving agricultural infrastructure. The central government uses regional autonomy as an excuse to offload its responsibility to the regions.

LOW PRIORITY GIVEN to AGRICULTURAL DEVELOPMENT DESPITE the RPPK

One must consider the government's overall economic development policies, which are closely intertwined with policies related to the agricultural sector. It is important to understand for instance whether or not current banking and monetary policies are working in favor of agriculture,

or not. The policies of Bulog (the National Logistics Agency) and the Department of Trade in regard to food imports influence decisions by the Department of Agriculture to improve agricultural production and to expand the area of production. The problem of debt also needs attention, because it is related to how the people's money, as set forth in the national budget (APBN), would be allocated, i.e., whether the money is put to good use or is used to repay loans.

From an examination of the budget, it is clear which sectors are prioritized by the government. The draft national budget for 2008 provides for an increase in budget allocation for infrastructure development, through two departments: the Department of Public Works (DPU) and the Department of Transportation. The DPU budget increased by 41% to Rp35.6 trillion; the Transport department's budget, by 64%, to Rp16.2 trillion. Meanwhile, the allocation for agricultural programs was only Rp14.1 trillion.

Infrastructure projects under DPU supervision, such as the construction of artery and toll roads or dams, are another indication of where the government's true priorities lie. It is widely known that infrastructure developments, especially the very big dams, would submerge fertile agricultural lands. Other infrastructure, such as toll roads, have already buried many fertile farmlands under concrete. These developments lead to food policy challenges, because when land conversion is done systematically—under the pretext of infrastructure



development—more and more agricultural land would be converted permanently to non-agricultural use.

Mining is another priority sector because it generates the highest foreign exchange revenues for the government. According to data from Kompas, the expected revenue from the mining sector in 2007 was Rp5.74 trillion, a significant increase from earnings reported in 2006. This kind of earning power is contingent on large-scale mining operations, such as those of PT Freeport Indonesia, Inco, Newmont Nusa Tenggara, and Arutmin, which generated Rp663 billion, Rp154 billion, Rp169 billion, and \$25 million, respectively, in 2007.³

This is the reason why, despite widespread acknowledgment that the activities of mining concessions cause great damage to the environment, the government continues to award mining permits.

For similar reasons, the Department of Agriculture, the Department of Trade and Bulog continue to import food products (especially rice) in spite of the drain on foreign reserves. The government rationalizes such importation on the grounds that national food security must be safeguarded.

The foreign exchange that one department generates at the cost of environmental degradation is then squandered by another state agency to pay for imported food products, which could have been produced domestically. Policies and practices along these lines exacerbate environmental damage, force people off their lands, and push the country headlong into a food crisis. All the while, the goal of reducing poverty and unemployment becomes more difficult to realize, even though macro-economic indicators show improvement.

According to the former Coordinating Minister for Economic Affairs, Kwik Gian Kie, the country's leaders are too easily swayed by signs of macro-economic stability and growth, in spite of the great numbers of people who are poor and unemployed. Growth in GDP, a stable exchange rate, and other signs of improvement such as the stock index or inflation rate, can coincide with extraordinary poverty.⁴

Actors

GOVERNMENT

“In Indonesia’s history, no government has succeeded in undertaking land reform.”

—Ahmad Erani, Indonesian economist

Infrastructure development is President Yudhoyono’s paramount concern. The Infrastructure Summit staged by his government in January 2005 was indicative of Yudhoyono’s vision of Indonesia’s future. Over 600 infrastructure conglomerates and local entrepreneurs participated in the summit. Yudhoyono hoped to get commitments from the private sector to fund two-thirds of the country’s investment needs (or at least \$80 billion). The sectors identified as key to Indonesia’s future development were power, water and sanitation, oil and gas facilities, information technology, transport and logistics (highways, ports, and airports). In support of Yudhoyono’s infrastructure development plans, he passed Presidential Regulation No. 36 of 2005 to relax regulations concerning land leases and concessions. This provoked a howl of protest and accusations that the law would favor only the investors. In the face of widespread criticism of this law, Yudhoyono was forced to back down and to cancel projects that were contingent on flexible rules in regard to land leases.

Yudhoyono’s policies have not departed from those of Suharto. Both leaders adhered to market oriented development and liberalization policies. Yudhoyono’s economic priorities are reflected in his government’s agrarian and agricultural policies, particularly the RPPK policies.

The RPPK document is expected to be a framework for the long-term—i.e., the next 20 years—but would be evaluated every six months and renewed annually. A committee would be created, to be chaired by the Minister for Economic Affairs. The Ministers for Agriculture, Maritime and Fishing, and Forestry would act as vice-chairs, and members from other ministers, governors, the Indonesian Chamber of Commerce, and others, would be called on to participate as needed.



Land regulation is cited as an important component of agricultural revitalization in the RPPK document, but this task would be conducted against the framework of the fully discredited Green Revolution technologies. Kompas, an influential daily newspaper in Indonesia, has opined that “conducting agricultural revitalization without implementing land reform will only open old wounds”. The adoption of RPPK policies—while neglecting agrarian reform—only goes to show that President Yudhoyono is falling into the same trap twice.

MULTILATERAL DEVELOPMENT AGENCIES and FINANCIAL INSTITUTIONS

Observers in Indonesia have noted the increasing involvement of multilateral development agencies and international financial institutions in integrating free trade and the allocation of agrarian resources. This is exemplified by the process and outcome of the Land Administration Project (LAP). The LAP is a huge undertaking of the Government of Indonesia (represented by the National Land Agency, the National Planning Agency, and the Ministry for Economic Affairs), the World Bank (WB), and Australian Agency for International Development (AusAID). For the first phase of LAP (1995–2000), the WB gave a loan to the Government of Indonesia amounting to \$80 million. The project would run for 25 years (1995–2020).

The LAP seeks to establish a “land market” and to make the administration of land more effective and efficient in order to make land more readily available for activities promoting capital growth in the country. In support of this project, the government repealed the law on land registration (Government Regulation No. 10 of 1961)—regarded as one of the cornerstones of agrarian reform implementation—and replaced it with a watered-down version (Government Regulation No. 24 of 1997).

Henceforth, the supply of land in Indonesia would be determined by the market. This is expected to exacerbate the already unequal distribution and control of land in the country.

Moreover, big infrastructure projects funded by the WB and the Asian Development Bank (ADB), for example, have resulted in violations of people’s and peasants’ rights. The Kedung Ombo Dam project in the Central Java province (funded by the WB during Suharto’s administration), the Jatigede Dam project in Sumedang, West Java (funded by the Chinese government during President Yudhoyono’s term), and the Nipah Dam project—one of the biggest infrastructure projects implemented in the country—are a few of those projects that are much reviled among the affected communities.

CIVIL SOCIETY ORGANIZATIONS and NGOs

Civil society organizations (CSOs) and NGOs in Indonesia have laid the blame for the country’s agrarian crisis on three factors. First is the concentration of the ownership of land and other natural resources on a small group of owners: either big landlords—scions of old landed families—who maintain feudal or semi-feudal modes of production; or big corporations, to which the government has rented out land to engage in mining, agro-industry, forestry, or the running of plantations.

The big corporations have been observed to be the more dangerous and reactionary type of land owners. They are ready and able to secure their interests, including using violence to put down local resistance. A few examples of the big plantations are Perum Perhutani and PT Inhutani. Transnational mining corporations like Freeport, Newmont, and Kaltim Prima Coal (Rio Tinto Ltd), and transnational petroleum corporations like Exxon, Caltex, Stanvac, and Total Oil Company, are



examples of big corporations that are able to influence the policies of the Indonesian government in regard to land and other natural resources.

The second factor is the inefficiency of production that is the legacy of many years of feudalism. Where modern technology has been introduced, this has benefited not the small peasants but big local businessmen, big land owners, and transnational agricultural corporations.

Third, is state violence and the anti-democratic, anti-people, and anti-peasant policies of the government. Successive administrations have used draconian measures intended to maintain the security of the state, particularly in the face of agrarian unrest. Peasant leaders have been arrested, jailed, and even murdered. Cases like these have taken place in Bulukumba (South Sulawesi), Garut, Subang, Pangalengan, Bogor, Sumedang, and Ciamis (West Java), Banyumas and Wonosobo (Central Java), Manggarai (East Nusa Tenggara), Muko-Muko (Bengkulu), Labuhan Batu and Porsea (north of Sumatra), Sesepa-Luwu and Dongi-Dongi (Central Sulawesi), Lombok (West Nusa Tenggara), Halmahera (North Maluku), and Banyuwangi and Pasuruan (East Java).

The state uses violence to put down local resistance to many state or corporate infrastructure projects funded by multilateral financial institutions, such as ADB and the WB. These infrastructure projects generally infringe on the land rights of local communities, particularly indigenous peoples. Infrastructure projects are Yudhoyono's second priority after the expansion of big plantation areas for biofuel energy.

CSOs and NGOs in Indonesia are conducting their advocacy work in response to the abovementioned analysis of the country's agrarian crisis. A number of them are demanding the cancellation of all infrastructure projects and debt problems. These groups include peasant movements such as AGRA (Alliance of Agrarian Reform Movement), STN (Serikat Tani Nasional), API (Aliansi Petani Indonesia), Petani Mandiri, and other social movements. Since the 1990s the networks of NGOs and a number of progressive intellectuals have



played an important role in promoting land rights. These are Bina Desa, KPA (Konsorsium Pembaruan Agraria), WALHI (Wahana Lingkungan Hidup Indonesia), and YLBHI (Yayasan Lembaga Bantuan Hukum Indonesia).

The Indonesian peasant movement is demanding an end to state violence directed at their sector, and the release of peasant leaders that have been thrown in prison on the basis of anti-peasant laws. At the same time, the Indonesian peasant movement rejects the plan of the current government to repeal the UUPA. The draft law intended to replace the UUPA strongly favors the interests of big land owners, totally rescinding the spirit and intent of the UUPA to carry out agrarian reform.

Strategies to Advance Access to Land AND Tenurial Security

MAXIMIZING OPPORTUNITIES MADE AVAILABLE by the RPPK POLICY

The RPPK outlines the policy of the Yudhoyono government in discussing, evaluating, and resolving problems in the agricultural sector, particularly in regard to farming, plantations, fisheries, and forestry, and especially those arising since the 1997–1998 economic crisis.

In other words, the policy defines the government's strategy to address challenges that affect farmers, farm workers, fishers, forest dwellers, and other poor communities. The RPPK policy is a starting point for



observers attempting to understand how the Yudhoyono government intends to address poverty in the country and to improve the lives of farmers. For the present, at least, the policy will be judged according to the actions of the government in the seven years since it was introduced.

The RPPK emphasizes not just production and economic aspects, but ideological ones as well. The ideology behind the RPPK policies demands that agricultural revitalization must be based on approaches, which are humanitarian, just and popular, and which respect national sovereignty. Agriculture occupies a vital position in these policies. Hence, agriculture is no longer viewed as a subset of industry, producing food and the raw material for manufacturing, but as being closely intertwined with production and economics.

In addition, the task of revitalizing agriculture requires that different governments work in tandem in formulating strategies and policies in relation to efforts to address poverty, unemployment, and economic growth.

Three government departments are most closely involved in the tasks set forth by the RPPK. These are the Department of Agriculture, the Department of Forestry, and the Department of Maritime Affairs and Fisheries, which are under the Coordinating Minister for Economic Affairs. These departments are crucial to the future of the agricultural sector because they hold the governmental power and authority related to the use and management of agrarian resources (particularly agricultural and plantation lands, aquatic resources and forest areas) in Indonesia. Therefore, because they are mandated by the RPPK to work together, it is hoped that better coordination among these agencies, which to this point has been very weak, would result in the improvement of the livelihoods of farmers, in particular, and of the agricultural sector, in general. As such, the RPPK could prove to be an important tool for moving forward more fundamental reforms in the agrarian sector, especially since such reforms require a unified approach among the various state agencies working in the sector.

If Indonesia genuinely seeks to reform the weaknesses in its agrarian structures and revitalize agriculture,

then state institutions that work in the field must have a common perspective of farmers and farming. The various departments that bear on farmers' livelihoods and agriculture must first be reformed, and coordination among them improved, to form a strong basis for the implementation of agrarian reform and the RPPK initiative.

REVOCATION of ANTI-PEASANT LAND LAWS

The enactment of TAP MPR No.IX/2001 has the potential to give peasant movements and the agrarian struggle new momentum. The TAP MPR No.IX/2001 declares that "the prevailing agrarian/natural resources management has been creating environmental degradation, inequality of land control and ownership, and agrarian conflicts." The decree goes on to instruct the House of Representatives (DPR) and the Indonesian President "to immediately withdraw, amend, and/or to change any laws and related regulations that are not suited with this decree" (Article 6). The MPR Decree on Agrarian Reform and Natural Resources Management also gives the government the mandate "to implement [...] land reform, to solve agrarian conflicts, and to provide [...] the funds for [the] agrarian reform program and resolution of agrarian conflicts" (Article 5).

TAP MPR IX/2001 thus gives agrarian advocates and the peasant movement in Indonesia the legal right to push the government to implement land reform (including the unfinished land reform of the 1960s) and to solve agrarian conflicts.

Despite such a law, the land occupation and land reclamation that have taken place in many parts of Indonesia during the reform era (1998–present), which could be viewed as change from below and a manifestation of peasant struggles, are still regarded by the government as illegal acts. At the same time, the government has passed several laws that contravene the intent of TAP MPR IX/2001, such as the Law No.18 of 2004 on Plantations and Law No. 25 of 2007 on Capital Investments. Both laws also go against the grain of the 1960 Basic Agrarian Law. Despite the greater democratic space prevailing in the country, the conditions of the Indonesian peasantry have actually taken a turn for the worse. Therefore, the resolution of land and



agrarian conflicts is contingent on the revocation of anti-peasant laws.

DEVELOPING a STRONG and DEMOCRATIC PEASANT-BASED ORGANIZATION

As a key strategy, advocacy to promote the agenda of agrarian reform must be undertaken, especially among the rural poor people. Among the peasantry, the development of a strong and democratic peasant-based organization is urgently needed. The movements involving land occupation and land redistribution, which have taken place in the last decade years in Indonesia, show that the pursuit of genuine land reform is the main agenda and historical mandate of the Indonesian peasant movement.

Toward realizing the agrarian reform agenda, at least five main tasks must be undertaken:

1. resolution of all land and agrarian conflicts and disputes;
2. implementation of land reform programs (including the unfinished land reform of the 1960s);
3. rearrangement of rural production and improving productivity by prioritizing peasants in efforts to improve access to land;
4. revocation of anti-people and anti-peasant land laws and regulations; and
5. development of a strong and democratic peasant-based organization.

Land reform implies a major change in social relations. It is a policy option that few governments take willingly.

The state is never a consistently rational, unified, and benevolent entity. It is beholden to dominant social forces. Hence, the state cannot be expected to adopt policies benefiting a fragmented and unorganized peasantry at the expense of landlords and other groups on whom it depends for support.⁵

For these reasons, the development of a strong and democratic peasant-based organization is a very important agenda in agrarian reform implementation as well as the most urgent strategic intervention in Indonesia today. From the beginning, peasant protests and struggles have significantly influenced the dynamics of Indonesian social movements—even if many of them had started out as a reaction to land eviction brought about by the expansion of capital in rural areas in particular, and development activities in general.

Peasants and poor farmers are the beneficiaries of any agrarian reform program. In this regard, the participation and support of peasants through their strong and democratic organizations will be a decisive factor in the successful implementation of agrarian reform.

BUILDING a COALITION to SUPPORT the LAND RIGHTS STRUGGLE

In every case where land reforms have succeeded, protests by organized peasant producers and rural workers have been a crucial factor. Peasant activists who organize themselves to bring about reform usually comprise only a small minority of the rural poor, especially in repressive contexts, but they invariably have the support—albeit silent—of a much larger constituency.

Today, however, the possibilities of a mobilized and organized peasantry seizing and maintaining control of large landholdings, such as what happened in Bolivia, Mexico, and China during revolutionary upheavals, are now extremely remote in most countries. Economic and political power is increasingly centralized under urban-based national and transnational agencies and corporations. The frequent exhortations by those wielding centralized power for greater decentralization of state and corporate governance seldom include a prior



democratization of land tenure and other social relations in rural localities. Such decentralization, when it does happen, usually results in even tighter control by the powerful at local levels and in diminished opportunities for the poor to get support from potential allies at the national and international levels.

The privatization of land has been governed by the law of supply and demand: land to the highest bidder, benefiting the land speculators and big corporations, first, and poor peasants, a far second, if at all.

These developments have led many observers to give up on the agrarian reform effort. The rural poor, they conclude, will simply have to wait until alternative employment becomes available by other means. At best, they think the poor should be provided with “safety nets” to keep them from starving to death.

However, the opportunities for land reforms are still available. Globalization has affected both the rural and urban poor negatively, and has given them reason to make common cause with each other. These two sectors have also found allies among the urban middle class and a few progressive minded land owners. Moreover, the spread of formally democratic multi-party political regimes offers new opportunities for pressing for reform through the electoral process.

Environmental movements can likewise become powerful allies of the rural poor. So too can social movements aimed at advancing gender equality and human rights. Growing urban unemployment stimulates political pressures to improve social conditions in the countryside in order to slow the migration of the rural poor to the cities and abroad.

The concentration of economic and political power in national capitals and imperialist country centers leaves governments more exposed to pressures for reform from national and international progressive social movements. These movements may focus on other issues, but they all have good reason to support the demands of peasants and rural workers for a more equitable distribution of

rights to land because this could help advance their own special causes.

Progressive NGOs and committed international organizations can play important roles as catalysts in helping grassroots peasant and landless movements organize and press their demands for land. They can help through research focused on the livelihood and sustainable development problems of the rural poor. They can provide valuable technical assistance, material resources, and legal aid. They can facilitate the use of modern communication technologies by peasants and others struggling for reform. They can publicize violations of socio-economic and human rights, corruption, and other abuses suffered by the poor. They can advance land reforms through advocacy at all levels.

But their roles will always be auxiliary to what must fundamentally be a domestic political process. The main actors in bringing about and consolidating genuine land reform must always include the landless and near landless, together with their political allies and the state. Well-intentioned NGOs and international organizations can help, but they could also hinder the peasants’ struggle if they fail to take into account the complex social dynamics that underlie the pursuit of agrarian reform.

Endnotes

- ¹ See Sri Hartati Samhadi, *op.cit.*, Kompas, 16 August 2005, p.50.
- ² Bachriadi, Dianto and Gunawan Wiradi. “Land Tenure Problems in Indonesia: The Need for Reform.” Forthcoming in Anton Lucas and Carol Warren (Eds.), *Land Tenure, Laws and Livelihood in Indonesia*. Athens: Ohio University Press.
- ³ See “Pertambangan: Investor Takut Isu Lingkungan”, in Kompas, 19 June 2007.
- ⁴ See “Apa Kata Mereka: Indonesia Masih Perlu Belajar!”, in Kompas, 2 June 2007, p. 37.
- ⁵ See Solon L. Barraclough, *An End To Hunger?: The Social Origins of Food Strategies*. London and New Jersey: Zed Books Ltd., 1991, p. 130.

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Asserting Freedom from Central Control

NEPAL Country Paper
Land Watch Asia



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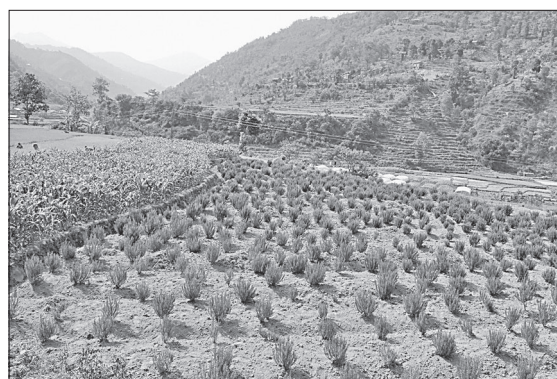
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Acronyms and Abbreviations

ADB	Asian Development Bank
APP	Agriculture Perspective Plan
BS	Bikram Sambat (Nepali calendar)
CBS	Central Bureau of Statistics
CSRC	Community Self-Reliance Centre
Danida	Danish International Development Assistance
DDC	district development committee
DLRO	District Land Reform Office
ha	hectare
HLCLR	High Level Commission on Land Reform
HUGOU	Human Rights and Good Governance Advisory Unit
km	kilometer
LWA	Land Watch Asia
NALAR	National Alliance for Land and Agrarian Reform
NLRCCG	National Land Rights Concern Group
NLRF	National Land Rights Forum
NPC	National Planning Commission
NSCA	National Sample Census of Agriculture
SDC	Swiss Development Cooperation
VDC	village development committee

Glossary

Birta	Land grants made by the state to individuals in the form of reward or gift usually on an inheritable and tax-exempt basis, which was abolished in 1969
Charuwa	Cattle herder
Chepang	An indigenous community of Nepal (still highly marginalized)
Dalit	A group of caste discriminated as so called ‘untouchables’ or ‘impure’
Deuki	A traditional system practiced in some society where a girl child is offered to the god and kept in the temple. The child is not allowed to enjoy human freedoms until the age of 14
Guthi	An endowment of land made for any religious or philanthropic purposes
Haruwa	Plowman (a kind of bonded system mostly practiced in Terai)
Jagir	Arable lands assigned to government employees and functionaries in lieu of their emoluments, which was abolished in 1952

Jamindar	Landlord
Jimidar	An individual responsible for land tax collection at the village level in Terai region who was responsible for autocratic regime before 1951
Kamaiya	A bonded labor system widely prevalent in the five districts in the Mid-Western and Far-Western development regions of Nepal
Kipat	A system of communal land ownership prevalent among the <i>Limbus</i> and other Mongoloid communities in the hill regions
Land holding	An agricultural economic unit of agricultural production. The holding includes all land operated by a holder whether rented or owned. A holder is the person who exercises management control over the operations of the land and may or may not be the same person as the household head (CBS)
Limbu	Ethnic and indigenous nationalities in Nepal
Mukhiya	A village head appointed by the government to settle dispute in the hill regions
Muluki Ain	Civil code
Munda	A kind of indigenous community of Nepal
Mushahar	A caste of Terai falls under Dalit group who are discriminated and humiliated
Panchayat	The autocratic regime whereby the King exercised absolute state powers for the period 1960–1990
Raikar	Lands on which taxes are collected from individual landowners; traditionally regarded as state-owned
Rakam	Unpaid and compulsory labor services due to the government from peasants cultivating <i>Raikar</i> , <i>Kipat</i> , and <i>Raj Guthi</i> lands; abolished in 1963
Rana	Surname of group of elite people who ruled Nepal from 1846 to 1950
Ropani	A unit of land measurement used in hill districts, comprising an area of 5,476 square feet
Talukdar	A village-level revenue-collection functionary in the hill region
Tenant	Tillers of a landlord’s land
Terai	The plain land of the southern part of the country



Quick Facts

Nepal's total land area is 147,181 square km. Only 20% is cultivable.

According to the 2001–2002 agricultural census:

- 94.1% of holdings is agricultural land, covering 24.98 million ha. The remaining land (156,400 ha) is non-agricultural;
- Forested/woodland areas have been reduced from 108,800 ha in 1991–1992 to 37,200 ha in 2001–2002—a decrease of 71,600 ha, or 66%, during the 10-year period.
- Some 20–25% of cultivable land is left fallow because of land ownership disputes.
- 1.37 million households are landlessⁱ (CBS, 2001)

ⁱ Central Bureau of Statistics, 2001.



NEPAL

Overview of Access to Land

LAND TENURE SYSTEM

The system of land tenure in Nepal has evolved into various forms and phases over the years. Historically, state ownership was the traditional form of land tenure in Nepal. The land belonged to the state and its rulers. After 1946, six major types of land tenure were recognized: *Raikar*, *Birta*, *Jagir*, *Rakam*, *Kipat* and *Guthi*.¹ Today, however, only two types of tenure prevail: *Raikar* and *Guthi*.

Raikar

The term *Raikar* is probably derived from the Sanskrit words *Rajya* (state) and *Kara* (tax), thus denoting land on which the state levies taxes. This is what distinguishes *Raikar* from other forms of land tenure, such as *Birta*, *Guthi*, and *Kipat*, where the occupant does not necessarily pay taxes and is generally not listed in official records.

Under this tenure system, the tenants have to pay a yearly land tax to the government for cultivating the land. The tax used to be paid through local agents (called *Jimidar*, *Talukdar*, *Jimwal*, or *Mukhiya*) of government. The agents also used to perform the task of land administration—and, in fact, acted as landlords—for which they retained a certain percentage of the collected land tax as their fee or salary. Numerous cases of exploitation of tenants were reported during the administration of these local



agents. The system of collecting land tax by appointing local agents was abolished by the Land Act 2021 (1964).

The *Raikar* system was adopted at a time when the supply of land in the country far exceeded the demand for it. In fact, the civil code (*Muluki Ain*) that instituted the *Raikar* system visualized land as a free commodity to be distributed among the local inhabitants on the basis of their need and on the availability of land.

Rights to *Raikar* land are limited to occupancy rights vis-à-vis the state. These rights can be freely sold or transferred to any person; in practice, it is almost like ownership. The term used for *Raikar* transactions is “*Rajinama*,” literally “resignation,” or giving up the right to land.

Ninety-eight percent of Nepali farmland currently operates under the *Raikar* tenure system.

Birta

The term “*Birta*” was probably derived from the Sanskrit word *britti*, which means livelihood. Hence, *Birta* refers to land granted to individuals to enable them to make a living. *Birta* land is awarded to individuals by the state, tax-free, for their bravery or loyalty.² The *Birta* owner has tenants working the land, from whom he—rather than the state—collects land tax. The *Birta* owner retained an agreed portion of the collected tax as his income and remitted the rest to the Government.

There were two types of *Birta*: non-inheritable *Birta* and inheritable *Birta*. Ownership of non-inheritable *Birta* land lasts only during the recipient’s lifetime, while inheritable *Birta* could be sold or transferred to another person. In many cases, however, non-inheritable *Birta* was transferred to the heir/s after the death of the *Birta* owner.³ *Birta* was not only the source of income of the *Birta* owner but was also an indication of high social and economic status.⁴ More than a third (36.3%) of the country’s farmland was under this tenure type before the 1950s.⁵

Birta tenancy was officially abolished with the promulgation of the *Birta* Land Abolition Act 2016

(1957), which required all *Birtas* to be converted into *Raikar*. However, the abolition of *Birta* took effect only after the formation of the Nepali Congress government in 1959.

Jagir, Rajya and Rakam

Jagir refers to the system wherein the government authorized civil servants to collect land tax (in cash or kind) and to use it for a certain period of time in lieu of a salary. In this system, the civil servant could not sell or transfer his right to his heir/s, nor to any other persons. However, the owner or tenant of *Jagir* land could do so.⁶ This tenure system was abolished in 1951 with the end of the Rana regime in Nepal as most of the *Jagir* assignees were Ranas. The abolition of the *Birta* and *Jagir* tenure systems signaled the disappearance of feudal lords from the agrarian scene in Nepal.⁷

Rajya is another type of land tenure which came into effect after the unification of the country by Prithivi Narayan Shah, King of Nepal from 1723 to 1775. The unification abolished the small fragmented kingdoms in the country. However, even after unification, the former kings (chiefs of certain territories) were authorized to collect land tax from certain lands and could use the money freely. In some circumstances, they had to pay a certain portion of the collected land tax to the state. This authority was assumed by heirs of the kings. However, they had no authority to sell or reallocate land to different tenants. This right was vested in the tenants or land owners. This type of tenure was abolished in 1971.⁸

Rakam originated from the assignment of land as compensation for the performance of specific functions, mostly of a manual nature. *Rakam* lands were assigned to carpenters, bricklayers, mail carriers, wind-pipe players, caretakers of religious places, and similar categories of manual workers. This system was limited to the hill region of Nepal, particularly Kathmandu Valley.⁹ *Rakam* was a temporary assignment and ended upon the death or termination of service of the assignee. The *Rakam* system was abolished in 1955, and *Rakam* lands were converted into *Raikar* lands.



About 7.7% of the country’s farmland is estimated to have been under *Jagir*, *Rajya* and *Rakam* prior to abolition.¹⁰ None of these tenurial systems is currently practiced.

Kipat

Kipat is land collectively owned and cultivated by the Limbu community in the hills of eastern Nepal for their own purpose. *Kipat* land could be sold, or rights to it transferred to members of the same community but not outside it. *Kipat* landowners had to pay tax to the state for the portion of the land used as homestead. Paddy lands were exempted from tax.¹¹ About 4% of the nation’s farmland was under this tenure system. It was abolished in 1961 by a government decree that converted *Kipat* land into *Raikar* following a survey of the land.¹² All *Kipat* lands have since been converted into *Raikar* (HLCR, 1995).

Guthi

The term *Guthi* was probably derived from the Sanskrit *Gosti*, or council. *Guthi* refers to land allocated for the purpose of covering the expenses of certain religious, charitable, cultural, or social functions. *Guthi* lands were registered to religious/cultural institutions by the state. However, individuals could also offer their land as *Guthi*. *Guthi* land is exempted from taxes.

The tenure right of tenants cultivating *Guthi* land is transferable to other tenants and is inheritable. At present, *Guthi* lands are administered by *Guthi Sansthan* (*Guthi* Corporation). About 2% of the nation’s farmland belongs to this tenure type. However, the government has initiated the process of converting most *Guthi* into *Raika* land.

Before the 1950s, the country’s cultivable land was divided as follows:

<i>Raikar</i>	963,500 ha
<i>Birta</i>	700,080 ha
<i>Guthi</i>	40,000 ha
<i>Kipat</i>	77,090 ha
<i>Rajya</i> , <i>Jagir</i> , <i>Rakam</i> and others	146,3336 ha

While *Guthi* and *Raikar* tenure systems are the only officially recorded systems in Nepal, an informal land tenure system exists alongside these. This type of land tenure system is mostly found in urban and semi-urban areas of Nepal, but it has also been observed in remote areas. Government and public lands are occupied by landless people, conflict victims, bonded laborers and rebel groups.¹³

DUAL OWNERSHIP of LAND

The tenancy-based tenure system is the kind which gives rise to “dual ownership,” as both landowner and holder (tenant) exercise control over the land.

Dual ownership tends to discourage long-term agricultural investments because of the insecurity of tenancy and the unequal apportionment of benefits. Moreover, due to fear of eviction, the tenant is often forced to accept onerous rental conditions of the landowner, leading to severe exploitation in certain cases.

Dual ownership of land was abolished by the fourth amendment (1996) of the 1964 Land Act. However, about 13% of farm holders still operate under rented tenure arrangements on about 8.7% of the country’s land. This means that as much as 13% of landholdings and 8.7% of all farmlands still remain under dual ownership. Of lands operating under rented tenure arrangements, about 6% are run under the “share of produce” rental arrangement. Given that landowners are not inclined to report this kind of arrangement, and that tenants fear reprisals from their landlord, the incidence of dual ownership of land is likely to be far higher than has been officially reported.

The process of putting an end to dual ownership is also hampered by the fact that 85% of tenants are unable to present the documents necessary to establish their rights to the land: the contract with the landlord; and a receipt of grain payment.

INSECURITY of LAND TENURE

To be considered a tenant, a farmer must have tilled or worked on another person’s land for livelihood for at least two consecutive cropping seasons. Tenancy rights conferred ownership rights one half of the land being tilled.

In 1964, when the government formulated the first Land Act and in so doing established tenancy rights, 1,818,975 tillers applied for tenancy rights; of this number, 1,546,734 (85%) got provisional certificates. However, only 318,596 of these were actually registered as tenants. Another round of registration was called pursuant to the fourth amendment of the Land Act, promulgated in 1996, and those who did not register had their tenancy rights cancelled. Because many of the tenants were illiterate and unaware of this law, as many as 560,000 of them failed to register, and lost their tenancy rights in the process. Today, more than 40% of peasants have no tenancy rights.

Even those with tenancy rights are not that secure of their land tenure. At least one tenant is evicted by a landlord in Nepal every day.¹⁴ The Land Act 1964 has given the landlord all sorts of excuses to do this.

FEUDAL and EXPLOITATIVE PRACTICES: HALIYA/HARUWA

Literally, *Haliya/Haruwa* is a male who plows his master’s field for very low wages. Such a plowman is called *Haliya* in the hills, and *Haruwa* in the plains. *Haliya/Haruwa* also refers to a kind of bonded labor—debt bondage in particular. The *Haliya/Haruwa* plows the landlord’s farm on an annual contract, but since he cannot make enough money to pay off the principal, he tills the land to pay off the interest. Since he is not free to do work for anyone else, he has little chance of earning enough to repay his loan. Since it is in the interest of the landlord to keep the *Haliya/Haruwa* in his debt, he plays all sorts of tricks, such as making the *Haliya/Haruwa* sign for a loan much more than what he actually received (e.g. having the *Haliya/Haruwa* sign for a 5,000 rupee loan, then surreptitiously adding another “0” to the amount in the signed document). Even when *Haliyas* go to pay back the principal, the landlord makes up one excuse or another not to accept it. And when the loan interest is compounded from year to year, the whole family is bound to repay the loan.

As per government records (2011), there are an estimated 19,834, *Haliya* families in the hills of the Mid and Far Western regions, and it is estimated 200,000 in the

western, central and eastern Terai districts in the country. These *Haliya/Haruwa* are mostly Dalits. Likewise, there are over 30,000 former bonded laborers in five Terai districts of the Mid and Far Western regions of Nepal who have been living miserably for ages.

Figure 1. Land-based Hierarchy in Terai

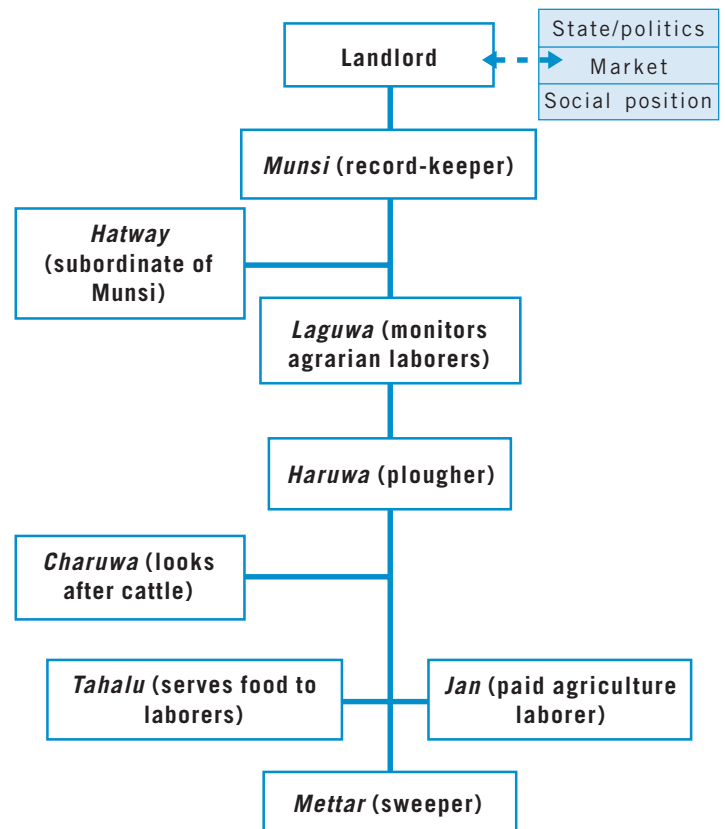


Figure 1 illustrates the land-based social hierarchy in Nepal, especially in the Terai region. This hierarchy supports some of the most exploitative feudal practices. The landlord hires many groups of workers to plow his land, look after his cattle, work on the farm, take care of the animals and sweep the grounds.

The figure also shows how the land-based bonded system is organized, particularly in the household as a production unit. The landlord continuously maintains his relationship with state, local or national political organizations, to secure power and authority. It is often the case that most elected representatives are themselves landlords or of



close kin to them. At the same time, a landlord also has to maintain linkages with the market to buy and sell products required for production. The market favors landlords because of their connection with state or political authorities. Further, in one way or another they can ensure the continuous flow of commodities demanded in the market. They also maintain a social persona, by performing some kind of social work (e.g., as chair of a

school management committee), by being benevolent to the poor, regularly performing religious rituals, and giving donations to charity organizations (such as for the construction of a temple), among others.

Land Ownership AND Distribution

LANDLESSNESS

- According to the 2001 census, out of a total of 4.2 million households, 1.3 million households (or almost 30% of households) are landless.¹⁵
- According to the Human Development Report of 2004¹⁶:
 - ➔ In rural areas, almost 29% of households, or over 5.5 million rural-based Nepalis (given that the average household size of Nepal, according to the 2001 census, is 5.45), do not own any farmland.

Table 1. Size of Holdings in Nepal

Size of holdings	Holdings		Area		Average land size
	Number	%	Hectares	%	
Holdings without Land*	26,700	0.79	118.2	0.0	0.00
Holdings with Land	3,337,439	99.21	2,653,918.9	100.0	0.80
< 0.1 ha	260,547	7.74	13,241.6	0.5	0.05
0.1 ha and < 0.2 ha	346,113	10.29	49,864.2	1.9	0.14
0.2 ha and < 0.5 ha	972,259	28.90	327,060.8	12.3	0.34
0.5 ha and < 1ha	915,674	27.22	641,659.3	24.2	0.70
1 ha and < 2 ha	588,649	17.50	791,965.0	29.8	1.35
2 ha and < 3 ha	157,026	4.67	371,223.0	14.0	2.36
3 ha and < 4 ha	51,573	1.53	175,690.5	6.6	3.41
4 ha and < 5 ha	20,241	0.60	89,257.5	3.4	4.41
5 ha and < 10 ha	21,575	0.64	139,750.2	5.3	6.48
≥ 10 ha	3,783	0.11	54,206.7	2.0	14.33
Total (Nepal)	3,364,139	100.00	2,654,037.1	100.0	00.79

Source: CBS, National Sample Census of Agriculture 2001–2002

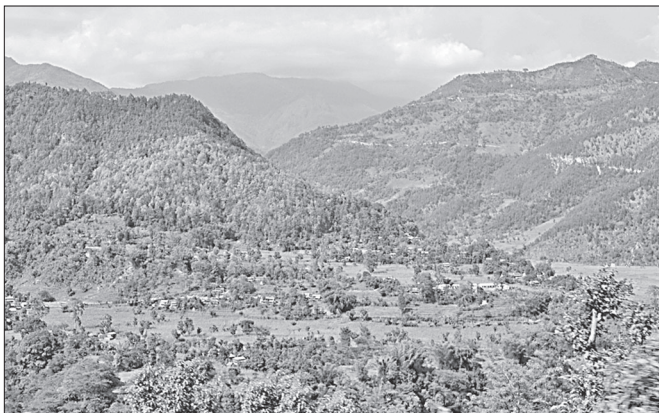
* Holdings without land refer to holders living on encroached public land.

- ➔ The marginalized groups include: freed bonded laborers (about 26,000 families); landless peasants; squatter settlers; indigenous peoples; *Haliya* (300,000 persons); *Haruwa/Charuwa*; *Dalit* (22%); *Badi/Badini* (4,442 persons); most indigenous and minority groups such as *Chepang* (52,237 persons); *Mushahar* (172,434 persons); *Santhal*, *Jhangadh*, *Munda* and many internally displaced people, *Deukis* (virgin girls offered for the service of a temple) and so on.
- Over 70% of peasants own less than a hectare of arable land.¹⁷
- There is a huge gender disparity in land ownership. Only 8.1% holders are female, though the proportion is gradually improving.¹⁸ The lower proportion of female holders is directly related to the lower proportion of female household heads. Also, only 10.8% of women own land.¹⁹
- Some 217,000 families do not have any land on which to build a house. These are considered the agricultural landless. Landlessness is highest in the Terai districts.

SIZE of HOLDINGS and DISTRIBUTION

Landholdings less than a hectare in size make up close to 75% of the country's farmlands, yet, together, they account for less than 40% of the total farm area. On the other hand, big farmlands (5 ha and over) comprise less than 1% of all holdings, but cover more than 7% of the total farm area.

A regional analysis of land distribution indicates that the proportion of landless holdings is higher in the Terai,



compared to the hills and mountains. Sixty percent of holdings in the hills and mountains comprise less than half of the country's total land area whereas 41% of the holdings in the Terai make up little more than half of the total land.

Other facts on landholdings:

- Average size all over the country: 0.8 ha
- In the Terai: 0.94 ha
- In the mountain region: 0.73 ha
- In the hills: 0.66 ha (the smallest)
- Female-owned or operated holdings are 35% smaller than those of males (CBS, 2004).
- Less than 1% of landowners hold 5 ha and more.

Prior to the implementation of the Land Act of 1964:

- Sixty-five percent of poor peasants had access to just 15% of the land; while a miniscule number of rich landlords (3.7% of the population) owned 39.7% of the land (CBS, 1962)
- Distribution of farmland: 75% of landholders own less than 40% of farmlands, while 25% of landholders own 60% of farmlands.

Issues Affecting Access to Land

CENTRALIZED LAND GOVERNANCE

In Nepal, land management is centralized. Although the Ministry of Land Reform and Management has extended units across the country, these do not have power to settle issues concerning land at the local level. All decisions related to land management are made at the ministerial level. Thus, people living in remote areas either have to travel to the capital, Kathmandu, to bring their case before the government, or wait for the ministry's decision to be handed down to the district offices. Because the poor cannot afford the cost of traveling to the capital, they usually take their concerns to local government agencies, which usually do not have authority to settle issues and which are frequently biased against the poor. Land administration is procedurally complex and poor people cannot deal with the formalities it requires.



ABOLITION of COLLECTIVE RIGHTS

Indigenous and ethnic groups are rapidly being displaced from their native land. This is the result of state-supported activities on indigenous peoples' lands that bring in big revenues, such as oil exploitation, mining, dam building, logging, monoculture of cash crops, cattle ranches, tourism, and the establishment of national parks and nature reservations.

Legal AND Policy Framework FOR Access TO Land

LAWS

Land Reform Act of 1964

- Fixed a ceiling on the size of landholdings;
- Sought to protect the rights of tenants by including their names in the owner's land title;
- Fixed the rent on agricultural land and reduced interest on rural loans;
- Allowed tenants to apply for tenancy rights at the District Land Reform Office (DLRO) provided that they had tilled the land the previous year and could present proof of this fact, such as a grain payment receipt;
- Has been amended 6 times, the most important being:

Fourth Amendment (1996)

- ➔ Provided that the land being cultivated by the tenant be divided equally between landlord and tenant, to ensure that tenants would become landowners themselves;
- ➔ A credit facility would also be made available to the tenant who wished to buy the landlord's half;
- ➔ Sought to abolish dual ownership of land.

Fifth Amendment [failed to be implemented in 2001]

- ➔ Attempted to reduce the ceiling on the size of landholdings.
- Problems in implementation:
 - ➔ Despite the law's intent to abolish the practice of dual ownership of land, as much as 13% of landholdings and 8.7% of all farmlands remain under this arrangement. It is likely that the incidence of dual ownership of land could even be higher than officially reported due to landowners withholding information or tenants' fear of reprisals.
 - ➔ Gave landlords unrestricted rights to evict tenants who fail or refuse to pay higher rents; thus, tenants had no secure tenancy rights, and were subject to arbitrary rent increases.
 - ➔ To get around the law, landlords evicted the tenants from their land. Thus, there has been a marked decline in the number of tenants and the area under tenancy from 1961 to 2001 (*refer to Table 2*).
 - ➔ According to the Badal Commission for Land Reform (1995), more than 450,000 tenant families were not yet registered, and that even those that have been registered have not been able to avail of their rights. In 2000–2001 a survey conducted by the Department of Land Reform and Management showed 266,261 registered tenants in 35 districts that were eligible land claimants but had not been able to avail of their tenancy rights. About a million poor households (mostly Dalits and indigenous peoples) have been deprived of their rights to land.
 - ➔ A 1973 study showed that close to 10 years after the enactment of the Land Act of 1964,

only 32,331 ha of land had been acquired out of the 50,580 ha (owned by 9,136 landlords) that had been identified for distribution, and of this only 64% had been distributed. Moreover, 31.2% of farmers were still tenants (Zaman, 1973). Another study found that 9.9% of landlords owned 60.8% of the land after 8 years of implementing the Land

Table 2. Tenants and Tenancy, 1961–2001

Description	1961	1971	1981	1991	2001
Total tenant households	40.4	19.0	9.5	15.9	12.2
Area under tenancy (in million ha)	25.5	15.9	6.2	8.5	8.7

Source: Ministry of Land Reform and Management (2006)

Act, thus leaving the pattern of land distribution basically unchanged (Regmi, 1976). More recent studies showed that after 20 to 30 years of implementing the Land Act, 28% of households were still unregistered tenants, especially in the Terai region (IDS, 1986; Khanal, 1994).

Interim Constitution of 2007

- Committed to “pursue [a] policy of adopting scientific land reform programs by gradually ending capitalistic land ownership practices.” (Part 4, Article 33 [f]);
- Mandates the state to pursue a policy of providing adequate land and livelihood to freed bonded laborers (Part 4, Article 35 [15]).

PROGRAMS and POLICIES

Interim Plan for 2007–2010

- Declares its objective of improving farmers’ standard of living and contributing to the national economy through implementation of “scientific land reform”;
- Sets the specific goal of ascertaining the land rights of landless slum dwellers, freed bonded laborers and tenants, to ensure their food security, address poverty, and make the land more productive;
- Outlines an implementation strategy that includes the formulation of appropriate laws and setting up of mechanisms to distribute land to landless groups; and
- Aims to form a high-level commission to resolve problems concerning landless groups.

Programs and Policies for Fiscal Year 2007–2008

The government’s annual program and budget includes the following land-related policies and plans:

- Government-owned, unused and barren land would be made available for commercial and cooperative farming under long-term lease, giving priority to the landless;
- The foundation for implementing scientific land reform to put an end to the feudal system of land ownership will be prepared. A system of issuing one certificate—recording all land owned by one person wherever the land may be situated in the country—will be commenced. Activities remaining to end dual land ownership (landlord and tenant) will be

completed. Necessary amendments will be made to increase the participation of the landless in the land. The rehabilitation program with freed bonded laborers will be continued.

Tenth Periodic Development Plan (2002–2007)

- Declares that the long-term policy of the Land Reform and Management Sector is to “bring about social justice and good governance and contribute in achieving the national goals of poverty alleviation through the development of an effective, trustworthy, and qualitative land utilization and management system in the country”.
- States the objectives of the Land Reform and Management Sector as follows:
 - ➔ To strive for an efficient, service oriented and informative land administration system based on modern technology.
 - ➔ To increase access to land by actual farm workers (those whose skills and labor are directly linked to farming) and thereby contribute towards poverty reduction by establishing and rehabilitating target groups.

In order to achieve these sectoral objectives, several strategies and policy actions have been proposed with respect to each of the objectives. Similarly, sectoral quantitative targets have also been set. The strategies and policy/action plans as stated in the Tenth Plan are as follows:

1. Preparing land use and national land policies
 - Under this strategy the following policy actions will be carried out:
 - ➔ Formulation of a National Land Policy to govern all activities related to land and formulation of an integrated law related to land and its implementation.
 - ➔ Implementation of a land utilization action plan to discourage non-agricultural use of fertile land.
2. Developing the desired legal framework for contract and cooperative farming with due respect to the rights of landowners, and aiming to reduce the trend of leaving large landholdings fallow or unproductive;

3. Strengthening the land information system, which aims to secure and update land records, develop a geographical information system for the smooth flow of information, and maintain records of land entitlements disaggregated by gender;
4. Updating topographical maps and developing the required manpower for land management;
5. Discouraging land fragmentation, specifically fixing and implementing a minimum size of land eligible for registration and discouraging land fragmentation beyond a certain minimum size;
6. Efficient management of the settlement of *Kamaiya* and improving their livelihoods—with efforts directed toward proper management of the settlements of landless and freed *Kamaiya*, provision of skills training to improve capabilities for income generation, and distribution of land that is available after imposition of new land ceilings to the landless and economically marginalized sections of society;
7. Seeking ways to implement and manage the new provision of land ceiling and preparing grounds for the formulation of a progressive taxation system in order to discourage unproductive land holding;
8. Mobilizing peoples' participation in the management of *Guthi* land and updating *Guthi* records.

Several programs and their quantitative targets have also been set corresponding to the above objectives, strategies and policy action plans. The programs seem to be highly progressive. Yet, while the period of the Tenth Development Plan has already elapsed, many of these proposed initiatives have yet to be implemented.

Agriculture Perspective Plan (APP) (1996–2010)

- Main thrusts are: enhancement of the productivity of land; commercialization of agriculture; diversification of products, and focusing on products in which Nepal has a comparative advantage;
- Identifies dual ownership of land and land fragmentation as major constraints to agricultural

development and recommends taking actions toward terminating dual land ownership and initiating land consolidation based on the recommendations of the High Level Commission on Land Reform (HLCLR) 1995. It is further mentioned in the plan that dual land ownership discourages investment on land development activities. Further, initiation of land reform programs and land consolidation programs have been identified as the basis for the selection of pocket areas in the Terai region;

- However, no action is being taken in pursuit of land reform and/or against land consolidation.

National Agriculture Policy of 2004

- Emphasizes the need to increase access to land of landless and marginal farmers for the general development of the agriculture sector and improvement of farm productivity;
- Recommends the following measures:
 1. Implementation and monitoring of compliance with land ceilings, the imposition of a progressive taxation policy, and formulation of contract rules for hiring farm land;
 2. Establishment of a Land Bank to enable landless groups to purchase farm land for agricultural production. Information services would be made available to the buyer and sellers of the land through involvement of local authorities (bodies);
 3. Provision of free technical assistance and seed grants to the Dalit, marginal, and landless agricultural laborers contracting and operating farms, ponds or other water bodies for the purpose of producing agricultural commodities; and



4. Lease of marginal public lands, grazing lands, degraded forest areas, and unutilized public lands to targeted community members.

Unwritten Practices Related to Customary Land

- Tradition dictates that where a person has tilled and sown the seeds for a crop, he/she cannot be evicted; and where a person has built and roofed a house on land that is not his/her own, the house cannot be demolished.
- Unfortunately, the legal system does not support any kind of ownership of cultivable land based on customary law.

Actors Facilitating OR Impeding Access to Land

RIGHTS-HOLDERS/TENANTS and LANDLESS GROUPS

Successive farmers’ movements have been undertaken by tenants and peasants since the 1950s. Table 3 provides a summary of organized, farmer-led movements and revolts, from the 1950s to date:

CIVIL SOCIETY ORGANIZATIONS

The Community Self-Reliance Centre (CSRC) is one of the NGOs at the forefront of advocacy for poor people’s land rights. Starting with two village development committees (VDCs) in Sindhupalchok district, CSRC has expanded its work to 42 of the country’s 75 districts.

CSRC began by providing non-formal education classes. It took some time to establish land rights as a crux for the struggle against poverty and other forms of injustice and discrimination. It started organizing the farmers and advocating for a pro-tenant farmer policy framework. Within a couple of years, CSRC’s initiatives evolved into a campaign that reached beyond Sindhupalchok. Development organizations (both national and international) began to recognize land rights as an important aspect of protecting human rights, building peace, and addressing poverty and discrimination, and joined hands in supporting land rights work.

Since land reform is a complex political issue, the idea of forming a broader civil society alliance around this issue was conceived. Thus, the National Land Rights Concern Group was established. Its members consist of media groups, human rights advocates, and

Table 3. People’s Movements for Land Rights, 1950–2007

YEAR	NAME OF MOVEMENT/PLACE OF ORIGIN	CAUSE/AIM	RESULT
1950 to 1960			
1950	Somlingtar, Bhaktapur District	Tenants’ refusal to pay land rent in the form of grain payments	Set off a movement against share-cropping in Rajapur, Bardiya District; the Jamindar Birodhi Andolan (Movement against landlords) in Lumbini; the Dharmabhakari Andolan, in Bara and Rautahat Districts; led to an organized and focused movement against the <i>Birta</i> tenure system, and the <i>Jamindari</i> system, and in support of tenancy rights; inspired the formation of an agricultural union parallel to the Akhil Nepal Kishan Singh (All Nepal Farmer Association);



Table 3. (con't.)

YEAR	NAME OF MOVEMENT/PLACE OF ORIGIN	CAUSE/AIM	RESULT
After 1950	Western Nepal, specifically in Dadheldhura and Baitadi Districts	Widespread disaffection from the Ranas, an autocratic regime that ruled Nepal for 104 years and was put down by the Revolution of 1950; Led by Bhim Dutta Panta, whose main goal was to abolish the <i>Haliya</i> and <i>Kamaiya</i> (another bonded-labor system); Panta's rallying cry was "[T]ill the land, or leave"—a challenge directed toward the feudal lords.	Panta's revolt spilled over to the Kailali and Kanchanpur Districts
1953–1955	All Terai Districts	Agitation among farmer youth against domination and exploitation and formation of the Socialist Farmers Party	Mass reprisals against farmers movements in 1960 led to the banning of the Farmers Union, which re-grouped as the Farmers Organization under the Panchayat System.
March 1954	Ratamata Bijayanagar, Pyuthan District	Started as political education and physical training; trainees who were called in to help the people in Narikot who complained about being oppressed were attacked by Thakuries, whom they defeated.	Warrants of arrest were issued against the trainees, who were forced to go underground.
October 1954	Kathmandu and Bhaktpur District	Six demands issued to the government, including the abolition of the landlord system	Various demonstrations against the government, which led to the arrest of 19 demonstrators; led the way to the second phase of the revolt in March 1957, following which 55 farmers were imprisoned; inspired a movement for farmers' land rights which persisted until the 1980s: led by Nepal Majdur Kisan Party
1956–1957	Ji Kaho, No Re Kaho (Address us respectfully) Revolution/Rautahat and Bara Districts	Revolt against feudal lords and their misdeeds	Evolved into a movement for dignity and self-respect, especially in the face of maltreatment of poor landless people by landlords; led to demands for and establishment of a grain bank by the union, and to which farmers as well as the feudal lords contributed grains and money; Police authorities, acting on behalf of the feudal lords, attempted to suppress the revolt by arresting its leaders but were defeated by the farmers.
1960	Dang Deokhuri District	Eviction of farmers	Farmers united against the combined forces of the landlord and the local police. Fighting ensued, during which farmer leaders were shot at. One of them died.

Table 3. (con't.)

YEAR	NAME OF MOVEMENT/PLACE OF ORIGIN	CAUSE/AIM	RESULT
1960 to 1990			
1970–1974	Jhapa	Oppression by feudal lords	Recruited youth supporters, who engaged in violent encounters with government; the killing of a number of youth supporters in 1973 paved the way for a higher form of revolt.
1978–1979	Chintang Revolution/ Dhankuta District	Widespread famine prompted starving poor people to break into the grain stores of the <i>majhayas</i> , or landlords. The <i>majhayas</i> owned all the fertile lands, while the poor farmers had to eke out a living from marginal lands, apart from paying land rent. They were also forced to work in the fields or in the <i>majhaya's</i> home for two weeks every year without compensation. In Dashain, the poor had to offer the <i>majhaya</i> gifts such as cocks, hens, alcohol, wooden pots, and sometimes, money. Poverty led to the insurgency.	As the <i>majhaya</i> stores were heavily guarded, the starving people failed in their attempt to break in.
1978–1983	Piskar Movement/ Sindhupalchok District	Looting of paddy by the feudal lords of Piskar, called Pandeys.	Organized attempt by the farmers (Thami community) to take back the rice that had been stolen from them; after the leader of the Pandeys sent in the police, a number of the farmers fled, while the rest were arrested.
1990 to 2007			
1993	Kanara Movement/ Bardiya District	Demand for land rights by the Tharu community; government oppression	
1995	Rasuwa District	Tenants' refusal to pay grain payments to the fake owner of land under the <i>birta</i> tenure system, which has been abolished.	
1996	Sindhupalchok District	Filing of 42 cases at the District Land Reform Office for the grant of tenancy rights	Led to the formation of the National Land Rights Forum
1997	Bagdari Movement/ Bardiya District; Pitmari Movement/ Banke District	Landless people demanding land rights Education of the <i>Kamaiya</i> laborers concerning their rights	



Table 3. (con't.)

YEAR	NAME OF MOVEMENT/PLACE OF ORIGIN	CAUSE/AIM	RESULT
1998	Banke District	Landless people taking over a piece of land owned by a private company	
2000	Kamaiya Movement	Liberation of the <i>Kamaiyas</i>	Expansion of the <i>Kamaiya</i> Movement into 5 districts
	Sindhupalchok District	Protest action at all the land offices to resolve the land problem in Sindhupalchok	Forced the government to form a committee to address the problem related to <i>Guthi</i> land in Sindhupalchok; regarded as a historic event in the struggle for land rights in Sindhupalchok.
2004	Nationwide	73,000 cases filed with the land registration committee's offices in regard to pending applications for tenancy rights	
	Rajbiraj City, in Saptari District	2-day hunger strike demanding land rights and citizenship cards	
2004–2006	Several districts	21,000 cases filed by tenants to claim their right to 50% of tenanted land	
2006	Sunsari District	Relay hunger strike in front of the land reform office	Support extended to the hunger strikers by the Indian land rights movement Ekta Parishad
	Dang, Banke, Bardiya, Sunsari, Sindhupalchok, Sapatari, Siraha, Mahottari, and other districts	Advocacy for land rights	Padlocking of district land revenue offices to force the government to decide on pending cases
2007	Kathmandu	Sit-in strike at the Prime Minister's residence and at the offices of the major political parties	Government promised to form a high-level land commission, but this has not materialized yet
	Singh Durbar, Kathmandu	Demonstration started by Badi women for land rights and security of livelihood, which lasted for 2 months	

social activists, among others. The alliance adopted the strategy of enhancing the capacity of the tillers and landless farmers to undertake and lead rights claiming initiatives themselves. NLRG has been able to reach 0.3 million tenants and landless farmers, develop 996 local activists among the tillers, and strengthen tillers' organizations to launch rights claiming movements on their own. Also, the National Alliance for Land and Agrarian Reform was formed in 2009, and is presently active in pursuing a similar strategy as the NLRG.

The tillers' organization—the National Land Rights Forum (NLRF), is a membership-based national people's organization (PO) formed in 2004. Its members, which currently number over a million, consist of land-deprived people, such as squatter settlers, slum dwellers, tenants, trust land tenants, former bonded laborers, landless farmers, Dalits, women, and other excluded and marginalized groups. The NLRF operates in 50 districts of Nepal.

As of 2009, it had 28 district-level and 1,211 village-level organizations, along with 48,133 members (one person per family), including 19,098 women and 23,531 Dalits. NLRF is led by 4,718 community leaders, of whom 7,067 (48%) are women and 8,251 (56%) are Dalits. NLRF has been leading the land rights movement throughout the country, advocating for pro-people land reform. NLRF has a democratic set-up with leaders elected from members of the primary organizations. The NLRF aims to:

- establish an organization from the community to national level, and develop leaders for and among land-deprived people;
- make tenants and landless farmers aware of their land rights and encourage them to defend their land rights;
- generate public awareness of land rights as critical in ensuring social justice, eliminating poverty, and promoting progress;
- conduct powerful agitation programs from the community to the national level in order to abolish discrimination in terms of class, caste, gender, etc.;
- participate in all kinds of non-violent agitation programs related to the formation of a democratic

government and the promotion of human rights and social justice; and

- manage land productively and systematically.

The movement has adopted a democratic and participatory approach, adhering to transparent and responsive processes at all levels of decision making and organizational operations. It strives toward democratic leadership and building consensus in making decisions. It is not aligned to any political party.

THE STATE/GOVERNMENT

Since democracy was restored in 1990, the Parliament has been a little more active and has taken up the issues of poor tillers and peasants. For example, in July 2002, the Parliament declared the abolition of the bonded labor system in Nepal. They have called attention to the continued practice of bonded labor, particularly *Haliya*, and a number of specific cases of land displacement resulting from development projects.

There are two main government agencies instrumental in directing and guiding land access and tenure issues in Nepal. The National Planning Commission (NPC) has overall responsibility for setting up development policy and strategies, while the Ministry of Land Reform and Management implements the agreed policies and strategies on the ground. NPC is the advisory body for formulating development plans and policies of the country under the directives of the National Development Council. It explores and allocates resources for economic development and works as a central agency for the monitoring and evaluation of development plans, policies and programs and facilitates their implementation. Moreover, it provides a platform for the exchange of ideas, as well as discussion and consultation pertaining to the country's economic development. The NPC serves as an institution for analyzing and finding solutions to the problems of civil society and NGOs, and the private sector in the country.

The Supreme Court and the lower courts rule on petitions filed by the people. So far, the Supreme Court has issued two major rulings on the rehabilitation of former bonded laborers, including *Haliyas*, and on directing government to pass laws to protect the rights of such victims.



POLITICAL PARTIES

All the eight major political parties have acknowledged that agriculture is the backbone of the Nepali economy, and proposed multi-dimensional programs to develop it. Based on their declarations, the political parties—whether rightist, leftist, or centrist—seem to share the opinion that development of the agriculture sector is possible if all the issues related to it, including tenancy rights, are addressed simultaneously and with equal vigor.

Since 1990, three parliamentary elections (1991, 1996, and 1999) have been held in Nepal. In their electoral manifestos, the parties have all raised the issues of land management, tenancy and agriculture. Most of them appear to be sympathetic to the concerns of squatters, landless peasants, freed bonded laborers, indigenous/disadvantaged people, tenants and other similar groups of landless people. Moreover, they have expressed concerns about accelerated land fragmentation and have debated issues, such as the commercialization or privatization of agriculture, and proposed “revolutionary” or “scientific” land reforms.

The following are the common points in the electoral manifestos of the eight major political parties:

- Land reform is a priority concern.
- Land reform is a vital aspect of overall agricultural development, and not only in regard to the management of land ownership.
- Dual ownership of land should be abolished.
- The establishment of a fertilizer factory is an urgent goal.

All parties across the full spectrum of Nepali political ideology have equally realized the need for land reform. Because there are few conceptual differences among them, the possibility of reform built on consensus is, in theory, very high.

INTERNATIONAL INSTITUTIONS/AGENCIES

International institutions and agencies are key actors in setting up the policy framework for development in Nepal. The country is heavily dependent on international communities and donors for its national development. In this context, international communities and agencies exert a strong influence on national policy formulation.

A number of international agencies have shown interest in a certain type of land reform and have been trying to steer the government in that direction. However, Nepali land rights advocates are debating the pros and cons of such approaches. In recent times, there is growing realization among international actors that pro-people land reform is one of the key interventions to ensure social justice.

However, there are only a few international agencies present in Nepal that support the land rights movement by tillers and peasants and CSOs. These are ActionAid International, Danida, HUGOU, Canadian Cooperation Office, MS Nepal, and Care Nepal, among others.

Opportunities, Challenges AND Strategies TO Advance Access TO Land AND Tenorial Security

ACCOMPLISHMENTS to DATE

1. Government’s Declared Intent to Implement Land Reform

The Interim Constitution of 2007 is committed to “pursue [a] policy of adopting scientific land reform programs by gradually ending capitalistic land ownership practices.” Likewise, the Three-Year Interim Plan (2007–2010) has clearly set policy and specific objectives for land reform.

Despite making a commitment to adopting scientific land reform in the Interim Constitution of 2007, nothing of substance emerged from the first Three-Year Plan (2007–2010). The Government of Nepal introduced another Three-Year Interim Pan for the period 2011–2013, which contained the majority of the proposals in the previous plan. To this end the government is still aiming to formulate a national land policy and is committed to the rehabilitation of *Haliya* and *Kamaiya*.

The government has also published the High Level Land Reform Commission report which lays down the groundwork for addressing four major components of the land rights campaign: (i) equitable access to land and social justice; (ii) agricultural input, production

and development; (iii) conservation, development and land use planning and (iv) institutional capacity building in land and agricultural governance.

Prime Minister Baburam Bhattraï committed to implement the common points of the two High Level Commission Reports during his tenure. As part of this commitment, a working committee was formed under the chairmanship of the Land Reform and Management ministry, which also included representation from the Departments of Law and Justice, Forest and Soil Conservation, and the Physical and Planning minister. This committee is working with the report to produce a workable action and implementation plan.

With regard to the Constitution, there is still no consensus amongst the political parties on the issues of (i) revolutionary versus scientific land reform, and (ii) compensatory payments to landowners with land in excess of the proposed land ceiling. Despite ongoing debate between the two key committees, both matters remain unresolved. The Natural Resource, Economic Rights and Revenue Allocation Committee favors revolutionary land reform without compensation, whilst the Fundamental Rights and Directive Principles Committee favors the payment of compensation on all land and scientific land reform.

2. Politically Aware Citizenry

With democratic space and intensive education, the people have increasingly become aware of their rights, social justice, and the pathways to it. This has created tremendous pressure on political actors to fulfill their promise of delivering pro-people land reform. The disadvantaged people have become organized, speaking and acting as one. Consequently, they have reaped the dividends of a democratic government.

3. Proactive Civil Society

Nepal's experience of democracy in the past decade has helped nurture civil society and establish its importance. Civil society has been organized into several specialized segments, such as human rights activism, democratic advocacy,

community empowerment, poverty eradication and human development. All these practices have made Nepali civil society a key partner for national development, social transformation, peace, and democracy in the country.

4. Enhancement of Land Literacy and Advocacy Skills

The Nepali social movement, especially the land rights movement, has taught lessons and promoted critical awareness of national laws and procedures. Tillers and peasants who used to be ignorant of their rights under existing laws are now aware of the provisions in the Interim Constitution of 2007 and other legal documents that concern them. They have developed the capacity to analyze these laws, especially whether or not these would work in their favor. Moreover, people have also learned to mobilize themselves to bring their agenda to the attention of political actors and state mechanisms. People have organized into issue-based networks and alliances.

CONDITIONS for SUCCESS

Land reform is a complex political matter. It is deeply rooted in the country's socio-cultural system, values, and norms. It is hindered by a vicious cycle that is difficult but not impossible to break. The following are the conditions or prerequisites for the successful implementation of land reform in the country:

1. Democratic Space

People can claim their rights only in a democratic system. Democracy based on social justice provides enormous political space for the people and civil society to pursue their agenda. Political will is another important aspect of this precondition.

2. Critical Mass and Political Clout

People need to be organized and increase their influence among political actors and state mechanisms in order to get a proper hearing for the problems of victimized people. A critical and supportive civil society, pro-people state mechanisms, supportive donors, and other international actors are some of other important conditions for effective land reform in Nepal.



3. Access to Land-related Information

Both the land rights victims and CSOs should have in-depth knowledge of the causes and symptoms of poverty, injustice, and violation of human rights. Based on these facts, civil society and ordinary people could make a convincing case to the political actors such that they are forced to take appropriate actions to respond to the issues. Civil society and human rights organizations can also publicize information widely enough, through, for example, exposés of corruption and injustice, to draw the attention of concerned duty bearers. Another important factor for the success of a land rights movement is increasing productivity. A concentrated effort should be made in this regard.

4. Building Multi-stakeholder Cooperation and Partnerships

Land Reform and ensuring social justice for the poor is no easy task. It is linked with the political economy, with all its complexities. Thus, there should be a collective effort by as many stakeholders as possible, such as the state, private sector, civil society, and farmers. In particular, key interventions include: decentralizing land management at the local level; enhancing farmers' capacity to produce surplus; simplifying land governance; and installing legal and institutional mechanisms.

5. Shared Commitment to Land Reform

The shared appreciation for the urgency of land reform among the political actors, and the provisions in the Interim Constitution of 2007 promoting scientific land reform should support advocacy efforts.

OPPORTUNITIES

Nepal is going through political transition. Despite ups and downs, people in general are confident about making changes. The landless are becoming more politically aware and organized. The present government was formed through people's popular power. Thus, politicians are anxious to bring about changes not just to improve conditions in the country but also to keep themselves in power.

The current legislation (e.g., the Interim Constitution of 2007; the Three-Year Interim Plan) already provides a road map toward the goal of land reform. Civil society and the development sector have come to understand the importance of land reform as an effective means to address poverty and to enable landless people to claim their rights. Institutions such as the NLRF, NLRCG and NALAR have emerged, and NGOs such as CSRC are supporting them in every way possible. Their skills in dealing with land issues have improved significantly.

RISKS and CHALLENGES

As much as land reform is important, it is undeniably challenging. History has shown that land is the source of socio-economic and political power. The small elite class will not readily relinquish such power, and is likely to oppose or create obstacles to the implementation of land reform.

The leaders of political parties come from the same elite class. Hence, it is likely that they would pay lip service to the scientific land reform prescribed in the Interim Constitution of 2007, but oppose it in practice.

The continued failure to include the issue of land rights in the Constitutional drafting process poses a threat to land reform. At the same time, frequent changes within the government, including key government officials has hampered negotiations on land reform. Since 2007, CSRC has dealt with four different land ministers and four secretaries. Relationship building takes time, as does the learning curve ministers must to understand the issues related to land reform.



Furthermore, in order to counter the effects of constant ministerial changes, grassroots pressure is essential to maintain momentum. The gains to date highlight the positive effects of collective action by those who are marginalized and affected by unequal access to land. The government is beginning to recognize the importance of land reform, but it remains a complex issue. It is not possible to have a meaningful impact if only a few organizations are involved. The formation of a broad civil society alliance to work towards the common cause of land rights and agrarian reform is therefore crucial to enhance the capacity of deprived tillers and landless farmers to articulate their concerns and become knowledgeable about their rights.

Also, sustained dialogue and meaningful collaboration with the government, particularly as the Constitution is yet to be finalized, are important. Continued documentation and dissemination of issues relating to land rights violations are also key to this process.

Globalization implies another challenge. A market-based economy, which globalization espouses, regards land as a commodity whose value needs to be maximized, rather than as an entitlement of the landless. Donors, such as the World Bank and Asian Development Bank, among others, pursue a market-based approach to land reform, which might not work in the interests of poor tillers and peasants. This needs to be analyzed carefully and studied critically.

STRATEGIES

Since Nepal is undergoing socio-economic restructuring of the state, the following actions should be prioritized. A number of subsidiary interventions should be made, but only the primary ones are presented as follows.

1. Inclusive Policy Formulation and Implementation

Current land-related acts and policies need to be repealed and new ones formulated on behalf of landless, poor tenant farmers. Most important of all, the Constitution should guarantee implementation of land reform. The success of land reform in West Bengal, India was due to the implementation of progressive land policies as dictated by the country's Constitution.

2. Restructuring of Land Administration

There is an urgent need to simplify and decentralize land administration. The authority over land reform and administration should be delegated to district development committees (DDCs) and village development committees (VDCs), with the District Land Reform Office (DLRO) serving as secretariat to these units. A separate land court at the VDC and DDC levels should be established to expedite the settlement of land issues concerning poor people. The court at the district level should be given as much authority as the appellate courts, in regard to resolving land disputes.

3. Establishment of a High-Level Land Authority

A high-level authority needs to be created to look at government official data on land vis-à-vis the reality tillers and tenants face, and find ways to address problems. Such an authority should be independent of vested interests, with experts in the field and representatives of the poor and marginalized, including women, Dalits, Madeshis, *Haliyas* and *Haruwas*. The authority should have its offices expanded from the central down to VDC levels, with a clear, written mandate at each level. The central committee of this high-level body should concern itself only with technical and advisory matters, while the VDC and district level committees should have the power to recommend concrete actions. The success of land reform in Japan, South Korea, and Taiwan depended on the power and authority of local level committees.

4. Educating and Organizing Poor and Landless People

No changes occur at the high level without constant pressure from below. This is as true in Nepal as everywhere else. As long as the poor remain unorganized, the elite will continue to keep them under feudal, semi-feudal, bondage and exploitative systems. The victims should therefore be organized, made aware of their situation, and mobilized against their ongoing deprivation and oppression. The oppressed and exploited should be made aware that they have the right to peaceful resistance against

suffering and oppression. Awareness gives them the power to fight oppression; organization makes the fight constructive and logical. There is therefore a need to invest in organizing and educating the landless and the poor.

5. Budget Allocation for Comprehensive Land Reform and Agriculture Sector

The Government of Nepal collects millions of rupees as tax from land transactions, yet hardly 10% of the revenues from land taxes is invested in land management. There are hardly any efforts to enhance land productivity. As a result, land productivity is decreasing, as is the contribution of agriculture to the country's Gross Domestic Product (GDP). However, efforts to enhance agricultural productivity should follow, not precede, a progressive land reform program. The additional budget allocation for agriculture would be meaningful only after the issue of inequitable land ownership has been properly addressed.

6. Making Land Reform a Common Concern

Among certain groups, land reform or land redistribution smacks of revolution, or at the very least, implies punitive action against rich landlords and even those who have been able to acquire land through hard work. It is therefore important to transform the national perception of land reform: to help the public understand that it is in the interest of the national economy and even the industrialists to correct the imbalance in land ownership. Unless genuine land reform is implemented, there will be few if any incentives to invest on productivity-enhancing agricultural technology; productivity will plummet; and land fragmentation will worsen. Land reform is needed in order to upgrade Nepali farmers from subsistence farmers to surplus producers.

Higher agricultural productivity creates employment, and provides the raw material for industries. The reduction of social unrest is not the sole objective of land reform. A broader alliance among political parties from all sides, the private sector, and civil society needs to come up with a mutually acceptable position on this issue.



POINTS of INTERVENTION

• Party Leaders

All the political parties agree in principle on the need for land reform. However, when it comes to actually making provisions for land rights, one or another excuse is made. The parties must be held accountable for the promises they made in their electoral manifestos.

There are a number of ways in which this could be done: (1) make the leaders aware of the situation, and show them the benefits of land reform in practice; and (2) impress on them the consequences of their failure to provide land to the landless. The Fifth Amendment of the Land Act of 1964 was nullified by the Supreme Court because it imposed a new land ceiling than what was provided for in the Constitution of 1990. However, this amendment was not incorporated in the Interim Constitution of 2007. Land rights advocates should ensure that the upcoming Constitution would not prove to be a hindrance to a pro-tenant and pro-landless land reform in Nepal. It is high time to educate and influence the leaders of political parties.

• The Bureaucracy

Land is a complex form of property. It involves a number of agencies. One agency points to another to settle a case. It involves VDCs and municipalities; the Land Revenue, Land Reform and Land Survey Offices at the district level; the Department of Land Reform, and the Ministry. Disputes not settled by these line agencies have to undergo a legal process

starting at the district courts, up to the appellate courts, and eventually at the Supreme Court.

Over 70% of court cases are related to disputes over land. Common folk, especially tenants and landless people, who are often illiterate, are unable to understand the existing provisions concerning land dispute resolution. It is important therefore that the bureaucracy supports the land reform process at the outset and does not create problems. Training and orienting them on issues of land is necessary so that they do not become a hindrance to land reform.

The setting up of a land court at the local level is necessary so that disputes over land are settled. One study has shown that the Land Revenue Office is the most corrupt sector in the bureaucracy.

- **Rights-Holders/Tenants and Landless Farmers**

Neither political parties nor the bureaucracy can be expected to be benevolent overnight without genuine pressure from the rights holders—the landless and the tenants. These communities need to become organized and aware of the legal provisions for and against their claims, so that they can demand their due rights. It is easier to get instructions from the government on how to prepare a hydration solution than it is to get land-related information, which is a matter of life and death to the average Nepali household. No radio program tells farmers to keep the receipts of their grain payments to the landlord, or to go and get their tenancy registered at the district land revenue office.

Many tenants still do not understand that since they earn their livelihood from farming, they are entitled to own the land. They also do not have a notion of tenancy rights. Even after a number of years since the abolishment of dual ownership, tenants are still unaware of this change.

- **Donors**

Few if any donors invest on land reform in Nepal. Many of them prioritize increasing agricultural production but overlook landlessness or tenancy. Donors are most likely oblivious to these issues. In view of donors' influence on the government, it is necessary to call land issues to their attention.

- **Civil Society**

Civil society, including NGOs, are not that focused on land reform. Many institutions advocate for human rights but few raise the issue of tenancy and land rights. Many poverty-focused NGOs are content to distribute seeds and give away a couple of goats “to improve nutritional status or generate income,” but overlook the more important element of the poor's coping strategy: growing grain or working for a landlord. CSOs need to be informed of this reality and challenged to expand their understanding of the situation of the landless and the poor. It is necessary to make use of the connections and expertise of these institutions so that they can expand their activities all over the country and in the right direction.

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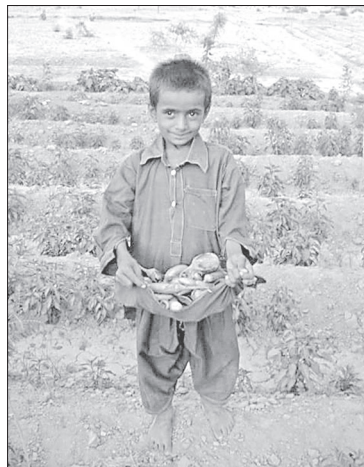
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Fighting the Pyramid of Power

PAKISTAN Country Paper
Land Watch Asia





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The scoping study includes four main areas: (i) legal framework, (ii) status of land access, (iii) assessment of key actors, and (iv) opportunities in advancing access to land by landless farmers.

Seema Gaikwad, Abdul Waheed Jamali, and ANGOC reviewed the country study. Dianna Mendoza abridged the paper, Antonio Quizon edited this version for publication.

Abbreviations and Acronyms

AAP	ActionAid Pakistan
ADB	Asian Development Bank
AHRC	Asian Human Rights Commission
AMP	Anjuman Mozareen Punjab
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
CAF	Corporate Agriculture Farming
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFO	Corporate Farming Ordinance
CSO	civil society organization
FATA	Federally Administered Tribal Area
ha	hectare
HBS	<i>Hari</i> Bhandar Sangat
HDI	Human Development Index
HIES	Household Integrated Economic Survey
HRCPC	Human Rights Commission of Pakistan
ILC	International Land Coalition
KP	Khyber Pakhtunkhwa (province)
LWA	Land Watch Asia
MLR	Martial Law Regulation
MQM	Muttahida Qoumi Movement
NAP	National Action Programme
NCS	National Conservation Strategy
NGO	non-government organization
PATA	Provincially Administered Tribal Areas
PML–N	Pakistan Muslim League–Nawaz
PPAF	Pakistan Poverty Alleviation Fund
PPP	Pakistan Peoples Party
Rs	Pakistan rupee
RSP	Rural Support Programme
SAAG	Sustainable Agriculture Action Group
SAP–PK	South Asia Partnership–Pakistan
SCOPE	Society for Conservation and Protection of Environment
SDPI	Sustainable Development Policy Institute
UNCCD	United Nations Convention to Combat Desertification
WTO	World Trade Organization

Glossary

<i>Barani</i>	Rainfed land, not irrigated by canal network
<i>Begari</i>	Forced labor, or labor without payment
<i>Batai</i>	Distribution of crop, used as a payment to the peasant or tenant by the landlord, usually on 50:50 ratio
<i>Hari</i>	Sharecropper
<i>Haq-e-Shifa</i>	priority rights of tenants to buy the land under their cultivation
<i>Kammi</i>	Working class involved in professions traditionally considered low-grade by society, such as sanitary work, hair cutting, shoe repair, laundry workers, etc.
<i>Khatedar</i>	Landholder
<i>Muqarraridar</i>	Tenant
<i>Nazim</i>	Elected representatives who used to head local government at village, <i>tehsil</i> and district level under the local government ordinance
<i>Purdah</i>	The practice of segregating men and women; and the practice of women covering their bodies to hide their form
<i>Sardari system</i>	<i>Sardar</i> is the head of a large tribe; in some areas of Pakistan, <i>sardar</i> are well respected and settle disputes within their tribe instead of resorting to courts of law
<i>Shariat</i>	Islamic law
<i>Tanazul</i>	Relinquishment of land ownership rights by women in favor of their male relatives
<i>Wadera</i>	Influential person, usually a powerful landlord
<i>Zamindar</i>	Landlord
<i>Zaat</i>	Caste



Quick Facts

While roughly 30% of the population is classified as “income-poor” based on official statistics, nearly half suffer from deprivation of basic opportunities—nutrition, health services, safe drinking water and education. Majority of those in poverty are in rural areas.

A 2004 ADB report linked rural poverty more to *social* than to economic factors, noting that the distribution of cultivated land remains highly skewed in Pakistan.

About half of the country’s workforce is engaged in agriculture.

Pakistan has among the largest irrigation systems in the world but still remains a net importer of food.

According to a 2004 World Bank report, empirical evidence indicates that productivity of land on large farms is *less* than that of small farms.

However, yields remain low because many landowners are absentee, and without ownership the farmers have little access to agricultural, credit, inputs, technology and marketing know-how.

PAKISTAN

Evolution of THE Policy AND Legal Framework ON Land

The Islamic Republic of Pakistan was founded in August 1947 as a result of the separation from British India. It has a land area of 770,100 sq km excluding the disputed territories of Azad Kashmir and the Northern Areas claimed by Pakistan and India. Pakistan’s territory is divided into four provinces (Baluchistan, Khyber Pakhtunkhwa [KP], Punjab and Sindh) and two tribal areas stretching along the eastern border of Afghanistan and are administratively divided into the Provincially Administered Tribal Areas (PATA) and the Federally Administered Tribal Area (FATA).¹

Pakistan inherited an agrarian system from the British Raj, characterized by extremely skewed land ownership concentrated in the hands of feudal lords, a privileged class during the British Raj over India, who used to serve their cause by collecting land revenue and providing loyal services. The power of these large landowners has been a major barrier to social and economic progress of rural society. They collaborate with other power centers to accumulate more wealth and power.

EVOLUTION of LAND POLICIES

Pre-Independence

The Punjab Tenancy Act, 1887 was the first piece of legislation enacted by the British Raj that provided security against occupancy tenants. Amendments in 1950 led to the abolition of payments of levies and prerequisites to landlord by the tenant; further amendments led to the Punjab Tenancy Act of 1952. The Act granted the sharecropper a fixed-term tenure ranging from one to three years. The landlord’s share in Punjab and Khyber Pakhtunkhwa was reduced to 40%, and to 50% in Sindh. Landlords could ask for extralegal levies and *begari* (forced, unpaid labor) from their tenants.

At Independence (1947)

Distribution of land was badly skewed. Less than 1% of farms constituted more than 25% of the total agricultural land, while the Tenancy Act of Sindh was also enacted during this time. Sixty-five percent of farmers held only 15% of farmland in holdings of about two hectares or less. Many owners of large holdings were absentee, contributing little to production but extracting much from the sharecroppers. Approximately 50% of the farmland was cultivated by tenants, including sharecroppers, most of whom had little legal security and limited rights. An additional large number of landless rural inhabitants worked as agricultural laborers. Farm laborers and many tenants were extremely poor, illiterate and undernourished; this stands in sharp contrast to the wealth, status, and political power of the landlord elite class.

Post-Independence

Unlike neighboring India, Pakistan did not undertake land reforms soon after independence and failed to facilitate the much-needed transition of productive relations from a feudal-agrarian to industrial state. Three isolated attempts of land reforms were made to reduce landholdings at intervals but these could not bring feudalism to an end.

Martial Law Regulation 64

In January 1959, General Ayub Khan's government issued land reform regulations that aimed "to boost agricultural output, promote social justice, and ensure security of tenure". Land ceilings of 200 ha of irrigated land and 400 ha of non-irrigated land were placed on individual ownership. One million hectares were surrendered; 250,000 ha were sold to 50,000 tenants.



The reforms, however, failed to lessen the power or privileges of the landed elite. This regulation also abolished all *jagirs* (large lands given by British Government to loyal persons for revenue collection).

Land Reforms Regulation 1972

In March 1972, the ZA Bhutto government announced further land reform measures. The land ownership ceiling was lowered to 5 ha of irrigated land and 12 ha of non-irrigated land; exceptions were limited to an additional 20% of the land for owners having tractors and tube wells. The owners' confiscated land received no compensation and beneficiaries were not charged for land distributed. By 1977, only 520,000 ha had been surrendered, and 285,000 ha redistributed to 71,000 farmers. Landlords were required to pay taxes, water charges, seed costs, and half of fertilizer and other inputs. Tenants were given rights of purchase, increased security of tenure, and lower rent rates.

Land Reforms Act 1977

Ceilings on private ownership of farmland in 1977 were further reduced to 4 ha of irrigated land and 8 ha of non-irrigated land. Agricultural income became taxable except for small farmers owning 10 ha or less. The military regime of Gen. Ziaul Haq as well as the governments in the 1980s and 1990s did little to implement reforms because they were supported by the landed aristocracy.

Agrarian reforms in Pakistan have never transformed rural society's property structure and production relations. Land ceilings were fixed in terms of individual holdings but not family holdings, resulting in land transfers to family members and relatives. During periods of military rule, feudal lords supported the ruling junta to protect their interests.

Existing Legal Framework, Customary Laws, Constitutional Provisions

Article 23 of the Constitution allows citizens equal rights to acquire, hold, own and dispose of property but provides the State with the right to intervene if the ownership or disposal of property clashes with public interest. The State is also responsible for providing protection to its citizens. Article 24 allows the State to intervene in



Land and the Military

In Pakistan, political, economic and decision-making power is concentrated in a nexus of military, civil bureaucracy, feudal and politicians that comprise the ruling elite.

Since the 1950s, the military has acquired millions of acres of land for distribution to serving and retired armed forces personnel. This practice of granting agricultural land as reward seems to be a tradition inherited from the British period. The Punjab Alienation Act of 1900 ensured the use of canal colony land as a means to reward those serving British interests. It allocated 10% of colonized land to the armed forces. This provision was later incorporated into the Colonization of Land Act of 1912, and later updated after independence in 1965.

Moreover, during the British era, the military establishment itself acquired large land tracts in urban and rural areas—including for the establishment of military farms for the supply of vegetables, dairy products and fodder for horses. After independence in 1947, these lands were taken over by the Pakistan armed forces as rightful successor, which continues to this day.

According to one estimate, the armed forces control about 12 million acres, constituting about 12% of state land. Some 62% of this is in the Punjab, 27% in Sindh, and 11% in the other provinces. About 7 million acres of the total is agricultural land with an estimated worth of Rs700 billion. However, only 100,000 acres (40,469 ha) are directly controlled by the armed forces establishment and its subsidiary companies. Most of the land was given (at highly subsidized rates) to army personnel as awards. ■

Source: Ayesha Siddiq (2006). "Pakistan's Generals Emerge as the New Land Barons". *New Pakistan*, Issue No. 5. October 13, 2006.

property rights to protect the rights of the disadvantaged in areas of ownership and devolution i.e., women and children. However, there is instance of the State having done this. Article 38 says that the State shall "secure the well-being of people ... by preventing the concentration of wealth and means of production and distribution on the hands of a few to the general detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, landlords and tenants."

Customary Rights of Farmers Recognized in These Laws

The Sindh and Punjab Tenancy Acts are the major land and tenancy related legislations recognizing customary rights such as tenant's right to land occupancy, landlord and tenant's rights for production, and succession to right of occupancy. A recent judgment of the Sindh High Court proposed amendments in the Sindh Tenancy Act to reform the age-old relationship between the *haris* (sharecroppers) and the landlords. The case reflected the traditional conflict between tillers and owners, with the landlords (*zamindars* or *waderas*) accused of coercion in perpetuating their stranglehold over impoverished and illiterate *haris*. This led to the discovery of private jails and people who were kept in chains; the non-payment of loans that the *haris* or their ancestors had taken from the *zamindar*.

Under the Sindh Tenancy Act, the *hari* is not an ordinary workman but a partner or co-sharer in the produce with the *zamindar*. The *hari* should be referred to as agricultural laborer entitled to government safeguards as provided for industrial labor. Yet, sharp disparities in living standards exist between the *zamindar* and the *hari*. While both are equal stakeholders, one lives in luxury while the other is heavily indebted, impoverished and illiterate, owning nothing.

It was also proposed that disputes arising from the relationship of *haris* and *zamindars* and incidental matters are to be adjudicated, decided and determined by a judicial forum more appropriately by conferring powers of tenancy tribunal on the civil judge or judicial magistrate, instead of the *Mukhtiarkar* (land revenue officer). Appeals may be provided before the district Judge, and reviews with the High Court.

LATEST DEVELOPMENT

The Punjab Assembly passed a bill on 24 December 2011 that gives proprietary rights to those tenants who had been in possession of the land and cultivating it without giving any rent

to the landlord for 20 years before the promulgation of the Punjab Tenancy Act, 1887. To be called the “Punjab Conferment of Proprietary Rights on Occupancy Tenants and *Muqarraridars* Act, 2011” after it gets assent of the Punjab governor, some 0.2 million tenants would benefit from the legislation, and 0.4 million acres of land would come under their legal occupation.

After the law comes into effect, an occupancy tenant or *muqarraridar* shall be deemed as owner of the land unless some owner proves it otherwise under clause 4 of the Act that the land was originally brought under the

cultivation of “predecessor-in-interest” (any predecessor) of the landlord. The concerned revenue officer shall enter into the revenue record the name of the occupant tenant or the *muqarraridar* as the owner of the land when the law takes effect.

According to clause 3 (3) of the bill, no person shall claim any compensation from an occupancy tenant, a *muqarraridar* or the Government for conferment of ownership of the land on the occupancy tenant or the *muqarraridar*. The bill also contains a provision for remedy of a landlord. In clause 4 of the bill, it has been stated

Duties under the Sindh Tenancy Act, 1950

DUTIES OF THE TENANT

- provide the requisite animal labour, manual labour and the implements of husbandry;
- proper weeding of all the crops grown by him and for the cost of such weeding;
- construct and maintain irrigation bunds and water-courses within the land allotted to him and for the cost of such construction and maintenance;
- shall not cultivate the land of any other landlord, if he has been allotted a family holding;
- provide the seed required for sowing; but where a landlord supplies any seed to his tenant, he shall be entitled to recover from the tenant, the quantity of seed actually supplied;
- transport the landlord’s share of produce after “*Batai*” to the landlord’s local place of storage “at the expense of the landlord”;
- grow such crops in such a manner as may be specified by the landlord.

DUTIES OF THE LANDLORD

- properly maintain main water-courses leading from the canal-modules to the land, and cover the cost of such maintenance; provided that the tenant shall be bound to give his labour for the silt-clearance of such water-courses during the irrigation season and in return therefore the landlord shall be bound to feed the tenant at his own cost;
- ensure the supply of the proper share of available irrigation water to the land allotted to his tenant;
- lend seed, for sowing to the tenant if the tenant so demands;
- any advance of food grains by the landlord to a tenant for domestic needs shall be repaid in cash at the market rate at the time it was lent or in kind of equivalent value;
- allot an area with prescribed conditions to the tenant for growing cattle-fodder and vegetable cultivation for the personal use of the tenant in areas where only cotton, sugar-cane, tobacco or such other crops are grown which do not provide fodder for the cattle.

GENERAL PROVISIONS REGARDING DEBT

- The produce of a tenant, after deducting such portion needed for the support of the tenant and his family until the next harvest, may be appropriated towards the debt due from the tenant to his landlord. The wholesale control price fixed for the locality by the government, or else and if no such is fixed the wholesale price prevailing in the local market shall be used as the basis for evaluating the produce.
- The balance of debt, if any, shall be deemed to be flotation debt recoverable from the tenant’s share of other crops.
- In case a tenant is indebted to his landlord, it shall be his duty to deposit his share of crop in the landlord’s store. Such crop shall remain in the joint possession of the tenant and the landlord until it is divided or is taken by the buyer.
- On termination of the tenancy, a tenant if he is in debt to his landlord, shall be liable to pay off his debt before leaving. ■



that “A landlord may, within six months, from the date of coming into force of this Act, file an application before the Collector on the ground that the land was originally brought under cultivation by a predecessor-in-interest of the landlord... If the Collector is satisfied that the land was originally brought under cultivation by a predecessor-in-interest of the landlord, he shall pass order as he deems appropriate.”

The aggrieved has also been given the right to file an appeal against the final order of the collector before an officer authorized by the government, whose order shall be final and no civil court shall entertain any appeal against the decision. According to the Punjab Government, about 200,000 tenants in Punjab were cultivating the lands since generations, who would now be benefiting ownership rights as a result of this legislation; hence a longstanding issue of tenants has now been resolved by the Punjab government.

ACCESS to LAND and TENURIAL SECURITY

Based on the Household Integrated Economic Survey (HIES) 2001-2002, around 10.36% of the rural population is landless; 32.67 % owns land under 1 ha; 0.05% owns between 1 and 2 ha; 0.03% owns 2 to 3 ha; and only 0.03% owns 5 or more ha. The rest, or 57% of rural households do non-agricultural work to survive.

Forms of Land Tenure in Pakistan

There is very little information on land tenure systems and land distribution in Pakistan. The Agricultural Census distinguishes three forms of tenure: (i) owners’ farms, (ii) tenants’ farms and (iii) owner-cum-tenants’ farms. The census explains the current land tenure only to a limited extent, and does not discuss patterns of ownership and actual managing units.² An attempt is made here to classify rural households into seven land tenure categories.³ The number of households per category is an old and rough estimate based on available census information and is only intended to give an order of magnitude.

LANDLORDS

Landlords own at least 150 acres (61 ha) of irrigated land or 300 acres (122 ha) of unirrigated land. In many

cases, the landlord leaves control of his land to a supervisor, preferring to live in the town or city. Land ownership is not only a means of earning a living but a symbol of economic status and political power. The landlord reciprocates the loyal tenant with customary responsibilities as help in need, old age and illness, and representation with outsiders. But the system is open to exploitation. Many tenants lie at the mercy of their landlords. Capital formation is completely left to the landlord who, from his income, has to maintain roads and canals (partly with the unpaid labor of his tenants). A landlord’s lifestyle involves capital transfer from rural to urban in the form of urban houses, children’s education, migration of family members, engagement in business activities, and luxurious spending instead of reinvesting in agricultural development.

SMALL LANDLORDS

They own 25 to 150 acres (10 to 61 ha) of irrigated land or the equivalent amount of *barani* (rainfed) land. The main difference between landlords and small landlords—apart from the acreage owned and income earned—is that the latter consists of owners who often take more interest in their land, resulting in a higher amount of capital formation and reinvestment in agriculture. The improved economic condition of these better educated small landowners also give them political power and influence.

FAMILY OWNER-CULTIVATORS

They own 7.5 to 25 acres (3 to 10 ha) of irrigated land or a corresponding area of unirrigated land. They personally cultivate their land with one or two pairs of bullocks, and in the upper size range, may hire a farmhand. Farming is a family enterprise and agricultural activities are not only a means of earning a living but also a way of life. Some have increased their farm area by renting land in addition to that owned. They form 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 *zaat* (caste) who controls village politics, occupies posts at union council level and cooperatives, and are often excellent farmers.

MARGINAL OWNER-CULTIVATORS

This group owns less than 7.5 acres (below 3 ha) of irrigated land or the equivalent, some of them renting areas to enlarge their holdings. They subsist on an average farm size of only 2.2 acres (0.89 ha) and work as agricultural laborers. This group has the highest cropping intensity and enjoys prestige not reflected in their economic welfare. Indebtedness often worsens their situation.

TENANTS OF BETTER STANDING

This category is rather heterogeneous and consists of tenants with larger farms (over 1.5 acres or 0.61 ha of irrigated land) that give them status and security. Some are tenants of government land; others are independent tenants of larger tracts belonging to landlords. Their cultivation is superior and landlords often rent large areas to them because they improve the quality of the land by their good cultivation practices.

TENANTS-AT-WILL

They comprise all other tenants. Their most frequent system of tenancy is the *batai* (sharing), in which the gross produce is shared by landlord and tenant, usually

at a 50:50 ratio, but with varying degrees of participation of landlords in the production costs.

LANDLESS RURAL LABORERS

They live mainly from the land with no direct tenure. Their relation to land is indirect: they provide their labor to landowners and cultivators against a share of the produce. Their actual number is large, but some succeed in owning or renting a little land and are incorporated in the category of “marginal owner-cultivators” or “tenants-at-will”. They are of three distinct groups:

- **The *kammis* or *sepis*** provide technical and social services and work as blacksmiths, carpenters, potters, weavers, or barbers. Their work is regulated by the customary *sep* system that requires them to work in their special craft against an annual lump sum pay by the farmers. They also provide labor free of charge, except meals, to landowners for such activities as construction of houses. Often unemployed, they have to be ready for work whenever summoned and are not allowed to offer their labor to other parties.
- **Permanent laborers** have a full-time contract with a specific cultivator, usually on an annual or seasonal

Table 1. Estimates of Land Tenure Categories in Pakistan

Category	Characteristics*	Estimated number in 1962	Percentage of agricultural households
Small landlords	25–150 acres of irrigated land owned	200,000–250,000	4%
Family owner cultivators	7.5–25 acres of irrigated land owned	500,000	9%
Marginal owner cultivators	less than 7.5 acres of irrigated land owned	1,600,000	30%
Tenants of better standing	more than 12.5 acres of irrigated land or with some land tilled	750,000	14%
Tenants-at-will	less than 12.5 acres of irrigated land tilled	1,800,000	33%
Landless laborers	no land owned or rented	550,000	10%

* characteristics described here in terms of irrigated lands, although there are corresponding category sizes of non-irrigated land

basis and often against payment in kind. They run no risk of being unemployed during the time covered by their contract, and often have long-term relations with cultivators.

- **Casual laborers**—the largest group with the poorest rural families have no definite relation to an employer, but offer their labor in agriculture, road construction, transportation, petty trade, and other escape jobs. They earn their living during harvest time when they are in great demand due to the unusually high wages—three times the normal wage rate for the long working day for about three months per year (wandering to different areas) and another three months at normal wage. They are unemployed in the remaining six months.

ACCESS TO LAND, POVERTY, PEACE AND DEVELOPMENT

About 75% of households own no land at all. On the other hand, only 0.05% own more than 2 ha in Punjab and Sindh provinces. Land ownership inequality is highest in Punjab, followed by KP, Sindh and Baluchistan. The unequal land distribution has caused widespread tenancy arrangements like sharecropping, resulting in high prevalence of poverty particularly in Sindh.⁴ Studies suggest a high prevalence of rural poverty ranging from 39% to 48% in all provinces. A broad-based land reform program on land redistribution and fair and enforceable tenancy contracts, along with rural public works programs and access to credit—is critical for reducing rural poverty.⁵

Present Situation

The application of the Tenancy Acts remains negligible in the neoliberal era. In some parts of the country, *begari* continues. Poor peasants do not receive their legal share of the produce. Sharecroppers are forced by landlords to work as seasonal agriculture laborers on a daily wage basis for some crops, further nullifying their rights. In parts of Sindh, sharecroppers work as agriculture laborers on sunflower farms; but in the next season for another crop, such as rice, they enjoy their

Corporate Agriculture Farming (CAF)

The Corporate Farming Ordinance (CFO) was passed in 2001 under the military regime of General Pervez Musharraf. Under this ordinance, corporations can now lease land in Pakistan for a period of 99 years, broken into two periods of 50 and 49 years. The government has allowed transnational corporations (TNCs) to take lease of unlimited land with a minimum size of 1,500 acres. In addition, TNCs have been promised 100% equity, numerous tax incentives, as well as full repatriation of profits. The government has also identified state lands which it would lease under the CFO.

Pakistan has taken definitive measures to meet the requirements of the neoliberal policies under the WTO and other bilateral agreements. The seed sector has already been privatized, and extensive measures are in place to promote agriculture export processing zones in various parts of the country including Sindh and Punjab. During previous couple of years the Asian Development Bank launched a \$24 million Agribusiness Support Fund (ASF). According to the ADB director: “Improved agribusiness is essential to maintain and expand export markets for agricultural products.”⁶ None of these trade liberalization initiatives augurs well for the poor peasantry in Pakistan, as these would in essence be profit-oriented ventures between the feudal elites of Pakistan and the corporate sectors in imperialist countries.

The government has utilized its land to set up agriculture export processing zones. There are linkages between the feudal elites and TNCs such as Monsanto. There are reports of feudal lords interested in joint ventures with agri-based TNCs for the development of mass production zones for seed cultivation. A number of TNCs, such as Pioneer, has factories in the very heart of central Punjab, which has some of the most fertile productive land in the country. The increased trend of landlords evicting tenants-at-will, or of changing the terms of working relations (sharecroppers/daily wage earners) will only be intensified as the demand for land by corporate interests comes into play.

Civil society organizations working for the rights of farmers consider the CAF policy as working against peasants who have been waiting for judicious land and agrarian reform in the country. The peasants, while rejecting CAF, are demanding land redistribution along a comprehensive package of agrarian reforms. Sections of civil society consider CAF as a serious mistake for national sovereignty, comparing it with the earlier colonial era when the East India Company conquered the Indian subcontinent through trade.

CONCERNS

The implementation of the CAF certainly raises a number of questions. First, if the government has surplus land available (including those amassed from surrendered land under previous land reforms) why has this not been distributed among the landless peasants? Second, if the government has taken up the agenda of market-led strategies for utilization of agricultural land, then does it mean that land reforms in the interest of the peasantry have been permanently shelved by the state?

Under any scheme of serious reforms, the land ceiling should be fixed at 50 acres (20 ha) for irrigated and 100 acres (40 ha) for non-irrigated land. The necessary legislation should be done in favor of land reforms and *Haq-e-Shifa*. All laws and regulations regarding land developed under the colonial era need to be abandoned and a judicial commission on land utilisation should be formed to check the rapid commercialization of land. Under the principle of *Haq-e-Shifa*, agricultural land of about 8 acres (3.2 ha) should be allotted to the landless agriculture workers and peasant families. The agricultural land occupied by or allotted to the military and government departments should be revoked and distributed among the landless peasants.⁷

Roots of Equity, an NGO based in Pakistan, comments on the situation in an article *Fate of Agrarian Reform in Neo-liberal Era in Pakistan*:

In the current era where neoliberalism is the key “development” policy, liberalization and privatization have taken on God-like status. The idea of privatization is being expanded to the agriculture sector; or to be more correct, agriculture is the key sector which is receiving the most extensive neoliberal policy directions. Apart from numerous other privatization and liberalization strategies in the agriculture sector, market-led land reforms are also playing a critical role in allowing the agri-business corporate sectors to dominate the rural agricultural economy of the Third World countries. ■

due share. They are not aware of their tenancy rights; nor have they ever signed a legal document with their landlord who can terminate their services at will, giving the term “tenant-at-will” its real connotation.

Women’s Access To Land

Women’s ownership and control of land is positively linked to sustainable development, poverty reduction, food security and environmental protection; it is integral to the independence and security of women that they cannot derive elsewhere. Despite this recognition, women’s land rights have been absent in land policy discourse. Land rights are deemed related to a homogenous category of landless poor peasants, ignoring power relations and hierarchies. Women’s empowerment is limited to welfare, improved access to education, health, non-farm assets, and economic status measured only in terms of employment. The ownership and control of land has always been mediated through male relatives, making women entirely dependent on men.

LEGAL CONTEXT

- While civil laws in Pakistan do not discriminate against women, succession and inheritance are dealt with in pursuance of the West Pakistan Muslim Personal Law that accords women half the share of a male sharer.
- None of three state-led land reforms under different governments recognized women as separate stakeholders in property rights, but an unintended outcome of the 1959 land reforms gave women land when landowners



transferred land to women within their families to escape redistribution of land to the landless.

- Islamic law that accords women some rights albeit unequal was not enforced; land ownership and transfer continued to be governed by customary laws excluding women altogether.
- Women wanting to claim their rights could not receive land because they were not enrolled in revenue records as tenants; no legal mechanisms acknowledge their economic contribution in the domestic and public spheres, nor the agricultural labor they provide.

PERCEPTIONS

This study also probed the perceptions of women and men on the issue of women's rights to own and control land:

- Men accept women's rights to own and control land on the basis of religious rights or fundamental human rights. Most men also express faith in women's ability to manage and control land either on their own or through male help. However, verbal acceptance did not translate into corresponding actions, with none of the men taking any steps to ensure property share for women in their families.
- Men argue against women's ability to manage land because of *pardah*, immobility, lack of exposure; the threat of rupturing the social structure and gender roles; women being compensated for lack of land rights through dower⁸ compensation, occasional gifts from their natal family, and security from male relatives. Some men see the deprivation of women's land rights as part of the overall plight of landless peasants facing asymmetrical power relations.
- Women are fully cognizant of the importance of these rights and feel that dower or other gifts that they receive do not compensate for the lack of these rights. However, women rarely seek help from state institutions. They find the legal system complex and beyond their reach, and do not have faith in the state institutions' ability or willingness to dispense justice. They are entirely dependent on the security they receive from male relatives and cannot risk jeopardizing the only support system available to them.



- Compared with other state institutions, there is a relative degree of willingness among women to approach *Nazims* (elected representatives) and councilors for the resolution of their issues as a last resort because these people are drawn from the local communities.

Policy Analysis

The 1997 Report of the Commission of Inquiry and a study by the National Commission on the Status of Women noted the deep-rooted patriarchal system and biased interpretation of directives as the main barrier to women's empowerment. However, this remained at the rhetorical level, with no concrete measures taken. The National Plan of Action for the Advancement of Women under the Beijing Platform, 1998 tackled land rights, but these were omitted in the National Policy for the Development and Empowerment of Women, 2002 that urged the need to ensure access of poor rural women to land, agricultural and livestock services, and micro-credit.

Pakistan is a signatory to the Convention to Eliminate All Forms of Discrimination against Women (CEDAW), which sets up an agenda for national action to uphold women's rights, but the Constitution states that national laws supersede international covenants. Thus, national laws stating women's unequal rights to land are never rectified. Pakistan is also committed to the efforts of achieving the Millennium Development Goals; Goal 3 is to promote gender equality and women's empowerment. In reviewing challenges and constraints towards achieving this goal, the Government of Pakistan Report 2005

recognizes the link between access and ownership/ inheritance of land and female empowerment, but the government has not addressed this issue.

Policy Recommendations

- **Land Reforms**

There is a need to ensure redistributive laws and policies are pro-poor and gender sensitive; and once in place, that they are effectively followed up and monitored to prevent the exploitation of loopholes in the said laws and policies.

- **Islam and Women's Land Rights**

Since *Shariat* is the most widely accepted means of granting women the rights to own land through inheritance, religion is one option to demand women's rights to land, such as in the case of Turkey and Somalia where male and female children inherit equally from the father's estate. An alternate option could be to bring inheritance and other family laws under a secular Civil Code to enable the State to enact gender neutral laws.

- **The Right to Forgo Rights**

The Pakistani courts accept the concept of *Tanazul* whereby a woman has the right to relinquish her share of inheritance, but the courts do not question the surrender of inheritance or dower by a woman on the suspicion of family pressure, which falls short of coercion and compromises independent decision-making. Policy should dictate that cases of *Tanazul* be examined rigorously to ensure the decision is not made out of duress.

- **Land to the Landless**

A joint titling system should be introduced to give land to landless women and enhance their status and position in their families and society.

- **Women with Land**

Few women do hold titles to land but they generally do not exercise control over the land. The government should provide training and awareness opportunities and infrastructure support to enable women to control and manage land on their own.

- **Agricultural Labor**

Agricultural work should be brought into the fold of the formal economy and regulated so that workers are protected. Women's contribution would thus be recognized and valued, and the multiple issues of agricultural labor could be addressed more effectively.

- **Targeting Women by Agricultural Services as Farmers**

Women should be provided extension services such as credits, fertilizers, and seeds. One factor is the mechanization of agriculture and the redundancy of manual labor. There is a need to train women and equip them with the latest technologies to ensure their continued contribution in agriculture.

- **Food Security and Women's Traditional Agricultural Knowledge**

Rural to urban migration may imply a complete loss of entire knowledge systems. Since women form a major part of the traditional agricultural system, it is important to ensure and preserve their knowledge about agricultural systems and that this knowledge is transferred to others.

- **Devolution and Local Bodies**

Elected local government officials such as the *Nazims* are the only members of the state machinery women feel they can reach out to as a last resort. Local councilors could handle land disputes or ensure equitable distribution of inheritance and minimize fraudulent methods of land capture.

- **Social Protection Systems and Strengthening State Service Delivery Institutions**

The government should institute social protection for women and reform existing legal institutions for better accessibility, affordability, and improved provision of justice. In the event of a divorce, women





should be provided maintenance for a minimum of five years and equal division of immovable property acquired during the validity of the marriage.

- **Birth and Marriage Registration and Land Revenue Records**

There is an urgent need to revise and maintain birth and marriage registration records to ensure registry protection, and a national comprehensive land record system to register women and maintain a gender disaggregated data because policies are targeted at tenants listed in the revenue record, clearly discriminating against unregistered landless peasants and women.

Contribution of Different Sectors in Addressing Land Issues

GOVERNMENT

Apart from the Pakistan Peoples Party (PPP), no serious efforts were undertaken to address land reform. When Musharraf toppled the government of Mian Nawaz Sharif (Pakistan Muslim League–Nawaz or PML–N), he stated his concern about feudalism. In 2000, he announced plans to carry out massive land reform, followed by a report entitled *Decentralization and the Devolution of Power* that called for rapid land redistribution to empower landless peasants. However, no serious action was taken, as to do so would involve a major confrontation with some of Pakistan’s most astute politicians.⁹

The events of 11 September 2001 further reduced President Musharraf’s chances of tackling feudalism, knowing he could not jeopardize the support of feudal lords while facing Islamic extremists considered as the enemy. In December 2007, following the death of Benazir Bhutto and with the PPP once again in power, the focus became the “fight against terrorism”—an insurgency by Taliban fighters waging war against American and North Atlantic Treaty Organization (NATO) forces in Afghanistan that ultimately shifted to Pakistan.

Agrarian reform has become a distant possibility. Regardless of whoever is in power, decisions are influenced by powerful elements in the civilian bureaucracy, secret service agencies, and other countries. Policy and action plans remain un-implemented, such as land reform proposals in the National Conservation Strategy (NCS) and the National Commission on Agricultural Report (1988). The Federal Land Commission, a statutory body of the Federal Government, was created under the Land Reforms Regulation, 1972 to implement land reform.

POLITICAL PARTIES

The PPP, currently in power, has a socialist and pro-poor outlook, with eight election manifestos from 1970 to 2008. Some manifestos were clear about ending feudalism through the Bhutto government, and a few addressed agricultural modernization. The 1970 manifesto laid down the Programmatic Principles; Article 6 states the party’s stand on eliminating feudalism and protecting the interests of the peasantry.

The PML–N under Sharrif’s leadership commits in its latest manifesto to reclaim and irrigate additional land for allotment to landless *haris* and tenants. It will also undertake a land consolidation programme to create viable units for modern agriculture.

Likewise, the Muttahida Qaumi Movement (MQM), a Sindh-based party, has been moving the Land Reform Bill proposing lower limits on land holdings. It proposes a land ceiling of 36 acres (15 ha) on irrigated land and 54 acres (22 ha) on rainfed areas.

DONOR AGENCIES and INTERNATIONAL INSTITUTIONS

The World Bank has welcomed Pakistan’s anti-poverty strategies, but its 2004 report said: “A more detailed rural development strategy is still needed.” It noted that “distribution of land is highly skewed ... [and is] a major cause of income inequality in rural Pakistan.”

A 2004 ADB report linked poverty “more to social than to economic factors”, saying that cultivated land is highly unequally distributed in Pakistan. “Access to



land... is crucial to reduce poverty in rural areas ...because feudalism has monopolized the rural economy and dominates the political and social life of the rural people. Land reform is a very critical question for any successful poverty reduction strategy.”¹⁰

CIVIL SOCIETY

Civil society in Pakistan has played an important role in keeping the momentum of tenancy reforms despite the unfavorable policy environment.

- **Bhandar Hari Sangat (BHS)**, is a grassroots organization in Sindh, that developed the “declaration on agrarian reforms”¹¹ through a consultative process¹² to assure land distribution among peasants and agriculture workers, reorganize agricultural production practices assuring inexpensive and adequate food for people, enhance land fertility and reduce superfluous expenses on agricultural inputs and environmental pollution by promoting native and traditional knowledge, experiences and information among farmers.
- **South Asia Partnership (SAP), Pakistan (SAP-PK)**, is a volunteer network of participatory development-support organizations operating under the same name and for the same purposes in Canada and four South Asian countries—Bangladesh, Nepal, Pakistan and Sri Lanka.
- **Human Rights Commission of Pakistan (HRCP)** is a broad-spectrum, countrywide human rights body at the forefront against bonded labor. In Sindh, HRCP

has been instrumental in exposing a number of cases in which landlords have peasants in forced captivity for not paying back loans.

- **Sustainable Development Policy Institute (SDPI)**, also called Pakistan’s Agenda 21, has outlined the need for an independent non-profit organization to serve as a source of expertise for policy analysis and development, policy intervention, and policy and program advisory services.
- **ActionAid Pakistan (AAP)** supports many grassroots organizations working for peasants and small farmers all over Pakistan doing work on women’s empowerment, hunger eradication, HIV prevention, and good governance.
- **Pakistan Institute of Labor Education and Research (PILER)** works mainly on bonded labor issues.
- **Sustainable Agriculture Action Group (SAAG)** is a network of civil society organizations and farmer groups promoting sustainable agriculture practices.
- **Roots for Equity** is engaged in research over food security, tenure security, globalization and farmers’ rights.
- **Society for Conservation and Protection of Environment (SCOPE)**, a member of the International Land Coalition (ILC), is primarily engaged in sustainable land management issues in purview of the UN Convention to Combat Desertification (UNCCD). It works with farmers on desertification issues.

THE IMPACT of SOCIAL MOVEMENTS and CSOs in ADVANCING the POOR’S RIGHTS to LAND

Leftist political parties, socialist elements and civil society were behind the first land reforms; their of a peoples’ revolt pushed the military government of General Ayub Khan, to introduce land reforms in 1959. The recent tenants’ campaign at Okara Military Farms, under the umbrella of *Anjuman Mozaraeen Punjab* (AMP), attracted global attention and was supported by many civil society groups, national and international media,



when tenants raised the famous slogan “*Maliki ya Maot* (ownership or death)”. However, landed politicians and feudal lords have been able to delay reforms.

CSO-ESTABLISHED LINKAGES

In the peasants’ struggle to secure ownership rights of Okara Military Farms, the *Anjuman Mozaraeen Punjab* (AMP) has successfully transformed into a tenants’ movement supported by many CSOs, left and socialist political groups and by some international organizations that support the AMP in pressuring government to take action.

ISSUES and GAPS in the ENGAGEMENT of CSOs WORKING on LAND ISSUES

CSOs still lack a collective voice; this could be due to an existing socio-political culture dominated by

hopelessness due to long spells of military dictatorships and weak democracy regimes—marred by corruption, human rights violations, socialist and communist ideologies, religious fundamentalism, and the rural-urban divide. CSOs have yet to learn to work through alliances. They also lack access to information, research capacity and the financial resources needed to address land issues.

Impediments to access, control and ownership of land Political, economic and decision-making power is concentrated in a nexus of military, civil bureaucracy, feudal and corrupt politicians who belong to ruling elite. The majority of elected houses are feudal—and never allowed land reforms to be implemented successfully or democracy to take root. The military is the biggest land-grabbing entity.

CASE STUDY

The Case of Okara Military Farms

Across the country, there are many examples of the military wielding absolute authority to suppress landless peasants in areas where they directly control the land. In the military farms of Okara district, Punjab, tension arose in 2000 when the military unilaterally decided to change the terms of contract of tenants from the traditional *50:50 sharecropping system*, to *cash rent under a yearly lease system*. Peasants were asked to become contractors instead of tenants, meaning that peasants would lose their legal protection and rights against eviction under the Punjab Tenancy Act 1887, and that farm authorities could cancel their contracts on six months’ notice, and then take over the land for themselves. Tensions arose; peasants staged an uprising and later raised their demands for full ownership of the land.

The Okara military farms were established in the early 1900s during British rule. These farms were established to provide dairy and other products for the military. After partition, the Pakistan military as successor took over these farms. In Okara district alone, over 17,000 acres (6,880 ha) are under military farms. Four generations of peasants have worked on these farms over the past hundred years without ownership rights.

Shortly after assuming power in 1999, the Musharraf regime sought to take control over 68,000 acres (27,519 ha) of land under military farms in Punjab. In Okara, violence flared up in 2001 when military authorities tried to test the grounds. They sent district police to collect wood from the local villages. The village women were the first to fight back and attacked the

police with sticks. Other peasants followed. The violence forced the police to fire into the air, wounding a child in the process. The police had to flee the scene.

Since then, the peasants have refused to pay the military farms administration; instead, they have channeled their tenancy payments to the Punjab revenue department. In November 2001, a peasants’ convention was held at Okara military farms attended by over 10,000 people; among them were over a thousand women peasants. This was organized by the *Anjuman Mozaraeen Punjab* (AMP, or Tenants’ Organization, Punjab) of Okara. Slogans at the convention were *maliki ya mout* (ownership or death); “Those who cultivate the land have the right of ownership”; and “We will win”. ■

Opportunities AND Challenges

1. Necessary Conditions and Strategic Interventions are Needed to Advance Land Rights

The country's power structure has not changed, with the feudal class enjoying wealth and power and land reform still out of political discourse. Terrorism, high inflation, food crises and electricity shortages still persist. But Pakistan is finally coming back on the track of democracy after nine years under a military regime. The PPP is the only party that has introduced land reforms twice in the history of Pakistan. Although it is not showing much enthusiasm for agrarian reforms in this term, it could engage other political parties and the ruling party in the Parliament through agriculture committees to revitalize the process.

CSOs have to sustain the campaign with the grassroots groups. The tenants' cry "ownership or death" over the Okara military farms will provide a huge motivation to such campaign. Besides democratic revival, the country is also experiencing unprecedented media awareness and activism on national development issues.

Perhaps the most positive development in 2009 was an emphatic win of the legal community, civil society and political parties when they restored Chief Justice Iftikhar Chaudhry after a historic two-year campaign. This win is significant as civil society emerged victorious against the military dictatorship for the first time.

2. Civil Society Must Pursue Strategic Linkages to Effectively Influence Policy Development and Implementation on Land Issues

Civil society must build on a common platform and strengthen strategic alliances with stakeholders such as tenants; landless agricultural laborers; the academe, media; political parties; and international partners such as the International Land Coalition (ILC) and Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC).

Dialogue is the next preferred step. District, provincial and national level conferences; rallies; seminars; demonstrations; field days; and walks are some effective tools to mobilize public opinion in favor of agrarian reform. Food security can be a central binding theme to forge a rural-urban alliance to develop political will.

The Okara Military farms' tenants' movement has sacrificed much in terms of human life, and it will be a pity if their sacrifices are not turned into a national victory for all tenants and landless agricultural workers.

3. Specific "Spaces" for Civil Society to Pursue Land and Livelihood Rights

The victorious reinstatement of the Chief Justice has opened possibilities for broader civil rights movements. Food security and poverty alleviation have become central development concerns that are convincing policy experts and opinion makers to pay greater attention to social capital and agriculture infrastructure in rural areas. The call for land reform needs to transform into a solid commitment on the part of political parties. The CSOs are dedicated and spirited, but they need to be organized into a strong, common platform to address this issue.

Endnotes

- 1 World Bank 2009; Ali and Rehman; GOP 2006a
- 2 Haider and Kohnen, Land Tenure and Rural Development in Pakistan, 2002.
- 3 Not included here are tribal tenure systems, including the sardari system.
- 4 Anwar, Talat 2002.
- 5 Landlessness and Rural Poverty in Pakistan, Anwer, Qureshi and Ali.
- 6 Daily Dawn, July 14, 2006 "\$24 million agribusiness support fund launched"
- 7 The concept of *Haq-e-Shifa* gives priority rights to tenants to buy the land under their cultivation.



⁸ Dower means “the part of or interest in the real estate of a deceased husband given by law to his widow during her life.”

(www.merriam-webster.com/dictionary/dower)

⁹ Sharif Shuja, 2005.

¹⁰ Mehnaz Ajmal of Pakistan’s independent Sustainable Development Policy Institute (SDPI).

¹¹ Statement of ActionAid Pakistan and BHS, Pakistan: Peoples Declaration on Agrarian Reforms.

¹² Human Development Centre (HDC), a reputable think tank published a speech of Dr. Mehboob UI Haq which provides a comprehensive commentary on the issue.

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Defending the Gains of Tenurial Reform

PHILIPPINES Country Paper
Land Watch Asia



Acknowledgments

This paper is an abridged version of the original Philippine Land Watch Country Paper “Taking Common Action for Access to Land” on the status of access to land and water as well as opportunities and strategies for civil society advocacy. This study (and its processes) is unique since it offers a cross-sectoral analysis on access to land, particularly on conflicting land policies affecting poor farmers, indigenous peoples, fisherfolk and forest dwellers in the Philippines.

The paper provides insights and directions into the advocacy of groups working on access to land issues and presents common advocacies and strategies that all sectors could pursue with positive effect on their respective issues. However, it does not intend to provide a comprehensive account nor an assessment of the specific provisions or content of such land policies and programs in the Philippines.

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Abbreviations and Acronyms

ADB	Asian Development Bank	ICC	indigenous cultural community
AFMA	Agriculture and Fisheries Modernization Act	IEC	information, education and communication
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development	IFAD	International Fund for Agricultural Development
AR	agrarian reform	IFMA	Integrated Forest Management Agreement
ARB/ARBs	agrarian reform beneficiary/ beneficiaries	IP	indigenous peoples
ARC/ARCs	agrarian reform community/communities	IPRA	Indigenous Peoples Rights Act
ARCDP	agrarian reform community development plan	IRR	Implementing Rules and Regulations
AR Now!	The People's Campaign for Agrarian Reform Network	ISF	Integrated Social Forestry
AusAID	Australian Agency for International Development	JBIC	Japan Bank for International Cooperation
BALAOD–Mindanaw	Balay Alternative Legal Advocates for Development in Mindanaw, Inc.	KAISAHAN	Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan
BFAR	Bureau of Fisheries and Aquatic Resources	km	kilometer
CADC	Certificate of Ancestral Domain Claim	LAD	land acquisition and distribution
CADT	Certificate of Ancestral Domain Title	LAMP	Land Administration and Management Project
CARL	Comprehensive Agrarian Reform Law	LARA	Land Administration Reform Act
CARP	Comprehensive Agrarian Reform Program	LGC	Local Government Code
CARPER	Comprehensive Agrarian Reform Program Extension with Reforms	LGU	local government unit
CBCRM	Community-Based Coastal Resource Management	LTI	Land Tenure Improvement
CBFM	Community-Based Forest Management	NAPC	National Anti-Poverty Commission
CBMPA	Community-Based Marine Protected Area	NCIP	National Commission for Indigenous Peoples
CFMA	Community Forest Management Agreement	NCR	National Capital Region
CFP	Community Forestry Program	NFR	NGOs for Fisheries Reform
CLOA	Certificate of Land Ownership Award	NGO	non-government organization
CLUP	Comprehensive Land Use Plan	NIPAS	National Integrated Protected Areas System
CPAR	Congress for a People's Agrarian Reform	NSCB	National Statistical Coordination Board
CSO	civil society organization	ODA	official development assistance
CTF	Communal Tree Farming	OFW	overseas Filipino worker
DA	Department of Agriculture	PAFID	Philippine Association for Intercultural Development
DAO	Department of Agriculture Order	PARC	Presidential Agrarian Reform Council
DAR	Department of Agrarian Reform	PESANTech	Paralegal Education, Skills Advancement and Networking Technology
DENR	Department of Environment and Natural Resources	PBD	Program Beneficiary Development
DILG	Department of Interior and Local Government	PD	Presidential Decree
FLA	Foreshore Lease Agreement	PhilDHRA	Philippine Partnership for the Development of Human Resources in Rural Areas
FMB	Forest Management Bureau	PhP	Philippine pesos
FPE	Foundation for the Philippine Environment	PO	people's organization
FPIC	Free and Prior Informed Consent	PP	Presidential Proclamation
GAA	General Appropriations Act	RTDs	Roundtable Discussions
GDP	Gross Domestic Product	SAC	Social Action Center
GPS	Global Positioning System	SAFDZs	Strategic Agriculture and Fisheries Development Zones
ha	hectare	SALIGAN	Sentro ng Alternatibong Lingap Panligal
HUDCC	Housing and Urban Development Coordinating Council	TLA	Timber License Agreement
		UDHA	Urban Development Housing Act
		USAID	United States Agency for International Development



Quick Facts

An archipelago of 7,107 islands

Composed of 79 provinces and 4 districts in the National Capital Region (NCR) grouped into 16 regions and subdivided into 1,623 municipalities, 41,926 *barangays* and almost 15.3 million households.

Around 50% of 88.7 million Filipinos (2007 Census) live in rural areas.

LAND

Total land area is 30 million hectares; 45% upland/forests, 47% alienable and disposable lands open for titling;

Around 10 million ha of agricultural land with 4.8 million ha of agricultural farms;

Forest cover decreased by 70% or 5.4 million ha from 21 million ha in 1900 (Philippine Environment Monitor, 2004)

WATERS

220 million ha of marine waters with a coastline of 17,640 km;

Philippines ranked 11th among top fish producing countries in the world with production of 2.63 million tons of fish, crustaceans, mollusks and aquatic plants. (FAO, 2003)

Municipal waters consist of the 15–km coastal waters from the shoreline; commercial fishing is not allowed unless approved by local governments

ECONOMY AND EMPLOYMENT

Agriculture contributes an average 20% to the country's Gross Domestic Product (GDP)

37% of jobs come from agriculture and fisheries

PHILIPPINES

Context of Access to Land AND Tenurial Security¹

RURAL POVERTY and LANDLESSNESS

The country's rich resources are the source of subsistence and livelihood for majority of Filipinos. The forest ecosystem directly supports approximately 30% of the population, including indigenous peoples.² Sixty percent of some 80 million Filipinos make their livelihood in some form of forestry or agriculture.³ According to the 2002 Labor Force Survey of the National Statistics Office, the agriculture sector employs one third of the country's total employed persons. On the other hand, fisheries provide employment to 1.37 million Filipinos.⁴

Over 31 million poor Filipinos are found in rural areas.⁵ Within agriculture, farm workers in sugarcane, small farmers in coconut, rice and corn, fishermen, and forester households were found to be among the poorest of the poor, accounting for about 70% of all subsistence households in 2000.⁶

The Philippine agrarian structure is made up of small peasant farms and large plantations. In 1986, before the introduction of the Comprehensive Agrarian Reform Program (CARP), government estimates indicated that around 20% of Filipino families controlled 80% of



lands. In 1988, less than 2% of landholders had farms exceeding 24 ha, but controlled 36% of all farmland.⁷

According to data from the National Commission on Indigenous Peoples (NCIP), there are more than 110 ethnolinguistic groups in the Philippines with an estimated ethnic population of 12 million, comprising almost 16% of the country's total population as of 2002. They are among the poorest and most disadvantaged social groups in the country. Illiteracy, unemployment and incidence of poverty are much higher among them than the rest of the population. Settlements of indigenous peoples (IPs) are remote, without access to basic services, and characterized by a high incidence of morbidity, mortality and malnutrition.⁸

About 80% of the municipal fishing families in the country are estimated to live below the poverty line. These families are entirely dependent on the coastal ecosystem for their livelihoods.⁹

LAND ACCESS for PEACE and DEVELOPMENT

Poverty, inequitable access to land and insurgency have their roots intertwined with the *encomienda* system.¹⁰ Peasant revolts to unjust tenurial relations persisted from the colonial period until today. The Philippine government unsuccessfully tried to address this insurgency through agrarian reform laws, which were insufficient.

The highly inequitable distribution of land has caused social tension and political unrest and inhibited the country's economic growth.¹¹ Meanwhile, the experiences of Japan, Korea and Taiwan confirm that land reform is the foundation for mobilizing agrarian societies towards rural, and ultimately urban, industrialization.¹² Land reform promotes higher agricultural productivity and creates purchasing power in rural areas, thus creating capital and markets for industry. Recent studies in the Philippines show that when agrarian reform is implemented properly and integrated support services are provided, farmers have higher incomes, invest in their farms more intensively, and have a more positive outlook.¹³

LEGAL FRAMEWORK of ACCESS to LAND and TENURIAL SECURITY in the PHILIPPINES¹⁴

Roots of Land Ownership Regulation in the Philippines¹⁵

Private land ownership was first introduced under the Regalian doctrine during the Spanish colonial period. This became the basis for all land laws in the country under the 1935, 1973 and the 1987 constitutions. The Regalian doctrine provides that all lands of the public domain and other natural resources belong to the King of Spain. When the republican system was introduced, the state became the rightful heir to the King.

Traditional systems of communal ownership were broken up and not accorded legal recognition, disenfranchising native Filipinos. American occupation later upheld the Spanish system of cadastral laws and introduced the Torrens Title system under the 1902 Land Registration Act.

Earlier policy efforts to broaden access to *public* land consisted mainly of opening up new areas for application of land patents, reforms in land titling and administration systems, and the introduction of systems for recognizing occupancy rights. In terms of *private* agriculture lands, land reform policy was introduced as early as 1963 through the Agricultural Tenancy Act, which sought to improve tenancy systems in agriculture.

Presidential Decree (PD) 27, promulgated in 1972, provided for the compulsory acquisition and redistribution of all rice and corn lands. The measure allowed for: (i) the compulsory acquisition of private lands; (ii) lowering of land ownership ceiling from 75 ha to 7 ha; and (iii) provision of support services to beneficiaries. Many saw this as a move to quell agrarian unrest in heavily tenanted areas, rather than to institute broader access to land. Large plantations remained untouched and corporate farming for up to 500 ha was even encouraged in rice.

Poor communities were displaced as lands were taken over by government corporations, large-scale development projects and logging and mining concessions. The introduction of Timber License Agreements (TLAs) allowed privileged individuals to extract forest resources.



When negative impacts of forest destruction emerged, the government tried new policies and programs that involved communities in forest management (e.g., Forest Occupancy Management in 1975 and the Family Approach to Reforestation in 1976). However, these programs caused upland communities, including IPs, to be treated as squatters (informal settlers) in their own ancestral lands and became a source of cheap labor for the aforementioned programs.¹⁶ Meanwhile, squatting was made a criminal act by PD 772.

The Integrated Social Forestry (ISF) Program of 1982 recognized the people's role in forest management. A Certificate of Stewardship or a Certificate of Community Forest Stewardship provided tenurial security for the first time for individuals and communities over 25 years. In 1989, the Community Forestry Program (Department of Environment and Natural Resources [DENR] Administrative Order No. 123) through Community Forestry Management Agreements (CFMAs) awarded organized upland communities a period of 25 years, renewable for another 25 years, to utilize and sell products from within the residual forest, as well as establish plantations.

There were also presidential issuances and proclamations declaring certain pieces of land as tourism zones or agricultural lands. Presidential Proclamation (PP) 2282 identified and declared certain areas from all the regions of the Philippines for agriculture and settlement. Most of the areas covered by PP 2282 were forest or ancestral lands. Some NGOs allege that PP2282 is still being used today to justify inclusion of upland areas and ancestral lands in other tenure reform programs or public land concessions.



Constitutional Framework

Philippine lands are either *inalienable* (owned by the State) or *alienable and disposable* (may be privately owned). Various laws govern the nature and utilization of these lands.

The current legal framework for access to land is rooted in the 1987 Constitution. Article II, Declaration of Principles and State Policies, lays down the general principles of access to land: (i) protection of property (Section 5); (ii) promotion of social justice and human rights (Sections 10 and 11); (iii) promotion of rural development and agrarian reform (Section 21); (iv) promotion of the rights of indigenous communities (Section 22); (v) promotion of a self-reliant and independent national economy (Section 19); and (vi) protection of the right of the people to a balanced and healthful ecology (Section 12).

Other provisions in the Constitution further underscore these principles.

- **Protection of property.** Property can be taken away, but only with due process, and in certain cases, with just compensation (Article III, Sections 1 and 9).
- **Promotion of social justice and human rights.** The use of property must be regulated in the interest of social justice (Article XIII, Section 1 and Article XII).
- **Promotion of rural development and agrarian reform.** The State must undertake an agrarian reform program founded on the right of farmers and regular farm workers who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of its fruits. (Article XIII)
- **Promotion of the rights of indigenous communities** establishes the rights of indigenous communities to their ancestral lands. Section 5 of the Article on National Economy and Patrimony requires the State to protect the rights of indigenous cultural communities to their ancestral lands. (Article XIII, Section 6)
- **Promotion of a self-reliant and independent national economy.** The national economy must create a more equitable distribution of opportunities, income, and wealth and refers to agricultural development and agrarian reform as the basis for industrialization and

full employment. The State must also protect Filipino enterprises against unfair foreign competition and trade practices. (Article XII, Section 1)

- **Protection of the right to a balanced and healthful ecology.** Ecological considerations were made as bases for the State's prioritization and setting of retention limits in undertaking agrarian reform. Congress must determine the boundaries of forest lands and national parks. Such forest lands and national parks are to be conserved. Congress shall provide measures to prohibit logging in endangered forests and watershed areas. (Article XIII, Section 4). Requirements for conservation, ecology, and development, shall be considered by Congress in the determination of the size of lands of the public domain which may be acquired, developed, held, or leased (Article XIII, Section 3).

In sum, the 1987 Constitution shows a consistent policy that links land ownership and use to equitable distribution of wealth and to a balanced ecology. Corollary to this main policy are the restrictive policies on the alienation of lands and on the use of alienated and private lands, the policies on the conservation and protection of resources, and the recognition of the rights of farmers, indigenous communities and other marginalized groups. These policies should serve as the yardstick for legislation pertaining to access to land.

Laws on Access to Land

At least five codes and 11 laws—most of these based on the 1987 Philippine Constitution—affect the use and regulation of Philippine land. These laws are still effective and enforced by various government agencies.

1. Republic Act (RA) 6657 or the Comprehensive Agrarian Reform Law (CARL)

- Enacted in 1988 during the Aquino administration (1986–1992);
- Expanded the coverage of the agrarian reform program to all agricultural lands regardless of crop planted;
- Targeted to redistribute around 8.1 million ha of agricultural land and ISF areas to 3.9 million landless tenant farmers and farm workers over a 10-year period (1988–1998);¹⁷

- Provides for different tenurial instruments based on land classification: tenurial security for forestry areas, and tenancy reforms and land redistribution for private and alienable lands. Land redistribution is complemented by the delivery of support services such as extension, credit, infrastructure facilities and assistance in livelihood projects;

Restrictions on Land Ownership and Land Use

Article XII, Section 2 of the Philippine Constitution declares that natural resources, other than agricultural lands, shall not be alienated; that the State shall have full control and supervision of any exploration, development, and utilization of natural resources; that there are citizenship limits for the exploration, development, utilization and ownership of natural resources; that any joint venture or partnership which the State enters into should be with groups that are at least 60% Filipino-owned for not more than 25 years and renewable for another 25 years only.

This restrictive policy applies with equal force to alienable lands, as stated in Section 3, which delineates the manner of alienation, the period of the lease, and the size of the land. Alienable lands of the public domain are limited to agricultural lands. Private corporations or associations may not hold such public lands except by lease, for a period not exceeding 25 years, renewable for not more than 25 years, and not to exceed 1,000 ha in area. Citizens of the Philippines may lease not more than 500 ha, or acquire not more than 12 ha by purchase, homestead, or grant.

The provision also cites conservation, ecology and development, and the requirements of agrarian reform as bases for Congress to regulate the size of lands that may be alienated.

The restrictions applicable to alienable lands likewise apply to private lands since Section 7 of the article provides that no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain and through inheritance. ■

- Imposes a 5-ha retention limit for the landowner and provides 3 ha for each heir who is actually tilling the land;
- Exempts from distribution: ancestral lands inhabited by indigenous cultural communities; lands with a slope above 18°; reserved lands like national parks, forest reserves, fish sanctuaries, and watersheds; lands for national defense and education and experimental farms, churches and mosques, cemeteries, etc.
- Managed by the Department of Agrarian Reform (DAR), while the DENR takes the lead role in providing tenurial security in forestlands, under the ISF program of the CARP;
- Operationalized by DAR through two main program components: Land Tenure Improvement (LTI) and Program Beneficiaries Development (PBD). The main strategy for PBD is the establishment of agrarian reform communities (ARCs), through which assistance and integrated development will be undertaken.
- Beneficiaries of the CARP are categorized into three groups based on their tenurial status: (i) owner/cultivators; (ii) leaseholders who were granted permanent use rights over the land; and (iii) farm workers who render service for value as an employee or laborer in an agricultural enterprise or farm;
- Guarantees equal rights to land ownership and equal shares of the farm's produce between women and men beneficiaries.

2. RA 9700 or CARP Extension with Reforms (CARPER)

- Enacted on 7 August 2009 during the Arroyo administration (2004–2010) to extend the implementation of and reform some CARL provisions;
- Extended the acquisition and distribution of all agricultural lands and infused new funding for CARP implementation;
- Emphasizes that CARP will not end after five years; but the Land Acquisition and Distribution (LAD) balance has to be completed within five years (until 2014). DAR will have to continue



with delivery of support services and agrarian justice (Section 21).

- Some reforms and new features of CARPER:
 - ➔ Repealed Section 53 of RA 3844 or the Agrarian Reform Code, which provided for judicial expropriation as a means of agrarian reform; replaced by administrative means through compulsory acquisition under CARP;
 - ➔ Created a Joint Congressional Oversight Committee on Agrarian Reform, composed of members of the Upper and Lower Houses whose mandate is to closely monitor CARP implementation for the next five years;
 - ➔ Provided a clear policy on food security and the strict regulation of any conversion of agricultural lands for uses other than food production; disallowed conversion of irrigated and irrigable lands into non-agricultural lands with penalty of imprisonment from 6 to 12 years and/or payment of penalty from PhP 200,000 to PhP1,000,000;
 - ➔ Identified rural women as qualified beneficiaries of land and support services, recognized both the productive and reproductive capacities of rural women, and assigned 20% representation of women in the Presidential Agrarian Reform Council (PARC);
 - ➔ Disallowed the voluntary land transfer scheme for land acquisition;
 - ➔ Guaranteed the indefeasibility of the Certificate of Land Ownership Award (CLOA), the Emancipation Patent and other titles issued under any agrarian reform program after one year from its registration

- Allowed identified farmer beneficiaries to start occupying and cultivating prior to the awarding of the CLOA;
- Placed all agrarian-related disputes under DAR's exclusive jurisdiction, except for the Supreme Court.

3. RA 8371 or the Indigenous Peoples Rights Act of 1997 (IPRA)

- Seeks to recognize, promote, and protect the rights of indigenous cultural communities (ICCs) and indigenous peoples (IPs). These include the right to ancestral domain and lands, self-governance, and the right to cultural integrity.
- Recognizes the *prior rights*, including the *pre-conquest* rights of indigenous peoples, thus superseding other land and resource rights;
- Under the principle of self-determination, ICCs/IPs shall formulate their own ancestral domain sustainable development and protection plans based on their indigenous knowledge systems and practices. Contracts, licenses, concessions, leases and permits within ancestral domains shall not be renewed or allowed without the Free and Prior Informed Consent (FPIC) of the IP community i.e., “consensus of all members of the IPs/ICCs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference or coercion” (Chapter 2, Section 3g, IPRA);
- IP land rights are recognized through the issuance of a Certificate of Ancestral Domain Claim (CADC) or a Certificate of Ancestral Domain Title (CADT).



4. RA 8550 or the Fisheries Code of 1998

- Signaled a change in government fisheries policy from a production and exploitation orientation to stewardship and protection;
- Provides for the establishment of fisherfolk settlement areas. However, it does not grant fisherfolk residents security of land tenure;
- Gives jurisdiction to the municipal or city government over municipal waters. The agencies

What is a CADC/CADT?

A Certificate of Ancestral Domain Claim (CADC) is the land tenure instrument issued by DENR that recognizes the claim of indigenous cultural communities to land, resources and rights thereon within a defined territory. A Certificate of Ancestral Domain Title (CADT), on the other hand, is a title formally recognizing the rights of possession and ownership of indigenous cultural communities/indigenous peoples (ICCs/IPs) over their ancestral domains that have been identified and delineated in accordance with the Indigenous Peoples Rights Act (IPRA).

The law provides two modes of securing a CADT: direct application and conversion from CADC to CADT. IPs whose ancestral lands/domains were officially delineated prior to the enactment of IPRA have the right to apply for a CADT over the area without undergoing the mandated process. This, in effect, converts their CADC to CADT. On the other hand, direct application is the process for IP groups whose ancestral lands were not delineated under any legislation prior IPRA.

The identification, delineation, and recognition of ancestral domains should be in accordance with the procedures outlined in the IPRA (Section 52) and its accompanying implementing rules and regulations. However, there is no clear guideline on how long the process should take.

In the case of direct applicants, a study by PhilDHRRA found that the average time from the start of the application process to the approval of the CADT is 3.4 years. In addition, it will take an average of 6.35 months before the issued CADTs are actually awarded to the tribes. ■



involved in carrying out the activities for delineation or delimitation are the Department of Agriculture (DA) through the Bureau of Fisheries and Aquatic Resources (BFAR), the National Mapping and Resource and the Local Government Units (LGUs). Delineating the boundaries of a municipality's 15-km municipal waters is essential for sustainable management of fishery resources, fishery law enforcement, and granting the preferential rights of municipal fishers within the 15-km zone (Section 18).

5. RA 7279 or the Urban Development and Housing Act (UDHA) of 1992

- Aims to address the housing shortage of the country,¹⁸ laying down the groundwork for a comprehensive and continuing urban development and housing program by prioritizing the provision of decent shelter to the poorest of the poor; providing the framework for the development and use of urban lands; encouraging people and community involvements and initiatives in urban development and shelter construction; improving and maximizing local government participation, especially in socialized housing; and tapping private sector resources for socialized housing.

6. RA 7160, or the Local Government Code (LGC) of 1988

- Empowers local government units and promotes people's participation in all stages of local development work—planning, implementation, monitoring and evaluation;
- Gives local government units (LGUs) the power to approve land conversion. Section 20 of the LGC states that through an ordinance passed by the

Sanggunian (local council), a city or municipality may reclassify agricultural lands when the land ceases to be economically feasible; and where the conversion shall result in appreciation of land values.

7. RA 8435 or the Agriculture and Fisheries Modernization Act (AFMA)

- Aims to accelerate the pace of development of agriculture and fisheries for the purposes of poverty alleviation and social security, food security, rational use of resources, global competitiveness, sustainable development, people empowerment, and protection from unfair competition.

8. National Integrated Protected Areas System (NIPAS) Act of 1992

- Provides for the use and enjoyment of protected areas consistent with the principles of biological diversity and sustainable development. It also supports the establishment and management of protected areas as a key strategy for conservation of the country's biodiversity;
- Introduced the concept of local participation in protected area management at a time when the common practice of most governments in the Asian region was a strict protection zone (conservationist) policy. The NIPAS act enabled local communities to take part in deciding on how best to manage the forests that are the source of their livelihood.¹⁹

9. PD 705 or the Forestry Code of 1975

- Affirms the Regalian doctrine of state ownership of public domain, including waters, minerals, coal, petroleum and other minerals, all potential sources of energy, fisheries, wildlife and other natural resources. These can be explored, developed or utilized only through license, concession or lease;
- Article 14 further states that no land of the public domain with a slope of 18° or over shall be classified as alienable and disposable. Only agricultural lands, industrial or commercial, residential and resettlement land of the public domain may be alienated.

Issues Affecting Access to Land AND Tenurial Security

MIXED ROLES and POLICY REVERSALS among IMPLEMENTING AGENCIES

Many laws on access to land require joint implementation or coordination among government agencies either because of complexities in implementation or because different agencies' expertise is required.

Mixed responsibilities among agencies have resulted in backlogs and contradicting implementation, especially where the accountability of the implementing agency is unclear or where the implementing agency does not have enough funds to perform its task. For instance, DAR cannot distribute agricultural lands without the DENR completing its survey. LGUs face the same problem in the delineation of foreshore lands for fisherfolk settlement, which is the responsibility of DA and DENR. In other instances, the implementing agency does not have the capacity to perform the task assigned to it and has to rely on another agency.

Land Reclassification: which Agency has the Final Say?

Some agencies have been granted blanket authority by law to reclassify lands. Under PD 705, only DENR has the power to classify public lands as agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, etc. Where public land is not classified, it is automatically considered as forest land. However, the President also has the power to declare land as forest or mineral reservation. Similarly, under NIPAS, the President may designate an area as protected until Congress passes a law declaring it as such.²⁰

Where private lands are concerned, the Comprehensive Land Use Plan (CLUP) of the LGU and zoning ordinances hold sway. The LGU also has the duty to designate zones for fishpens, fishcages and other structures within their jurisdiction. However, the President can at any time reclassify land when public interest requires it.

NCIP is supposed to govern all affairs concerning IP groups. However, the determination of the coverage of IP groups' ancestral domains is contingent on a survey conducted by DENR.

Competing Authority on Land Conversion

AFMA allows the conversion of agricultural lands on a case-to-case basis, but does not specify the reasons for land conversion.

CARL also allows the conversion of agricultural land to other uses, i.e., when the land ceases to be economically valuable for agricultural purposes, or when the area has become urbanized, thus making the land more economically valuable when put to other uses. This provision only covers awarded land under CARL.

The CARPer law, however, now automatically exempts all irrigated and irrigable lands from being converted to non-agricultural use after a prolonged campaign by civil society groups.

In many cases, the LGU invokes its power to reclassify land on the mistaken notion that it has full authority to do so under the LGC of 1988. Actually, the LGU's power to reclassify land has limitations under this law. Only portions of agricultural lands may be reclassified upon approval of the Department of Agriculture. Lands awarded to farmer beneficiaries may not be reclassified. In practice, however, this protection is often flouted by LGUs.

The Fisheries Code and Forestry Code provide for the automatic reversion of land to its former classification, conditioned upon the use or non-use of the subject land.

The NIPAS act requires a law from Congress to convert a certain protected area to a non-protected area or to adjust the boundaries of a protected area. This process makes changes to protected areas harder. On the other hand, the Forestry Code gives blanket authority to DENR to classify the lands of the public domain.

IPRA requires the IP community's FPIC before the conversion of ancestral land by an external entity.



However, it does not clearly define “free, prior and informed consent.”

Overlapping Policies, Conflicting Definitions, Cross-Cutting Purposes

CARL covers private and public lands devoted to or suitable for agriculture. However, the definition of agriculture is broad enough to include forest lands, resettlement sites, and all other government-owned lands suitable for agriculture.

CARL identifies priority categories of agricultural land to be covered; among them are idle and abandoned agricultural lands; lands foreclosed by government financing institutions; all arable public agricultural lands under agro-forestry, pasture and agricultural leases; lands already cultivated and planted to crops; and all public agricultural lands which are to be opened for new development and resettlement. CARL is not limited to the acquisition and distribution of agricultural lands; it also has provisions for establishing agrarian settlements and for undertaking lease agreements for the use of agricultural lands. CARL, which preceded the enactment of IPRA, recognizes and protects the right of IPs and forest settlers to exploit the resources within their territory.

A protected area, as delineated by the NIPAS, can cut across all types of land as long as it fits the criteria, i.e. has a high degree of biodiversity or is ecologically fragile.

“Forest” under PD 705 has no clear definition, except for a provision that classifies land as forest when it



has a slope of 18° and above. PD 705 also mandates that land could revert to forest land in two instances: first, when mangrove areas and other swamps that had been turned over to BFAR for fishpond purposes remain unutilized, or have been abandoned for five years from the date of such release; and second, when land with a slope of 18° and above is declared alienable and disposable unless covered by titles or approved application.

The reversion of land to its former classification by operation of law creates confusion over the nature of the land and the jurisdiction of the regulating agency. CARL exempts from coverage lands with 18° slopes and higher. However, CARL also provides that where such land is already developed, then it could be put under agrarian reform.

The Fisheries Code mandates DA to establish and create a fisherfolk settlement within lands in the public domain that are near the seashore. The same law imposes a prohibition on the alienation or disposability of some public lands, like marshes, mangroves and ponds suitable for fishery operations. However, the law grants fishpond leases to fisherfolk organizations, which DA may revoke where environmental considerations demand it.

Under IPRA, the extent of ancestral domains²¹ is self-delineated by the IP community. Ancestral domains cover not just land but also water and other resources. They are considered as private land owned by the IP community and all the generations thereof, and hence, cannot be sold, disposed of, or destroyed. At the same time, the government can lay claim to lands covered by the ancestral domains of an IP group, especially those with a slope of 18° and above, and classify them as alienable and disposable.

The LGU has the power to impose taxes over lands within its jurisdiction. Under the LGC, the classification of real property for valuation and assessment purposes is made on the basis of the land’s actual use, regardless of its classification.²² LGUs have been known to reclassify agricultural land covered by CARP in order to

convert them to non-agricultural uses, which bring in more revenue.

Conflicts in policies and interpretations, and overlaps in scope create confusion, to the detriment of the basic sectors. Government has tried to harmonize the laws through dialogues and joint agency mechanisms. Though helpful in coordinating the direction of agencies in conflict, these mechanisms have not resolved the differences among the basic sectors involved. For instance, IP claims over their ancestral lands are being contested by agrarian reform beneficiaries, i.e., lowland farmers, (with the support of DAR), resulting in conflicts between these two groups. LGUs represent another group of competitors to IP land claims.

The Philippine Constitution is silent on how to prioritize such competing interests.

FACTORS HINDERING AGRARIAN REFORM IMPLEMENTATION

Incomplete Land Acquisition and Distribution, Questionable Data

Agrarian reform advocates agree that CARP implementation over the last 20 years has fallen short of expectations. LAD is still a long way from being completed, with much of the LAD shortfall occurring in private agricultural lands where land owner resistance is strong. As of 2010, most of the remaining 1 million ha for distribution under CARP are privately owned agricultural lands. The

accomplishment rate for these lands was a low 19% as of June 2010.²³

Moreover, the reported “accomplishments” under CARP include lands that are covered by CLOAs but which have not yet been turned over to their intended beneficiaries. Collective CLOAs, i.e., issued to cooperatives and farmers’ organizations, are treated differently from the proof of ownership which the individual members of such organizations receive in the process, thus resulting in double counting and inflating DAR’s accomplishments.

Insufficient Support Services and Access to Credit

There is a backlog in the delivery of support services for the majority of agrarian reform beneficiaries (ARBs) who have already been awarded lands. A recent NGO survey of 1,851 ARBs in 32 provinces reported that more than half of respondents do not have access to post-harvest facilities (e.g., thresher, drier, hauler, warehouse) and 44 % of the respondents had access to credit. Weak targeting of beneficiaries may be the cause for the gap between the accomplishment report and the actual support services delivered.²⁴

Exemptions from CARP Coverage

The government’s original target of 10.3 million ha in 1988 was severely reduced in 1996 to 8.1 million ha due to exemptions and massive land conversion. More than 5.3 million ha of land were exempted outright from CARP in 1996. The reduction in public land

Table 1. Summary of CARP (Comprehensive Agrarian Reform Program) Accomplishment, 2010

Agency	Total scope* (million ha.)	Land distributed (million ha.)	Balance (million ha.)	Agrarian Reform Beneficiaries (ARBs)
DAR (Department of Agrarian Reform)	5.163	4.203,025	0.96 (approx)	2.494,569
DENR (Department of Environment and Natural Resources)	3.960	3.194,293	0.76 (approx)	2.247,213
Total	9.123	7.397		

Source: DAR Accomplishment Report December 2010.



covered by CARP was due to the lease of vast tracts of government-land to cattle ranchers, operators of export crop plantations, and logging concessionaires.²⁵

Insufficient Political Will

The government's lack of political will to implement CARP is evident in its deliberate understatement of its targets, its inability to hold DAR accountable; and inadequate support (financial, technical, institutional) for CARP.

DAR's Poor Performance

DAR's poor performance is manifested in: (i) the predominance of voluntary offer to sell and voluntary land transfer as the primary mode of land acquisition, as opposed to the much more difficult compulsory acquisition; (ii) the department's orientation on quantity, which measures success in terms of number of hectares awarded; (iii) the absence of an effective monitoring system to determine if the intended ARBs have actually

CASE STUDY

Sumilao Farmers: Victims of Government's Lack of Political Will and Landlord Defiance of CARP

In 1995, the Sumilao farmers were awarded ownership of the Quisumbing Estate, a 144-ha prime agricultural land in San Vicente, Sumilao, Bukidnon under the government's Comprehensive Agrarian Reform Program (CARP). Before the farmers could get hold of the land, however, the land owner sought to convert the land to an agro-industrial estate, claiming that the conversion would benefit the community. The Agrarian Reform secretary at the time disapproved the application for conversion, but then Executive Secretary of the Office of the President approved it.

In protest, the Sumilao farmers went on a hunger strike in 1997 which lasted 28 days. Then President Fidel Ramos acceded to the farmers' demands, ordering that 100 ha be awarded to the farmers while allowing the landowner to keep the remaining 44 ha. The farmers celebrated this "win-win" solution, but their jubilation was short-lived. Shortly after, the Supreme Court overturned the President's order based on a technicality, namely, that the Sumilao farmers were merely "recommendee farmer beneficiaries".

The estate reverted to its land owner, who was ordered to proceed with developing the agro-industrial estate. However, none of the projects the landowner promised was implemented. Furthermore, in 2002, the estate was sold to San Miguel Foods, Inc. (SMFI), a food manufacturer, which plans to use the land as a piggery farm. This violates the terms of the conversion order.

The Sumilao farmers thus lodged a protest with the Department of Agrarian Reform (DAR) but were told that the matter was under the jurisdiction of the Office of the President. Hence, on 9 October 2007, the Sumilao farmers marched from Bukidnon, in Mindanao, to Manila to seek a resolution of the case from President Gloria Arroyo.

The farmers' march drew the attention of many sectors, especially the Roman Catholic Church. No less than former Manila Archbishop Gaudencio Rosales blessed and expressed support for the poor landless tillers. This further fuelled the campaign to pressure President Arroyo to act on the case and the SMFI to give up its

claim to the land. Prominent media exposure; the strong support of the Church and of various NGOs and POs; countless briefings at schools, churches and, with influential individuals, and the farmers' commitment to their cause were critical factors that led to the campaign's success.

In March 2008, five months after the farmers set out for Manila, SMFI yielded and struck a compromise deal with the farmers. The food conglomerate returned 50 out of the original 144 ha to the Sumilao farmers and agreed to purchase the remaining 94 ha from surrounding areas.

On 30 March 2008, the Sumilao farmers, with their supporters from the Church and civil society advocates, finally tore down the perimeter fence and set foot once again on the land of their forefathers.

However, the farmers still have to secure their victory. As of 2011, DAR already identified the location of the 94-ha balance, and is now being subjected to the process of CARP coverage. ■



been installed in the lands awarded them; and (iv) high incidence of abandonment, sale, or mortgaging of CARP-awarded lands by ARBs because of the lack of credit for production or the need to raise money for medical expenses.

Market-oriented Tenurial Schemes

DAR's poor performance in the distribution of private agricultural lands is compounded by the promotion of various arrangements to circumvent actual land transfer to farmers. One such scheme is the “leaseback” arrangement whereby ARBs turn over control of the awarded land (via a lease contract) to agribusiness corporations or to the former landowners as a precondition for the release of the ARB's CLOAs. Another dubious arrangement is the “corporative” scheme, wherein ARBs are given shares of stock in the agricultural corporation of the landowner in lieu of having the land transferred to them. Conversion of agricultural land to commercial, residential and industrial uses is also prevalent, further reducing the scope of land reform.

Lack of Donor Support for Land Acquisition

The policy of donor agencies to fund support services delivery (rather than the more controversial land acquisition) has also contributed to poor CARP implementation. Also, donor funding for NGO activities related to agrarian reform has been reduced and shifted toward government projects.

Land Grabbing

Farmland grabbing, or the act by local and foreign entities of leasing or acquiring farmlands for food security investment, is a present threat. The Philippines

has been identified as a “lease hotspot”, a target of foreign countries seeking agricultural land (12 cases surfaced from a news search). Local entities as well have been involved in the practice of leasing (and eventually owning) lands from agrarian reform beneficiaries²⁶.

Landlord Resistance and Harassment of Farmers

Landlord resistance is one of the major bottlenecks in CARP implementation. This takes various forms, including not presenting the necessary documents; circumventing CARP by exploiting legal loopholes; using connections to high-ranking government officials; and harassment of ARBs.

The Philippine Asset Reform Report Card (PARRC) cites 283 documented cases of harassment due to land conflicts.²⁷ Of these cases, 41% had been committed by other farmers because of boundary disputes, conflicts of ownership, and overlapping land titles due to inaccurate subdivisions. About 35% were in conflict with former land owners who resisted surrendering their lands. A number of farmers were reportedly harassed by government officials, rebel groups or insurgents, and military.²⁸

OBSTACLES to ACCESS to ANCESTRAL DOMAINS

Snail-paced Ancestral Domain Titling

Thirteen years after the passage of IPRA, only 55% of the targeted area (7.7 million ha) have been awarded to indigenous communities and limited development activities in support of the ancestral domain management plans have been undertaken in IP areas. As of 2010, 156 out of 286 CADT applications had been approved.

Mining Operations on IP lands

Since 1992 the Philippine government has aggressively promoted the revitalization of the mining industry, for which it has opened up 30% of the country's land area to exploitation.²⁹ As of September 2010, the Mines and Geosciences Bureau (MGB) reported that there are 90 existing mining tenements in the country. These include 90 exploration permits, 331 mineral production sharing agreements, 48 mineral processing permits, and 6 financial and technical assistance agreements.



Weak Implementing Agency

NCIP, the agency mandated to implement IPRA, is ill-equipped, underfunded, staffed with people who are poorly trained and lack the necessary field experience and cultural sensitivity to handle land conflicts and resource access issues. A number of NCIP personnel have been accused of helping mining companies gain entry into IP lands by getting around the FPIC requirement.

Lack of Effective Integration between NCIP and DAR

In 2008, NCIP, which used to be under DAR, became an agency under DENR. This transfer gives cause for concern. DAR may not, as a result, be expected to prioritize or at least give due attention to IP concerns, given that IP communities are fewer than farmers. There has been speculation that by putting NCIP under DENR’s supervision, the government can facilitate the approval of applications for mining operations, especially those within ancestral domains.

Limited CSO Support after CADC/CADT Award

Civil society support for CADC/CADT claims has often been limited to the pre-claim period. Few NGOs are committed to and capable of providing the needed support during the post-claim period, which requires governance, as well as livelihood, technical, and financial assistance to IP claimants. As a result, many forest dwellers have found life to be more difficult during the post-claim period. The remoteness of many CADC/CADT areas likewise hampers the delivery of basic social services.

Crisis in IP Leadership and Threats to IP Culture and Traditions

Within IP communities, there is a rift between traditional (male) elders and younger leaders, who have been educated in lowland schools. This friction, coupled with the ongoing process of integration into the mainstream cash economy, makes IP communities more vulnerable to pressure from external forces (e.g., corporate interests and migrants) and can bring about community disintegration. Affiliation with various religious or political groups is also dividing IP communities and families, and threatens to destroy their culture. Many IP spiritual leaders have become Christian pastors. In other cases, persons who are not true tribal leaders have been appointed as chieftains.

ISSUES AFFECTING ACCESS to FORESTRY RESOURCES

Lack of Tenurial Security among Upland Communities

Of the over 20 million people residing in upland areas, only those who hold a CADT, or who have entered into a forest stewardship agreement with the government under a community-based forest management (CBFM) program, enjoy security of tenure. Moreover, majority of the 2.7 million people who are supposed to be tenured by virtue of these instruments are still seen as squatters. Meanwhile, large upland areas are covered by timber licenses, or else have been given over to mining operations.

Prevalence of the Regalian Doctrine

In 1995, CBFM was adopted by the government as the national strategy to achieve sustainable forestry and

Table 2. Summary of CADTs/CALTs Issued, Area Coverage, and Number of Beneficiaries, 2010

Instrument	Number issued	Tenured area (ha)	Beneficiaries
CADT (Certificate of Ancestral Domain Claim)	156	4,259,331.54	912,395
CALT (Certificate of Ancestral Domain Title)	156	17,307.70	8,609

Source: National Commission on Indigenous Peoples List of CADT/CALT as of September 30, 2010.

social justice. This marked a shift from centralized management of resources to a participatory and people-oriented approach. However, this policy shift has not resulted in greater tenurial security among forest dwellers. The Regalian doctrine still persists and allows the government to revoke any land use permits and tenure instruments it has extended to communities and individuals. Because it does not guarantee tenurial security, CBFM cannot ensure the judicious use of forest resources.

Confused DENR Mandate

DENR is the primary controller of public lands and resources, including forest lands. The dual mandate of DENR—to protect and conserve the environment and to promote the utilization of natural resources—creates confusion and conflict in the policies and operations of the agency. This “schizophrenia” came about when the Department of Environment and the Department of Natural Resources were merged to form the current DENR. At the same time, the DENR bureaucracy has failed to demonstrate its capacity to

shift toward a more participatory approach that underpins the CBFM strategy.

Development Strategy Based on Resource Extraction and “Public-Private Partnerships”

The previous Arroyo administration has anchored the country’s economic development on resource extraction, particularly of timber and minerals. The present Aquino administration seems likely to pursue this development track with its heavy emphasis on establishing more “public-private partnerships”, where foreign investors and the private sector play a crucial role. Land leases are even encouraged for agribusiness investors as promoted by the Philippine Agricultural Development and Commercial Corporation (PADCC) under the DA. This is a marked departure from the social reform and asset reform agenda of previous administrations and has led to increased pressure on the remaining natural resources of the country. The current government faces a dilemma of how to strike a sound balance between economic development and sustainable resource use and management, while protecting the rights of the

Table 3. Forest Land-use Instruments

Instrument	Number issued	Tenured area (ha)
CBFM (Community-Based Forestry Management)	1,781	1,622,129
TLA (Timber License Agreement)	14	684,524
IFMA (Integrated Forest Management Agreement)	169	674,000
ITPLA (Industrial Tree Plantation Agreement)	9	39,749
Tree Farms	142	17,469
Agro-forestry Areas	80	89,725
SIFMA (Socialized Industrial Forest Management Agreement)	1,837	40,265
PFDA (Private Forest Development Agreement)	91	4,992
FLGMA (Forest Land Grazing Management Agreement)	395	109,415
Total	4,518	3,282,268

Source: Philippine Forestry Statistics, Forest Management Bureau. 2005

poor and marginalized to have access to and control over these resources.

Lowland to Upland Migration

Pressure on limited forest resources is further exacerbated by the continuous migration of lowlanders to the uplands. The upland population, estimated at 25 million people, or 29% of the country's total population, is growing by 10% per year due to migration.³⁰ New upland settlers find few livelihood opportunities apart from those that depend on forest resources. IPs also frequently come into conflict with farmers due to claims over the same piece of land.

Status of Fisheries Code Implementation

As of January 2011, 920 coastal municipalities and cities had been identified and mapped with technical descriptions which were provided to LGUs for review and proper action. Only a third of the LGUs eventually certified the technical descriptions or maps while 69% of the LGUs requested for revisions. Only 6% or 55 LGUs have issued local ordinances delineating their municipal waters.

The Fisheries Code likewise provides for the issuance of fishpond lease agreements (FLAs) for public lands that may be declared available for development to commercial scale. Preference will be given to qualified fisherfolk cooperatives as well as small and medium enterprises. It is also mandated that reforestation activities be undertaken for riverbanks, bays, streams, and seashore fronting the dike of the fishpond. About 4,522 FLAs were issued from 1973 until 2010 covering almost 60,000 hectares, based on data from the BFAR. However, only one FLA was issued to a fisherfolk organization. Unproductive fishpond developments were required by law to have their FLA cancelled. As of 2010, 11% of total FLA scope (6,389 ha) had been cancelled; however, only 36% of the cancelled FLAs (1,443 ha) was reverted back to DENR for reforestation.

Despite reports by the BFAR that municipal fisheries production contributes 26% to total production in 2009, the numbers do not ascertain whether this has actually raised the incomes of small fisherfolk. ■

ISSUES AFFECTING ACCESS to FISHERIES RESOURCES

No Land Allocated by Government for Small Fishers

The experience of municipal fishers in Luzon, Visayas and Mindanao shows that government agencies, both local and national, do not prioritize access to land and tenurial security of small or municipal fishers.

Lack of Funds and Capacity to Implement the Fisheries Code

Fourteen years after its passage, the Fisheries Code has not been fully implemented because it is unfunded, among other reasons. There are also no implementing rules and regulations (IRRs) in regard for its key social reform provisions, such as the establishment of fisherfolk settlements and delineation of municipal waters. Moreover, DA and LGUs lack the capacity to implement it.

Tenurial Instruments Beyond the Reach of Small Fishers

Fishpond and Foreshore Lease Agreements (FLAs) provide tenurial security to qualified applicants and allow them to develop, utilize, and manage foreshore lands, fishponds, and other water bodies. Unfortunately, FLAs are too expensive for most small fisherfolk.

Resort owners and real estate developers are the usual beneficiaries of FLAs. The application of these groups for FLAs is prioritized by the local government because they can be counted on to finance economic activities, and thereby bring tax revenues to LGUs. Small fisherfolk, on the other hand, are regarded as a burden by LGUs because they require assistance in managing the resources entrusted to them.

Threats to Coastal Settlements

The tenurial security of small fishers is threatened by the following: (i) private land claims over public areas where fishers have settled and lived in; (ii) private land claims over foreshore land and salvage/easement zones; (iii) sale by small fishers of their lands or their occupancy rights to private investors and resort/real estate developers; (iv) the promotion of aquaculture for fisheries development; (v) establishment of resorts and other tourism facilities;



(vi) port development and other public coastal infrastructure development; and (vii) setting up of factories, industrial estates, export processing zones and other industrial facilities.

Land Titling Complications

Small fishers' tenurial security is also threatened by problems in land titling which usually arise from: (i) complicated laws on land titling; (ii) unclear jurisdiction of various agencies and institutions; and, (iii) differing systems, processes of land measurement, mapping, valuation and titling of various agencies and institutions.

ISSUES RELATED to LAND USE PLANNING

Other threats to small fishers' tenurial security are related to land use planning, including: (i) conflicts over differing land uses among stakeholders; (ii) environmental degradation due to lack of enforcement of environmental laws and standards; (iii) lack of appropriate knowledge and skills in coastal area management, especially among local governments; (iv) lack of genuine participation of municipal fishers and other sectors in the process of land use planning; (v) lack of resources (especially funds) to enforce and monitor CLUP implementation; (vi) unclear jurisdiction over municipal waters, foreshore areas, and coastal zones; and (vii) the need to integrate land use planning with the preparation of the Annual Investment Plan.

Displacement and Relocation Issues

Small fishers who are displaced or relocated to other areas are faced with the following concerns: (i) relocation sites that are far from the sea, their livelihood source; (ii) limited consultation with the affected families in

planning the relocation/resettlement process; (iii) problems in the process of selecting beneficiaries; (iv) limited compensation for destroyed properties and limited/no assistance in rebuilding their houses; (v) inadequate social services, transportation/communication facilities and public utilities in the relocation sites; and (vi) inadequate health, education and social services, as well as livelihood and employment opportunities.

“Fishing” Grab

Poaching or fishing by any foreign entities in Philippine waters also threatens the security of tenure of fisherfolk. Section 87 of the Fisheries Code prohibits such fishing operations but these have persisted. As of 2010, 30 shipping vessels were apprehended (BFAR data); unfortunately, only 18 of them (60%) were filed with administrative/criminal cases.³¹

Weak, Fragmented Fisherfolk Groups

Only 10% of Philippine fisherfolk are organized. Fisherfolk organizations are generally weak and fragmented because they are vulnerable to the machinations of local politicians. In some cases, political differences among NGO support groups contribute to the division among fisherfolk groups. Civil society and government support for the fisherfolk sector is generally less than for other sectors.

Actors in Access to Land AND Tenurial Security

GOVERNMENT

Government faces formidable challenges in the enforcement of access to land laws and implementation of related programs. Foremost among these challenges is the lack of political will to implement the laws, manifested in inadequate budgets and inefficient or inept bureaucracies.

Market forces have also influenced government implementation of access to land laws and programs. This is illustrated by government's enthusiastic promotion of commercial mining, despite the latter's negative impact on other sectors, particularly IPs.

Another challenge comes from existing laws that go against social justice principles yet remain unrepealed and, therefore, continue to be in force. One such law is PP 2282, which gives the President blanket authority to convert forest lands and ancestral domain areas into agricultural and resettlement lands.

DONOR AGENCIES and INTERNATIONAL INSTITUTIONS

Three major Philippine donors—Japan, Asian Development Bank (ADB) and the World Bank—have provided significant funding to access to land programs. However, donor funding has been uneven across the four sectors, with agrarian reform receiving the largest share and fisherfolk, the least. There are also gaps in donor support. For example, few donors provide financing for land acquisition.

Donor support is also provided indirectly through civil society groups sub-contracted for projects funded by official development assistance (ODA).

Agrarian Reform

The total ODA contribution for CARP stands at PhP35.3 billion, or 32% of the PhP110.2 billion (as of 2004) released by the Philippine government for CARP. ODA funds that have gone to CARP have been spent largely on the delivery of support services (mostly infrastructure); only a little part of this ODA money has been earmarked for land acquisition.

Forestry

One recent major donor initiative in the forestry sector is the Philippine Tropical Forest Conservation Foundation, which was established through a United States Agency for International Development (USAID)—sponsored debt swap. The foundation is managed by a board of trustees whose members include representatives from government, NGOs and USAID. The foundation provides support to NGOs and people's organizations (POs)—in partnership with LGUs—engaged in reforestation activities.

Many donors have likewise provided support for reforestation activities, among them, the World Bank, the European Union (EU), ADB, International Fund for



Agricultural Development (IFAD), and the Japan Bank for International Cooperation (JBIC) .

Indigenous Peoples

Due to capacity gaps within NCIP, donors have stepped back from earlier commitments to support the agency's operational projects, and instead, have chosen to focus on capacity building for the agency, that is: website development, education, and resource management planning. Most of donors' funding for field projects has been coursed through DAR.

There has been renewed interest in IP issues due to the passage of the UN Declaration on the Rights of Indigenous Peoples in September 2007. This opens up opportunities to lobby the Philippine government for more effective implementation of IPRA.

Fisheries

Donor support for fisherfolk settlement has been minimal. In 2003, DENR, AusAID and the World Bank started implementing a pilot project to introduce reforms in land administration and public land management in six municipalities of Leyte. As of July 2007, the project registered 2,019 patents and of these, 1,531 have already been distributed. Three of the municipalities covered by the project—Palo, Tanauan and Barugo—are coastal municipalities.

A key contributor to the fisheries sector, particularly on the promotion of land access by small fisherfolk, is Oxfam (Great Britain and Hong Kong), which has supported the advocacy work and other activities of the NGOs for Fisheries Reform (NFR). Oxfam was also a major sponsor

of the National Conference on Fisherfolk Settlement in November 2006.

PRIVATE SECTOR

In general, private commercial interests have been a major obstacle in the struggle of the basic sectors to gain access to land or tenurial security.

Agrarian Reform

Landlord resistance is one of the major bottlenecks in the implementation of agrarian reform. This takes various forms, including: (i) not presenting the necessary documents; (ii) circumventing CARP by exploiting legal loopholes; (iii) using connections to high-ranking government officials; and (iv) harassment of ARBs, leading in most cases to violence. Since 1998, as many as 18,872 farmers and rural organizers have fallen victim to human rights violations.³²

Forestry

Logging concessionaires take advantage of their Integrated Forest Management Agreements (IFMAs) to clear-cut forests. Only 10% of the area covered by Timber License Agreements (TLAs) is being reforested, and mostly with fast-growing species that will also be cut down. Other replanting efforts involving the private sector consist of tree-planting activities by company employees along national highways rather than in denuded forest areas.

Mining interests have targeted some 80,000 ha for mining exploration, most of these in forest areas. A Philippines–China agreement earmarked some 2 million ha for agribusiness plantations, which were likely to cut across the country's few remaining forest areas.



However, the Philippine government has suspended the agreements on agriculture, given the scandals—mostly concerning corruption—in relation to loan agreements with China.

Indigenous Peoples

As a result of the National Minerals Policy, private investments—in mining, IFMAs, pasture lease agreements, oil palm plantations and orchards, and similar large-scale commercial enterprises—are being implemented in the ancestral lands of indigenous communities.

Fisheries

The establishment of industrial estates, power plants, ports, beach resorts, recreation facilities, etc. on foreshore lands and coastal areas has displaced communities of small fisherfolk. A number of small fisherfolk are enticed to sell their occupancy rights, or are forcibly removed. They usually offer no resistance because the lands they occupy are state-owned.

CIVIL SOCIETY and SOCIAL MOVEMENTS

Civil society and social movements continue to be involved in the struggle of the basic sectors to gain access to land and tenurial security. Civil society engagement is uneven, with agrarian reform receiving the largest share of support, in comparison with other rural issues. The recent trend towards downsizing of NGO activity in the Philippines has affected civil society support for land access and tenure security.

Agrarian Reform

Civil society has traditionally been involved in the advocacy for agrarian reform, starting from the peasant rebellions in the pre-independence period, continuing throughout the 1950s and 1960s in protest of tenancy, and persisting to this day, to hold government administrations to their commitment to land redistribution.

Civil society action reached a high point in the late 1980s, with the formation of the Congress for a People's Agrarian Reform (CPAR), a broad federation of peasant groups whose lobbying efforts were instrumental in the passage of CARL.



Tracing a general downward trend in the activities of NGOs in the Philippines, civil society support of agrarian reform is also declining. Among other reasons, this probably came about when NGOs began to specialize in their chosen fields, and thereby reduced their involvement in broader political and economic issues.

Forestry

A number of civil society groups are engaged in the forestry sector. However, most of their efforts are uncoordinated and, as a result, fail to achieve their intended impact. An underlying reason for this is their failure to focus on inclusive themes that could serve as a rallying point for collaboration. For example, the more inclusive theme of “sustainable land use” (as opposed to “forest protection”) would elicit support from a broader range of stakeholders, including the academe and the private sector (which has a stake in ensuring the continued supply of marketable forest products).

The lack of coordination among NGOs involved in the forestry sector is also due to the absence of a credible personality who can mobilize the various groups. Perhaps this is a role that the bigger conservation groups, such as the Foundation for the Philippine Environment (FPE) and Haribon, could consider taking. At the local level, the experience of Social Action Center–Quezon (and SACs in other areas) demonstrates the potential of the church to catalyze broad support to address forestry issues.

Indigenous Peoples

A promising initiative is the Forging Partnerships conference that brought NGOs and other resource providers in dialogue with IP leaders and communities.

The conference has enabled IP groups to define development assistance within their own context, formulated protocols for NGO support to IP communities, and established mechanisms to share information (through IP coalitions) and provide assistance (by matching IP needs with NGO capabilities). A permanent steering committee facilitates the sharing of resources.

This development represents a positive shift in NGO attitudes away from paternalism (which had fostered IP dependency in the past), a softening of formerly inflexible ideological positions, and a willingness to engage with other stakeholders.

The government’s mining policy has forged a strong link between environmental concerns and IP rights. Alyansa Tigil Mina—a multi-sectoral civil society alliance—has been established for sustained advocacy against mining abuses.

Civil society support for CADC claims has often been limited to the pre-claim period. Few NGOs are committed to and capable of providing the needed support during the post-claim period of resource utilization, which requires governance, livelihood, technical and financial assistance to the IP claimant. As a result, many forest dwellers have found life more difficult during the post-claim period. The remoteness of many CADC areas likewise hampers the delivery of basic social services.

Fisheries

Civil society support for the fisherfolk sector is less than for other sectors. Such support includes awareness-raising on fisherfolk rights, legal assistance and case handling, paralegal training, research on fisherfolk issues, and engagement with local governments. The small number of volunteer lawyers can hardly service this sector’s huge demand for legal assistance. NGOs in the fisherfolk sector are likewise strapped for funding, and this has forced a number of them to focus on Mindanao, where much donor support is concentrated.

Apart from NGOs, the church has been a key ally in providing information and other types of support toward the resolution of cases involving fisherfolk. Media,

both local and national, have also been supportive of fisherfolk issues.

A noteworthy initiative is Gawad Kalinga, which employs a simple strategy of providing land for the landless, homes for the homeless, food for the hungry and as a result providing dignity and peace for every Filipino. While not focused exclusively on small fisherfolk, a number of Gawad Kalinga projects in Bato, Leyte, Ozamiz, Misamis Occidental and Balangkayan, and Eastern Samar have successfully addressed the settlement needs of municipal fishers in these areas. It may be appropriate to establish a more formal collaboration between Gawad Kalinga and fisherfolk groups.

Fisherfolk have not been as fortunate with LGUs. In general, cooperation between them has not been productive. However, there are notable exceptions, e.g., in the provinces of Quezon, Davao Oriental and Zambales, where mechanisms for consultation and dialogue have facilitated the identification of fisherfolk settlement sites for inclusion in the municipal CLUP.

In 2006, NFR, together with fisherfolk representatives from Luzon, Visayas and Mindanao, reviewed the Fisheries Code. The review identified seven themes in fisheries, one of them being fisherfolk rights and settlements. This was in response to the increasing number of reports from fishers of court-decreed displacement and eviction. To address this concern, NFR came out with three documents declaring its support for fisherfolk settlements. The first is a Joint Administrative Order outlining the process for identification and selection of fishers-beneficiaries and disposability of lands through different modes. The second document reviewed was a draft special order for DENR to identify lands of the public domain near the sea that are suitable for settlements (this has been adopted by DENR as a Special Order entitled “Identification of Public Lands Suitable for Fisherfolk Settlements in Coastal Municipalities and Cities.”) The third document is a proposed municipal ordinance ordering coastal cities and municipalities to identify, acquire, and distribute areas for fisherfolk settlement.

Innovations

The most promising approaches to access/tenurial security are those that integrate the concerns of tenurial security, livelihood, resource management and community empowerment. To some extent, integrated, tenure-based resource management is already embodied in progressive legislation such as IPRA and the Fisheries Code. In part, these community-based, integrated approaches evolved from experiments by NGOs, POs, and reformers in government.

AGRARIAN REFORM

TriPARRD

The Tripartite Partnership in Agrarian Reform and Rural Development (TriPARRD) program of the Philippine Partnership for the Development of Human Resources in Rural Areas (PhilDHRRA), a rural development NGO network, utilized a tripartite approach (cooperation among government, NGO, and farmer’s organizations) to promote land tenure improvement, social infrastructure building and agricultural productivity enhancement. The “tripartite approach” as well as many TriPARRD technologies (for instance, on land distribution tracking) have since been institutionalized by DAR (Delos Reyes & Jopillo, 1994).

Agrarian Reform Community Development Plan (ARCDP)³³

DAR launched the ARC approach to beneficiary development in 1993, which involves the provision of support services, specifically basic social infrastructure, like water, power supply, education and health, for ARB





communities living in the same or adjacent *barangays*, rather than attempting to service all areas covered by CARP.

The second phase of the ARCDP, implemented from 2003–2007, focused on the following interventions: community development and capacity building; rural infrastructure development; agriculture and enterprise development; and financing support.

Farmer Paralegalism

Paralegalism involves educating farmers on the laws that affect their rights. It also includes training on handling legal cases and networking with other advocates. One such paralegal program is Paralegal Education, Skills Advancement and Networking Technology (PESANTech). The project aims to improve the resource tenure of communities through empowered community based legal resource institutions. PESANTech was implemented by SALIGAN, KAISAHAN and BALAOD–Mindanaw. From 1993 to 2006, the program covered 21 provinces nationwide.

FORESTRY

Community Based Forest Management Agreement (CBFMA)

The government instituted the CBFM program in 1995. Its underlying principle is that “equity refers not only to the sharing of benefits but [also] the responsibility of sustainable development.” Through the issuance of CBFMAs, the CBFM program provides land tenure to organized upland groups (POs), and entitles them to utilize a designated forest land for a period of 25 years, renewable for another 25 years subject to certain conditions.

INDIGENOUS PEOPLES

Three-Dimensional Mapping of Ancestral Domains

Unlike conventional maps, a three-dimensional (3D) map includes 3D representations of significant natural features (such as mountains and bodies of water) as well as sites with social, cultural and spiritual significance. A 3D map thus reflects residents’ knowledge and use of a particular area.

Supplemented by Global Positioning System (GPS) technology for accuracy, a 3D map was used by the Tagbanwa clan in Calamian, Palawan to bolster its application for a CADC over an area that had been earlier appropriated by the local government.

Thus, on 12 June 1998, six years after the Tagbanwas filed their claim, and despite strong opposition, DENR approved the Tagbanwa’s CADC application covering 22,400 ha of land and waters.

FISHERIES

Community-Based Marine Protected Areas (CBMPA)

NGOs promote the CBMPA approach within the context of the community-based coastal resource management (CBCRM) strategy already adopted by the government. The CBMPA strategy involves the setting up of a fish sanctuary (where absolutely no fishing is allowed) and a fishing area where the small fisherfolk will have preferential access as well as direct management responsibility. These CBMPAs are established in cooperation with local governments. A locally organized committee or council manages the CBMPA (Haribon, 2004).

Opportunities AND Strategies To Advance Access to Land AND Tenurial Security

OPPORTUNITIES and CHALLENGES

The Philippines has some of the most progressive laws on tenure reform in the region, if not the world. Nevertheless, the Philippines also has one of the most skewed property regimes in the world.

A major challenge is the capacity of government agencies to implement key legislation. Implementing agencies, such as DAR, NCIP, BFAR/DA and DENR, are generally perceived as lacking the resources, expertise and political will to implement decisive tenurial reform. The question of political will reaches the highest levels of government, which continue to be dominated by elite interests.

Globalization and modernization also threaten national sovereignty, compromising ecological integrity, and imposing varied and new demands on the nation, its people and natural resources. For example, the government policy favoring large-scale, commercial mining has affected all social justice and ecological programs, threatening the integrity of the lands and waters used by farmers, fishers and IPs.

Progress in tenurial security for marginalized sectors is the result of painstaking advocacy and social innovation by NGOs, POs and reformers in government. Despite divisions among the poor and their supporting groups, collaboration of pro-poor forces at the national and local levels is possible. Provided all parties agree on the core issue as well as the rules of engagement.

RESPONSE

In response to the above challenges, a number of Philippine CSOs—representing a broad spectrum of NGO

networks and support groups, agrarian reform advocates, environmental conservation organizations, federations of peasants, fisherfolk, indigenous communities and forest dwellers—convened in January 2008 to commit to an advocacy program and cross-sectoral actions intended to promote access and control of the basic sectors to land, water and other natural resources. The group met again in 2010 to review and revise their agenda based on recent issues and developments.

The convergence of these civil society groups is based on two basic principles that they hold in common:

1. Access and control to land and water resources are crucial to the survival and dignity of the basic sectors. For this reason, their rights to land and water must be prioritized over those of other users.
2. The respective concerns of the basic sectors on access and control over land and water are not in contradiction to each other, nor to the goal of conservation and development of national resources.

Lessons in Promoting Access to Land and Tenurial Security

1. Government is a key factor in the struggle of the basic sectors to gain access to land and tenurial security. LGUs are particularly important because of their local presence and their regulatory powers over land and natural resources.
2. The issue of land access and tenurial security for the basic sectors cannot be divorced from the country's mainstream economic development strategy. This development paradigm is characterized by subservience to the demands of globalization and a strategy of resource extraction as the major engine of economic growth.
3. The demise of CPAR notwithstanding, collaboration (perhaps even unity) among the farming sector at the national level is still possible as long as this is issue-based and the parameters of collaboration are clear and agreed upon by all parties.
4. Studies indicate a trend toward the abandonment, sale, or mortgaging of CARP-awarded lands. The sale of such lands has been more pronounced in progressive or urbanized areas where land prices are higher. This phenomenon requires a careful re-thinking of agrarian reform.
5. Information dissemination and education on land access and tenurial security rights remain important tasks. Only a small number of the basic sectors are aware of their rights.
6. Granting IP communities rights over their ancestral domain is highly controversial because the latter are richly endowed with much coveted natural resources. This effort can succeed only by building a supportive broad, multi-sectoral coalition. The inclusive theme of environmental protection—forest protection in the rural areas—is a good rallying point for collaboration among a broad range of sectors, including LGUs.
7. Building multi-sectoral alliances will require the resolution of internal conflicts among the basic sectors. Conflict resolution will entail more than an acceptable legal framework (Section 59 of IPRA has the beginnings of a legal solution). More important is the creation of a cadre of facilitators who will help sustain the dialogue between competing parties to resolve conflicting claims. ■

Rather, security of tenure over land and water resources by the basic sectors is a major prerequisite for national development and the conservation of land and water. The participation of the basic sectors in the determination, planning and execution of land and water use is therefore of paramount importance.

Advocacy Program

The advocacy program, aimed at promoting access to land and water and tenure security, and which will be implemented over the next five years, is expected to achieve the following results:

1. Passage of a National Land Use Act (NLUA)

The national land use act (NLUA) shall articulate the national policy that will regulate the interests of the different stakeholders (and particularly, the basic sectors). Specifically, NLUA shall: (a) address conflicting provisions on land use found in different laws like CARP, IPRA, UDHA, NIPAS Act, Fisheries Code, etc.; (b) provide for a rational land use policy, taking into consideration the lands to be protected, the lands to be used for productive purposes, settlements, infrastructure development, and geohazard areas; and (c) be participatory in nature. Congress should ensure adequate funding for the national land use act, particularly for the planning process, resolution of disputes and delineation of lands.

AGRARIAN REFORM

2. Monitoring of CARPER Implementation

After the passage of the CARPER law, it was felt that there was a need to monitor the implementation of the remaining targets under LAD more closely. Given the amendments to the original CARP, raising

farmers' awareness and knowledge on the CARPER law was deemed important. This will enable them to understand the newly enacted law and will strengthen their capacities to resolve agrarian reform-related issues in their local communities. Critically important to monitor is the performance of DAR in distributing the more contentious lands that are owned by historically landed families.

FORESTRY

3. Passage of the Forest Resources Bill

Two thirds of Philippine forests have vanished from the 1930s to 1988, together with the loss of many species that leads to ecological destruction and loss of forest resources for food, medicine and other uses. Thus, in the 15th Congress, CSOs are pursuing the passage of the Forest Resources Bill primarily to protect and restore forests and ensure the continued and efficient use of forest resources by present and future generations.³⁴

4. Clear Primary Mandate of DENR

DENR, the controller agency for public lands and natural resources, has a dual—at times conflicting—mandate: to protect and conserve the environment; and to promote the utilization of natural resources. This dual mandate creates confusion and conflict in the department's policies and operations, resulting in conflicting land uses. Therefore, DENR's primary mandate should be clarified.

5. Co-Management

Collaborative management and strong people's participation should be the guiding principle in forest management. This shall enable LGUs and other sectors to actively participate in forest management. This will also facilitate the infusion of additional resources and the decentralization of responsibilities and accountability such that benefits accrue to local communities.

6. Community-Based Forest Tenurial Instruments

Community-based forest tenurial instruments should recognize the link between forest protection and a security of tenure among forest dwelling communities. They should be flexible and be based on existing community practices and traditions, integrity of ecosystems and appropriate management units.



7. Mapping of Forest Lands

Estimates of Philippine forest cover are questionable because of the dearth of reliable maps and DENR's decision to include tree plantations and orchards as part of forest lands. Mapping should be undertaken to determine the extent and location of forest areas and document overlapping claims.

8. Environmental and Natural Resource Accounting

An environment and natural resources accounting system should be adopted in the preparation of national income accounts in order to internalize environmental costs and benefits.

INDIGENOUS PEOPLES

9. Strict Enforcement of IPRA

The capacities of NCIP should be strengthened. It should be held accountable as IPRA's implementing agency, and its funding should be assured for the implementation of Ancestral Domain Management Plans.

10. Revised FPIC Procedures

The procedures of the current revised FPIC process should be reviewed and changed to conform to the traditional decision-making processes of the tribe concerned. Tribal decisions based on the new FPIC process should be implemented strictly, particularly with regard to decisions involving mining and other extractive activities within the ancestral domain. Currently, the Committee on National Cultural Communities in the House of Representatives is chaired by an IP leader who believes that the FPIC process needs to be revised to be genuinely representative of the views of the IP communities concerned.

11. Passage of the alternative Minerals Management Bill

CSO anti-mining advocates believe that “the extraction of mineral resources must be done judiciously because mineral areas are part of forests, watersheds, riverine systems, coastal habitats and communities—all of which are intrinsically linked with biodiversity, the environment, food security, livelihoods and survival”. The Minerals Management Bill seeks to scrap the present Mining Act of 1995 (RA 7942) with the enactment of the

“Philippine Mineral Resources Act of 2010”. This champions conservation of non-renewable mineral resources for the benefit of both present and future generations of Filipinos by adopting a sustainable, rational, needs-based minerals management geared towards effective utilization of mineral resources for national industrialization and modernization of agriculture.³⁵

12. Established Conflict Resolution Mechanisms

The competing claims of IPs and other basic sectors on the same land have resulted in an extremely polarized situation that is difficult to resolve. IPRA should serve as the legal framework for the resolution of these competing claims; the Ancestral Domain Management Plan should be adopted as the overall development framework to which the plans of other stakeholders can be incorporated. A cadre of facilitators should also be formed to ensure the peaceful resolution of these claims at the local level.

13. Sustained Information Dissemination

There should be continuing information, education and communication (IEC) on the IPRA, as many are still unaware of the law's specific provisions. The IEC campaign should also aim at building broad support for IPRA implementation.

FISHERFOLK

14. Speedy Implementation of the Fisheries Code

This involves: (a) allocation of General Appropriations Act (GAA) funds; (b) delineation of municipal waters using the framework of DENR Administrative Order 17; and (c) the immediate issuance of the IRRs for Section 108 to guide the establishment of fisherfolk settlements. The IRR should be prepared jointly by BFAR/DA, the Department of Interior and Local Government (DILG), DENR, HUDCC and other concerned agencies.

15. Amendment of Section 108 of the Fisheries Code

Section 108 of the Fisheries Code (RA 8550) should be amended such that in place of DA, HUDCC should take on the task of providing for the establishment and creation of fisherfolk settlements, and including provisions for land ownership by municipal fishers (absent in the Fisheries Code).



16. Revise FLA Guidelines

Guidelines on FLAs should be revised to prioritize the FLA applications of small fisherfolk, and to make FLAs more affordable.

CROSS-SECTORAL ACTIONS

In addition to the above advocacy program, participating CSOs also agreed to undertake the following cross-sectoral actions:

17. Inter-sectoral Dialogues and Collaboration

In order to build consensus and learn from each other, the groups shall convene regular inter-sectoral dialogues and collaboration. They shall advocate and build internal capacities to help form and strengthen coalitions of POs.

18. Electoral Education and Reform

The groups shall pursue and as a coalition participate in massive electoral education for electoral and political reforms, so as to enable the basic sectors to put in place political leaders who will implement laws promoting social development and protecting social welfare.

19. Budget Monitoring

The groups shall participate in budget formulation and budget monitoring of government agencies implementing major land and water tenure programs: DAR, NCIP, DENR, and BFAR-DA.

20. Monitoring of Human Rights Violations

The groups shall monitor, document and disseminate cases of human rights violations in relation to land and water tenure issues.

21. Alternative Reports on Tenure Reform

The groups shall document, consolidate and disseminate alternative reports assessing the implementation and effectiveness of land and water tenure reform legislations and programs.



Endnotes

- ¹ Based on the summary prepared by Joel Pagsanghan and Jennifer Javier for the Philippine Partnership for the Development of Human Resources in Rural Areas (PhiDHRRA) with input from summaries of the roundtable discussions of the farmers, IPs, forestry and fisherfolk sectors, Quezon City, August to November 2007.
- ² Medium Term Philippine Development Plan, 2004–2010
- ³ Gould, D. (2002). The evolution of land tenure in forestry management in the Philippines. <http://www.spatial.maine.edu/~onsrud/Landtenure/CountryReport/Philippines>
- ⁴ Bureau of Fisheries and Aquatic Resources. (2002). Philippine Fisheries Profile. Quezon City: Bureau of Fisheries and Aquatic Resources.
- ⁵ World Bank. (2004). Philippines environmental monitor: Environmental health. Manila: World Bank and the Department of Environment and Natural Resources.
- ⁶ National Statistics Coordination Board, 2000
- ⁷ Quizon, A., Mendoza, M., Quitangon, G., Almojuela-Tolentino, M. (2007). Bridging issues on access to land through land partnerships in the Philippines. Quezon City: Asian NGO Coalition for Agrarian Reform and Rural Development.
- ⁸ As cited by the International Fund for Agricultural Development (IFAD) in their Rural Poverty Report on the Philippines, www.ruralpovertyportal.org/english/regions/asia/phl/index.htm, 2007.
- ⁹ (PARRC, 2008)
- ¹⁰ Adriano, L. (1991). A general assessment of the comprehensive agrarian reform program (Series No. 91–13). (Working paper). Makati: Philippine Institute for Development Studies.
- ¹¹ Balisacan, A. & Pernia, E. (2002). What Else Besides Growth Matters to Poverty Reduction?. In Asian Development Bank Economics and Research Department Policy Brief. (Series No. 5). Mandaluyong City: Asian Development Bank.
- ¹² Korten, 1990 cited in delos Reyes, R. & Jopillo, S. (1994). Waging Agrarian Reform: NGO Initiative for a Tripartite Program in the Province of Antique. Quezon City: Institute of Philippine Culture, Ateneo de Manila University.
- ¹³ Department of Agrarian Reform. (2007). CARP Impact Assessment Studies II. (Draft paper). Quezon City.
- ¹⁴ Based on the paper prepared by Atty. Aison S. Garcia and Atty. Marlon J. Manuel, Peasant Unit of SALIGAN for the Country Paper of ANGOC on Access to Land and Tenurial Security, Quezon City, 2007.

- ¹⁵ Quizon, et. al., ANGOC, (2007).
- ¹⁶ Pulhin, J. and Dizon, J. (2003). Politics of tenure reform in the Philippine forest land. Paper presented at the convention on “Politics of the Commons: Articulating Development and Strengthening Local Practices”, Chiang Mai, Thailand.
- ¹⁷ Department of Agrarian Reform states in its June 2007 Accomplishment Report that the total CARP Scope is 9.12 million ha, of which 5.16 million ha are assigned to DAR and 3.96 million ha to DENR.
- ¹⁸ The Philippines has one of the highest annual rates of urban growth among developing countries—averaging 5.1% from 1960–1995. The estimated housing shortage from 1993 to 1998 was placed at 3.72 million housing units.
- ¹⁹ Working with People section, www.haribon.org.ph
- ²⁰ Section 5 of RA7586.
- ²¹ RA 6657, Section 40, (3) Sparsely Occupied Public Agricultural Lands—Sparsely occupied agricultural lands of the public domain shall be surveyed, proclaimed and developed as farm settlements for qualified landless people based on an organized program to ensure their orderly and early development.

Agricultural land allocations shall be made for ideal family-size farms as determined by the Presidential Agrarian Reform Council (PARC). Pioneers and other settlers shall be treated equally in every respect.

- ²² RA 6657, Section 40 (2) Subject to the requirement of a balanced ecology and conservation of water resources, suitable areas, as determined by the Department of Environment and Natural Resources (DENR), in logging, mining and pasture areas, shall be opened up for agrarian settlements whose beneficiaries shall be required to undertake reforestation and conservation production methods. Subject to existing laws, rules and regulations, settlers and members of tribal communities shall be allowed to enjoy and exploit the products of the forest other than timber within the logging concessions.
- ²³ Department of Agrarian Reform, 2010
- ²⁴ CSO Land Monitoring Abridged, PhilDHRRA, 2011.
- ²⁵ SALIGAN, 2007.
- ²⁶ CSO Land Monitoring Philippines, 2011.
- ²⁷ PARRC, 2008.
- ²⁸ CSO Land Monitoring Philippines, 2011.
- ²⁹ Doyle, C., Wicks, C., & Nally, F. (2007). Mining in the Philippines, Concerns and Conflicts: Fact finding mission to the Philippines report. UK. Society of St. Columban.
- ³⁰ De Vera, D. (2007). Indigenous peoples in the Philippines: A Discussion Paper. Paper presented at the round table discussion

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- ³¹ CSO Land Monitoring Philippines [abridged , 2011, p. 10].
- ³² Partnership for Agrarian Reform and Rural Development Services, Inc. (2007). Shades of Amos: Expositions on Social Justice, Agrarian Reform and Human Rights. Quezon City. PARRDS.
- ³³ Contributed by the John Carroll Institute for Church and Social Issues citing from Balisacan, Arsenio M. May 2007. Agrarian Reform and Poverty Reduction in the Philippines. Policy Dialogue on Agrarian Reform Issues in Rural Development and Poverty Alleviation. Traders Hotel, Manila, www.dar.gov.ph/faps_arcdp2.html, www.davaonorte.gov.ph/profile/sep_4_6_5.htm
- ³⁴ Haribon Foundation. (2010). The Forest Resources Bill, Haribon Policy Paper No. 5.
- ³⁵ Alyansa Tigil Mina. (2011). Primer on Alternative Minerals Management Bills 2011, Quezon City.

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Land Ownership and the Journey to Self-Determination

SRI LANKA Country Paper
Land Watch Asia





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- **Government, Authorities, Boards and Co-operations**

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- **Non-Governmental Organizations**

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Acronyms

CLEO	Crown Lands Encroachment Ordinance of 1840
CLO	Crown (State) Land Ordinance of 1947
CSO	civil society organization
FAO	Food and Agriculture Organization
ha	hectare
HSZs	high security zones
IDP	internally displaced person
INGO	international non-government organization
LDO	Land Development Ordinance of 1935
NIRP	National Involuntary Resettlement Policy
NLC	National Land Commission
NGO	non-government organization

Glossary

Bethma	Custom whereby only part of the paddy fields are cultivated during a season when the water level of the tank is low
Chena	Slash-and-burn agriculture in the highlands
Deshodaya	“Awakening the nation”; governance program for community empowerment
Farmer Organization	Official village-level institution established under the Agrarian Development Act
Grama Niladhari	Village-level government officer
Grama swaraj	Self-rule
Krupanisa	Agricultural research and production assistant operating at the village level
Purana	An ancient village in the dry zone
Purana welas	Old rice fields
Samurधि	Poverty relief program aimed at creating prosperity
Shramadana	Donation of labor for self-help

LEGAL TERMS

Alienation of land — transfer of state land under the provisions of the Land Development Ordinance (1935)

Colonization schemes or “colonies” — state-sponsored land settlement schemes under major irrigation projects

Crown land — referred to as “state land”, includes all lands in Sri Lanka to which the government is lawfully entitled to or which may be disposed by the government with all rights and privileges attached to such land

Disposition — any transaction of whatever nature affecting land or the title thereto and includes any conveyance, devise, donation, exchange, lease, mortgage or transfer of land

Encroachment — unlawful occupation of state lands

Encroachment regularization — giving legal recognition to encroached land through permits

Evict — in relation to a tenant cultivator of paddy land, means to deprive a tenant cultivator of his right to use, occupy and cultivate the whole or any part of the extent of paddy land let to him by the use of direct or indirect methods

Instrument of disposition — any instrument or document whereby any disposition of state land is effected and includes a grant, lease, permit or license relating to state land

Kachcheri — the office of a government agent or the District Secretary also presently referred to as District Secretariat

Land grant — a grant of land from the government under an act or ordinance

Land grantee — the person to whom any state land or right or interest in such land is given

Land holding — land alienated by the government and includes any part thereof or interest therein

Land Kachcheri — a formal meeting held in the prescribed manner for the purpose of selecting allottees for alienating state land

Land officer — the officer dealing with state land matters at district or divisional level

Mapping-out — the allocation and reservation of state land for one or more of the purposes specified under the LDO

Regulation — a regulation made by a minister under an act or ordinance



Quick Facts

Sri Lanka has a land area of 65,525 square kilometers.

Agricultural land covers 2.3 million hectares.

Population: 20.2 million (Food and Agriculture Organization, 2009)

Major languages: Sinhala, Tamil, English

Major religions: Buddhism, Hinduism, Islam and Christianity

Per capita GDP: \$2,012 (World Bank, 2008)

The land reforms of 1972 and 1975 reverted lands exceeding 20 hectares to the state, making it the biggest landowner, controlling 82% of the total land area of the country. Privately owned lands make up the remaining balance.

Presently, one in three Sri Lankan families lives on land alienated by the government under long-term leases or other forms of tenure.



SRI LANKA

Policy AND Legal Environment OF Access TO Land AND Tenorial Security

EVOLUTION of LAND POLICIES of the STATE

Sri Lanka has a recorded history of over 2,500 years. Under the ancient monarchy, the king assumed the role of trustee of all lands and natural resources. In 1505, the maritime areas of the country fell under the control of the Portuguese, and of the Dutch in 1650, leaving a legacy of culture and legal systems. But it was the British rule after the conquest of Kandy in 1815 that left an indelible footprint in the country's affairs. Even after National Independence in 1948, the British system of governance prevailed. Land legislation has its origins in the British period.

Sri Lanka's population is predominantly Sinhalese (75%), followed by Tamils and Muslims. While the Sinhalese are Buddhists claiming ancestry to North India, Tamils in the north and those in the central hill country (brought in as indentured labor by British planters) are largely Hindu with origins in South India. Muslims first came as traders from Arabia and first settled in the northwest. Christians of different denominations live primarily along the western coastal areas. The multi-ethnic, multi-religious peoples that came under European rule still continue with customary laws and practices, including those related to land tenure.

A HISTORICAL SKETCH

The evolution of Sri Lanka's land policy and legal environment has four main historical episodes¹:

- Early period of monarchy and sovereign rule (up to 1815)
- Era of conquest and colonial rule (1505 to around 1915)

- Period of seeking roads to freedom (1915–1948)
- Era of National Independence (1948 to present)

In accordance with ancient traditions, the King was the overlord of the land, and was given honorific titles of *bhupathi*, *patawipathi*, *mahipati*, *dharanapati* and *bhumisara*, signifying his power over land. However, the concept changed with the century; the King became only a “custodian”—not the sole proprietor of land. Even during the last phase of indigenous rule under the monarchs of Kandy, the kings upheld the tradition that respected people’s individual land rights, indicated by recorded events such as purchasing land from private owners for donation to temples. Irate kings who plundered private property against custom were compared by historical chroniclers to “highway robbers”.

COLONIAL LEGACY

After the cession of Kandy in 1815, the British Crown took over as the sole owner and supreme authority of land in the colony, blatantly displaying the “right of conquest”. In 1840, the Crown Lands Encroachment Ordinance (CLEO) declared that “all forest, waste, unoccupied and unsettled land belonged to the Crown, unless the contrary thereof is proved.” People who owned land through *paraveni* (inheritance) but without documentary evidence were disenfranchised. The worst affected were the *chena* (shifting cultivation) farmers in the Kandyan areas. Anyone who attempted to occupy property under the CLEO were fined and summarily ejected. The CLEO declared that “diverse persons without any claim or pretense of title (who) have taken possession of land... belonging to Her Majesty...” necessitated expeditious separation of *private* land from *crown* land. The law was further reinforced by the Waste Lands Ordinance of 1897, and by the establishment of the Land Settlement and Survey Departments that functioned more like instruments of oppression than of land administration. The Survey Department was established in 1800 originally for preparing title plans and road development, while the Land Settlement Department was responsible for the separation of private and Crown lands.

PREVAILING LAND POLICIES of the GOVERNMENT

Sri Lanka remains a social democracy where regular elections are held and government policies change with each leadership. Socialist left-oriented governments earlier introduced policies of tenurial reform (Paddy Lands Act, 1957) and nationalization of private land (Land Reform Law, 1972 and 1975). However, “open economic policies” were introduced in the 1970s by a more right-wing oriented government and this rapidly opened-up land markets.

Through the 13th Amendment (1987), policy directions in land management were incorporated into the Constitution. However, this was not fully implemented because of a common public perception that the 13th Amendment was brought under pressure from India to seek a lasting solution to the Tamil separatist problem of the north. The central government was reluctant to devolve powers to the provincial councils as required by the Constitution. Provisions such as the establishment of the National Land Commission (NLC) were postponed, and the power-sharing between the central government and provinces created confusion in land alienation and agrarian services. This led to a virtual no-action on the land policy.

Attempts to develop a national land policy embracing all aspects of land development, alienation and conservation initially failed to receive Cabinet approval or legal recognition. This is probably due to complexities in law and sensitivity of the subject. Under the 13th Amendment, only the NLC is mandated to formulate a land policy.





In this context, the 2006 policies as outlined in the *Mahinda Chintana* (thoughts of President Mahinda) are likely to continue. Land policies are presented in the context of agricultural development policies:

“The availability of land is one of the major issues of our country. Due to the abandoning of arable lands, traditional attitudes and a multitude of other problems, farmers are gradually getting discouraged. This is a serious challenge facing our farming community. I am determined to meet this challenge and for that purpose a National Land Policy will be formulated. Under this programme, 100,000 plots of land will be given for cultivation to farmers who do not possess land. Land will also be provided to those in the next generation of settlement schemes as Mahaweli farmers. Laws will be enacted to confer freehold rights of Crown lands already allocated to farmers ... State land will be alienated to landless on a priority basis in order to resolve the landlessness of the Kandyan peasantry.”

The Ministry of Land and Land Development launched the *Bim Saviya* or Land Title Registration Programme in 2007 under the *Mahinda Chintana*. The program seeks to strengthen ownership of land by providing secure titles to those possessing or utilizing a parcel of land. It is implemented as a national program under the provision of the Registration of Title Act No. 21 (1998)—where land is surveyed, boundaries defined, and ownership ensured under a title certificate issued free of charge. It is anticipated that clear and secure land titles will lessen land disputes and litigation, while improving land security and its marketability.

EXISTING LEGAL ENVIRONMENT

The Land Commission reported that by 1985 there were at least 39 major pieces of legislation governing land management; this number has grown further in the last two decades. The Constitution forms the supreme law of the land, followed by acts, ordinances, and laws passed by Parliament. The following are the more prominent legislative land enactments:

13th Amendment to the Constitution (1987)

The 13th Amendment was introduced soon after the Indo-Lanka Accord, with provisions that addressed land issues in the context of ethnic reconciliation. The provincial councils established in 1987 received devolved powers under provisions of the 8th and 9th Schedules of the Amendment. Land, irrigation and agriculture came under the powers of provincial councils, subject to certain conditions. For instance, provincial councils were given the powers to initiate irrigation and land development schemes utilizing water from rivers within the province, while inter-provincial rivers remained under the central government.

Provisions of the 13th Amendment were not successfully implemented in Northern Province, even with the presence of the provincial council. The central government has been reluctant to devolve powers for fear of losing its grip on the provinces. Thus, there has been no clear delineation of powers between the provinces and the center in matters of agrarian development and internal security. The government has also failed to establish the National Land Commission for the purpose of establishing a National Land Policy, in accordance with the 13th Amendment. Attempts towards formulating a National Land Policy by any ministry or agency have been confronted with questions about their constitutionality.

Land Development Ordinance (LDO) of 1935

This ordinance was based on the recommendation of the first Land Commission of 1927. It was designed to address the historical injustices and impacts of the CLEO of 1840, as well as related colonial legislations that disenfranchised local populations. The LDO sought to “preserve the peasantry”, alleviate landlessness and develop available state lands. The LDO has been the primary legal instrument for reform through which lands were passed to landless families during the last 75 years. It enabled village expansion programs and major settlement schemes. The first Land Commission sought to “create a contented, prosperous and self-reliant multitude of peasant proprietors”.

Crown (State) Land Ordinance (CLO) No. 8 of 1947

This ordinance provided the terms for the grant and disposition of Crown lands; the management and control of such lands and the foreshore; and the regulation and use of water bodies. The CLO also provided for vesting land in naval, military and local authorities. This ordinance provided the legal basis for government to allocate land for non-farm activities in the Mahaweli development areas, and to provide long-terms leases of land to private enterprises such as the Pelwatta and Moneragala sugar companies.

Land Reform Laws of 1972 and 1975

These are acclaimed as the most far-reaching pieces of legislation that have transformed land ownership and nationalized private and foreign-owned land. The law encompassed private estates and imposed land ceilings on private ownership—giving government access to land exceeding one million hectares. It limited the maximum land that could be owned privately to 50 acres (20 ha) and paddy land to 25 acres (10 ha). However, less than 10% of the nationalized land was redistributed to the landless. Mismanagement also resulted in negative productivity.

Agrarian Development Act No. 46 of 2000

As successor to the Paddy Lands Act of 1957 and the Agrarian Services Act of 1979, this Act of 2000 sought the establishment of agricultural tribunals, farmer organizations, and agrarian development councils that promote the interests of the farming community.

Other Sectoral Policies Related to Land

Land policies have also been incorporated in other development sectors—i.e., in policies related to forest and wildlife conservation, land use and watershed management, environmental protection and waste management. For example, the National Environmental Policy and Strategies (2003) devotes its first section to land policy, with 15 policy statements. Statement 5 stipulates that “land tenurial arrangements adopted in agricultural land and settlement areas should promote good land management.” Statement 13 declares that “attractive landscapes—rural and urban, coastal and

inland—as well as sites of archeological, cultural and religious interest (must) be protected.”

Customary Land Rights

In addition to common law (residuary law) inherited from the Roman-Dutch legal regimes of Europe, there are three prominent customary laws in Sri Lanka: *Kandyian* law, a residuum of ancient Sinhalese land tenure originating from the Aryans; *Thesavalamai*, applicable to the *Malabar* (Tamil) residents of Jaffna peninsula; and the Muslim law of intestate succession. There are also laws on tiny minorities such as Chetties and Parsees. Land owned by temples and Hindu shrines were governed under different laws and customs. None of them provided for a unitary form of inheritance in the case of intestate succession.



CUSTOMARY SINHALESE LAND LAWS²

The *Kandyian* customary law associated land with marriage through *deega* (the wife lives with the husband's family) and *binna* (the husband lives with the wife's family). In *binna*, the wife enjoys absolute rights over her land and property and as folklore maintains, she can send back a husband whenever she so desired. In *deega*, brothers can share the same wife (*eka gei kaema*), which prevailed until recent times, to avoid partitioning limited land. In such a situation, children were treated as those of a married person, but were brought under the care of all brothers.

Land inheritance under the *Kandyian* custom was generally equitable but gave a strong preference for the



eldest male child in intestate succession. This custom presumably found its way to the LDO of 1935 and came under criticism at the State Council at that time. Rising sentiments for gender equity paved the way for regulations permitting females the same rights of inheritance as males. Women were indifferent to this change due to continuing male domination in rural marriage customs and the fear of living under a dominating son-in-law. Today, it is still customary to sub-divide property equally among children, resulting in the fragmentation of paddy lands—proof that the unitary form of succession enshrined in the LDO ran against age-old customs.

Other customary practices still existing are *thattumaru* (rotation of cultivation among several family members) in using land at different cultivation seasons, and *kattimaru* (rotation of plots that allow a fallow period [puran] for soils to recuperate their fertility in the dry zone).

There is also the *bethma* system, a cultivation adjustment to recurrent water scarcity where only the village paddy tract, often near the tank-bund, can receive and economize water for a particular season. To ensure access to land for subsistence, every farmer under the tank is entitled to a land parcel in the *bethma*. During a *bethma* (literally meaning a divided portion), private ownership of the selected paddy land is temporarily suspended, and would revert back to the normal ownership only after the harvest.

THESAVALAMAI—CUSTOMARY LAND LAW IN JAFFNA³
Thesavalamai or the customary land tenure practices prevailing in the Jaffna Peninsula were collected and codified during the Dutch Period (1706). The *Thesavalamai* Law was enacted to give force to the customs of the *Malabar residents* (or Tamils) and were meant to preserve the dominant caste hierarchy among Jaffna Tamils. The law obliges a landowner to concur with adjoining landowners (who are given preemptive rights) before executing a land sale or transfer. The law was applicable to Jaffna Tamils but it had unintended effects such as preventing other ethnic groups (Sinhalese and Muslims) from acquiring land. Some argue that it

contributed to the segregating conditions for the Tamils. There is also some uncertainty as to whether *Thesavalamai* is subject to the same rules of land ownership in other parts of the country like Wellawatta in Colombo or in up-country areas. These complexities have called for proposals to repeal the *Thesavalamai*, but it has not been attempted so far due to ethnic sensitivities.

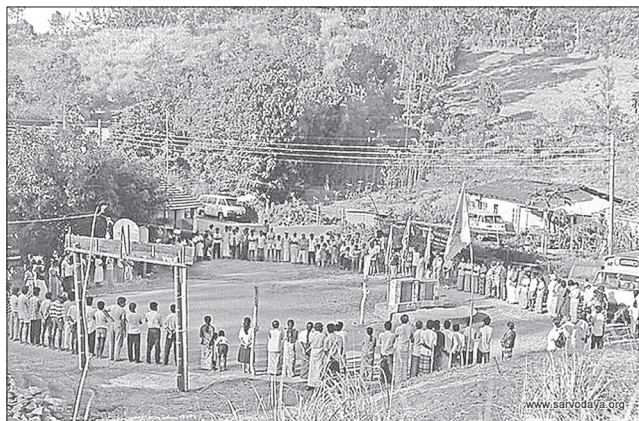
MUSLIM INTESTATE LAW⁴

Muslim marriage and family customs are directly related to property inheritance. The Muslim Intestate Law of Inheritance is one of the operational pieces of legislation that provides how land should be passed on to the next generation, with the belief that the “law of the god should take precedence over the law of the land”, particularly where private freehold property is concerned. However, land alienated by the government under the LDO and kindred legal instruments is subject to the laws of the land.

Access to Land AND Security OF Tenure

Starting in the 19th century, British colonial policy encouraged the expansion of plantation estates; however, this often came at the expense of villages and the neglect of the traditional peasantry. This created a duality of commercial (estate) and subsistence (traditional paddy) agriculture. Plantation estates were established from the sales of Crown lands, which covered some 886,667 ha in the period 1850–1930.

With the expansion of estates, not only was the peasantry disposed of the lands they cultivated, they were also neglected as insignificant to the export cash economy. Tenurial systems became more complex, and there was an increase in the volume of land litigation. There were reported cases of starvation in some parts of the hill country.⁵ The subsequent policy of large-scale imports of rice kept local *paddy* farmers poor and backward. The disadvantage faced by farming communities was never rectified even if subsidies have been granted to the farmers.⁶



THE CONCEPT of “PRESERVATION of the PEASANTRY”

The first Land Commission of 1927 attempted to change colonial land policy through large-scale alienation of land to the landless peasantry. This was undertaken through the key legal instrument of the LDO of 1935. Over 800,000 ha of Crown lands were redistributed under various schemes during the 50 years after the LDO enactment.

Moreover, two major land alienation programs were undertaken after 1985—the Mahaweli Project, and the Presidential Task Force on Land Alienation—where close to 1.2 million ha were distributed among farmers.

Initially, the unit size of land allotments was 2 ha of paddy land and 1.2 ha of residential land; this size was later reduced due to the increasing demand for land in new settlement schemes. In the Mahaweli settlements created in the 1980s, the size of land allotments was 1 ha of paddy land and 0.25 ha of homestead land. In some highland colonization schemes, the allotment was less than half a hectare, raising questions about the economic viability of such farm units in the dry zone.

To prevent the undue disposition of allotted lands, protective conditions were incorporated in LDO-issued permits. These included rules on the sub-division and fragmentation of awarded lands. Also, administrative mechanisms prevented the land from being passed on to non-peasants, paving the concept of “preservation of the peasantry”.

Despite these measures, however, illegal transactions took place. In some settlements including Mahaweli, a substantial portion of land allotments changed hands. Those who sold their land rights—usually at low prices—often remained in the settlements despite the poverty and deprivation. Thus, while the settlements discouraged urban slums, pauperization in some settlements reduced them to “rural slums”. Some of these settlements became breeding grounds for dissent and rebellion.

STATE MONOPOLY OVER LAND OWNERSHIP

The land reforms of 1972 and 1975 nationalized large estates above the established land ceiling of 20 ha for private landholdings, and brought these back under state ownership. With this, the state became the biggest landowner controlling 82% of the country’s total land area, leaving the balance of 18% as privately owned.

There were earlier efforts of alienating state lands to the landless. Recommendations of the First Land Commission (1927) led to the enactment of the Land Development Ordinance (LDO) of 1935, also called the *volte-face* (or reversal) of colonial land policy, as it facilitated the acquisition of all untitled land for opening up plantations. Today, one in three families in Sri Lanka lives on land alienated by the government under long-term leases (often 99 years) or other forms of tenure since the 1930s.

The imbalance between state and private land ownership was eased to some extent by these earlier land alienation processes. However, land was often transferred under long-term leases or similar tenure arrangements, rather than through freehold where owners could enjoy rights in perpetuity. Thus, land values were low and land considered as “unencumbered” collaterals in credit provided by reluctant banks, due to the difficult procedures to recover defaulted loans. The government was reluctant to confer freehold status due to the fear of “improvident alienation” (i.e., poor families haphazardly selling off their lands).

One consequence of continued state monopoly of lands has been the high incidence of “encroachment” (illicit occupancy) on state lands, as landless people often have no other option. A 1979 survey revealed that 5.8% of

the country's total land area came under some form of encroachment. With increasing politicization of land, successive governments resorted to "encroachment regularization" (giving legal recognition to occupants) to appease illicit occupiers. This policy was based on social research indicating that most encroachers actually made serious efforts to develop their lands.

Significantly, it should be noted that the largest proportion of government-alienated land today is due to encroachment regularization. For landless farmers, encroachment has become an easier way to obtain a parcel of state land, compared to the processes to be followed under the LDO. "Regularization" has further increased the encroachment of state lands.

Past Efforts AT Land AND Tenorial Reforms

PERIODIC LAND COMMISSIONS

Land Commissions (that incidentally come every 25 to 30 years) have proven useful for understanding changes in land issues and for formulating fresh policy directions. The First Land Commission of 1927 changed the colonial policy of land sales into a more people-oriented alienation of Crown lands. This led to the enactment of the Land Development Ordinance of 1935 which allocated crown lands for village expansion and colonization. The Second Land Commission of 1957 focused on tenorial issues related to land alienated under different laws. The Third Land Commission of 1985 embraced wider concerns, focusing on land degradation and title registration. In 1993, a Presidential Task Force was set up to directly address landlessness through the alienation of state lands.

REGULARIZATION of ENCROACHMENTS

Successive governments adopted "encroachment regularization" that was administratively expedient but which opened opportunities for corruption, even as it helped encroachers to purchase their own land. In urban areas, water and electricity were provided to encroachers, strengthening their claims for continued occupancy. However, it became hard to resolve occupancy of sensitive

areas as stream banks, reservoir buffer zones, forest reserves and railway reservations. This also became an impediment for long-term scientific land use planning. In some recent litigation, the courts upheld the view that, irrespective of the length of time of land occupancy, an encroacher would never be entitled to a prescriptive right of tenure.



TENANCY REFORMS

The Paddy Lands Act of 1957 generated important tenancy reforms in the paddy sector by protecting the rights of *ande* tenants (sharecroppers). It achieved greater social justice, but failed to increase productivity. This was offset by the introduction of high-yielding paddy varieties in the following period. Today, tenant protection measures continue to operate under the Agrarian Development Act of 2000.

LAND REFORM and REDISTRIBUTION

Land reforms affecting the plantation sector were introduced in the 1970s. Land ceilings were imposed on individual ownership (20 ha for highlands and 10 ha for paddy lands). The main recipients of acquired land were public sector agencies with 234,156 ha (56%) and cooperatives with 106,435 ha (25%). Only a small fraction covering 35,815 ha (9.5%) were passed on as peasant smallholdings. Almost all lands distributed for peasant smallholdings came from land belonging to indigenous owners, particularly from coconut plantations, rather than from plantations (mainly tea and rubber) owned by foreign companies. Moreover, the reforms brought plantation lands under state agencies with little

management experience and subjected them to undue political interventions. This proved detrimental, as the production of plantation crops like tea gradually declined and took many years to recover.

MIDDLE-CLASS ALLOTMENTS

With the intention of attracting investments on land, efforts were made to promote middle-class land allotments, and this produced mixed results. A thriving sector of middle-class tea smallholders emerged in the south; middle-class paddy holders continued to thrive in Anuradhapura and Ampara districts. On the other hand, middle-class highland schemes in the dry zone failed and were subsequently abandoned after extracting valuable timber from the allotments and nearby forests.

YOUTH SETTLEMENT SCHEMES

Efforts were made to attract the unemployed youth for land development under political labels such as “land armies” and new *janavasa* programs. However, these proved unsuccessful, along with dreams of creating collective farms due to demands for individual ownership. However, significant progress was made in some of the highland settlement schemes in Rajangane, Mutthaiyan Kaddu and Wiswamadu Kulam.

INVOLVEMENT of the PRIVATE SECTOR

There were failed efforts to invite private companies to develop dry zone areas like Minneriya, and to invest and develop farms in Mahiyangane that resulted only in deforestation and loss of valuable timber. There was promise in organizing private foreign investments in Pelawatta and Moneragala for sugar plantations while opening employment avenues for rural youth. Valuable lands were also given to entrepreneurs to start new industrial ventures.

LAND for HOUSING the URBAN POOR

There has been significant progress in addressing the shelter for the urban poor through arrangements like the Million Housing Programme—wherein slum dwellers in low-lying areas in Colombo City were provided with apartments in high-rise buildings. The net effect of filling up low-lying land and the continued occupation of sensitive reservations, however, has been a greater exposure to

natural hazards such as floods, where again the government has to come for rescue in times of disaster.

PRESIDENTIAL TASK FORCE on LAND ALIENATION

This task force was established in 1993 to address the issue of landlessness, with some 264,702 ha identified for both agriculture and housing. The largest category was for agriculture, where productivity did not improve despite government support, similar to the distribution of 100,000 allotments pledged 23 years later under the *Mahinda Chintana* policy of 2006. People and politicians took land allocation into their own hands, and officials were relegated to the position of merely endorsing those encroachments. Inefficiency in the system also aggravated the situation.

LAND-RELATED AGENCIES and PROGRAMS

Agriculture Policies

The National Food Production Drive, 2007–2010 focused on increasing food production and agricultural incomes. Among the initiatives undertaken were home gardens, increasing paddy and other food crops, cultivation of abandoned paddy lands, rehabilitation of minor tanks, transfer of technology, and development of marketing facilities.⁷ One special policy under the *Mahinda Chintana* was the *Gama Neguma* (village upliftment) program that aimed to develop villages as micro-centers of livelihood development and poverty reduction. This included provision for electricity for rural villages, access to drinking water, access roads, schools and health centers, community centers and factories, with the support of government agencies.

Relieving Poverty

From 1974 to 1994, the *Janasaviya* was the country's main poverty alleviation program that provided monthly cash grants to families in poverty. This approach was later replaced by the *Samurdhi* program which supplemented cash grants with other strategies to move people out of the poverty trap. These included livelihoods the creation of an enabling environment, technical know-how, improved infrastructure and marketing facilities, investments in special poverty reduction programs, and small enterprise development through microcredit facilities.

Reducing Food Insecurity and Undernutrition

The current policy is to enhance the food security and nutritional conditions of households through a twin-track approach of strengthening agricultural productivity and improving access to food. Also, a special food security project providing assistance in agricultural production, livestock and inland fisheries, and in strengthening farmer organizations in dry zone districts and less developed wet zone districts was initiated in 1995 and funded by the Food and Agriculture Organization (FAO).

Land Titling under *Bim Saviya*

Bim Saviya is a program launched under the *Mahinda Chintana* by the Ministry of Land and Land Development in order to strengthen the ownership and marketability of land. It seeks to introduce title registration (in place of deed registration), to resolve or make arrangements to resolve the ownership of unsettled lands, and to establish a Digital Land Information System for better land administration. *Bim Saviya* has been implemented under the provisions of Registration of Title Act No. 21, 1998 where lands are surveyed, boundaries defined, and title certificates issued free of charge. The Ministry hopes to complete this task in 15 years.

National Involuntary Resettlement Policy (NIRP)

This policy applies to displaced people whose homes and lands are acquired by public and private sector development projects, forcing them to move and resettle in unfamiliar locations. Under this policy, a comprehensive Resettlement Action Plan (RAP) is required where 20 or more families are affected. Where fewer than 20 families are involved, the policy still applies, but a resettlement plan can be prepared with less detail. The NIRP applies to all projects regardless of funding source. One gap in its coverage is that it can leave out people affected by small development projects. The NIRP also needs sound legal footing in some legislative enactment.

REBUILDING AFTER the TSUNAMI

The tsunami of 2004 that struck most of the country's coastal areas brought about serious problems of displacement and unavailable shelter. Local NGOs such as Sarvodaya and several international NGOs (INGOs) provided housing facilities, with government providing



legal land documents. NGOs acted as intermediaries in identifying suitable lands and eligible recipients, while government attached conditions to avoid “improvident alienation” or re-sale of awarded lands by the recipients.

One contentious issue was the establishment of buffer zones along the coasts. The government prohibited construction within 1,000 m from the shoreline, later amended to 500 m, reduced to 100 m, and modified to 35–100 m. Land values fell drastically following the tsunami; the impact on housing, tourism and coastal agriculture was massive as well. Attempts to introduce buffer zones to discourage people from returning to their traditional dwellings have proved unsuccessful, however, as short-term interests prevailed over long-term needs for safety.

KEY PLAYERS in the LAND SECTOR

The government's huge role in land administration and management and the limited role given to the private sector and civil society organizations (CSOs) have resulted in increasing inefficiencies in land management; malpractices; and corruption. State institutions dealing with land include:

- Departments of the Land Commissioner, Surveyor General, and Agrarian Development;
- Semi-government corporate bodies (state-owned enterprises or SOEs) that include the Urban Development Authority, Mahaweli; Sri Lanka Land Reclamation and Development Corporation, Land Reform Commission, and State Plantations Corporation; and
- Provincial authorities that have been established after the 13th Amendment to the Constitution, such as Provincial Commissioners, Provincial Directors, etc.

NGOs help the poor manage a small portion of lands. They take leasehold rights as in the case of Sarvodaya (see “*The Sarvodaya Shramadana Movement*”), Movement for Land and Agricultural Reform (MONLAR) and Sewa Lanka. INGOs such as Plan Sri Lanka, World Vision and Care International have also assumed a prominent role after the tsunami. Private companies are active in real estate transactions. Most of them acquire large blocks of land and portion them into smaller parcels for sale. In the process, they often come into conflict with encroachers with whom various deals are devised.

KEY LAND ISSUES in DIFFERENT SECTORS

Conversion of Developed LDO Lands to Freehold Ownership

The original intention of the LDO was to transfer full land ownership to allottees; however, this has been continuously deferred due to fears of “improvident alienation”, unnecessary fragmentation and multiplicity of ownership. Over the last five decades, land had been transferred under *leasehold* arrangements, and the conditional ownership conferred under LDO permits renders the land unacceptable to banks as collateral. The government has declared its intention to confer freehold ownership, yet enforcement is likely to be difficult due to inefficiencies in the system. It would be reasonable for the government to release its hold once the land is developed to a satisfactory level.

The Sarvodaya Shramadana Movement

Sarvodaya was founded in 1958 as a people’s self-help organization inspired by Gandhian ideals of “truth, non-violence and service for all”. It has a reach of over 15,000 villages across Sri Lanka.

The wide range of services Sarvodaya provides includes community-based disaster management, early childhood development and child protection, health and nutrition, legal services, microfinance, environmental conservation, youth empowerment and leadership training, women’s capacity building, provision of rural technical services, and psychosocial and spiritual healing. Sarvodaya’s work on land rights and agriculture may be summarized as follows:

- **Sarvodaya shramadana societies and *Deshodaya*.** Sarvodaya currently works through a network of 5,200 community-based organizations known as Sarvodaya Shramadana Societies operating as legally

independent bodies. These societies pass through a five-stage village empowerment process for building *grama swaraj* (self-rule). The next stage, started in 2006, is a governance program called *Deshodaya* (awakening the nation) to empower and link communities together to obtain services from the state and other stakeholders, in a rights-based approach. *Deshodaya* forums are regularly organized at division, district and national levels where land issues are also discussed, including: collective use of public lands for agriculture; village-level land conflicts and leasing of lands to multinational corporations against the will of villagers; preservation of forests and natural reserves against encroachment; preservation of water bodies against polluting industries; and collective action to safeguard public irrigation infrastructure.

- **Land rights, documentation and legal services.** Services include mediation of land-related and minor conflicts at village level, awareness-raising and training sessions on various issues including land, and helping IDPs/returnees in the Northern Province acquire their missing documents, including deeds to their lands.
- **Sarvodaya Institute of Higher Learning (SIHL).** The SIHL provides education to rural communities on various subjects such as sustainable agriculture, home gardening, urban agriculture, water resources management, and climate change adaptation.
- **Complementing the “*Divi Neguma*” program.** Sarvodaya complements the government’s *Divi Neguma* (uplifting lives) program that seeks to create 1.1 million agricultural units for the food security and livelihoods of marginalized populations. ■



Residual Matters Relating to *Ande* (Share) Tenancy in Paddy Lands

Ande tenancy is no longer an acute social issue as it was in the 1950s when the Paddy Lands Act was introduced. However, there are still residual issues to deal with, such as the nearly 300,000 share tenants and 1.2 million land-owning farmers who live in similar, dismal conditions. Any action to improve the lot of share tenants must also take into account the conditions of small land-owning cultivators.

Chena Farmers and Their Future

Chena continues in most dry zone areas despite restrictions, contributing to land degradation and thwarting efforts to introduce alternative farming systems. About a million farmers depend on *chena* for their livelihoods or as a secondary source of income.

Encroachment on State Reservations

The last encroachment survey was conducted in 1979, and no similar survey has been done since. It may be assumed that there are nearly half a million encroachments despite periodic regularization. Evicting encroachers may not be a good political option, but allowing “business-as-usual” not only increases proneness to natural hazards such as floods and landslides, but encourages further encroachments.

The Vedda Communities

The Veddas constitute an important portion of the Sri Lankan population. They are limited mainly to the jungle areas in Central and Eastern provinces where they maintain their identity including their language and way of life since ancient times. With the expansion of settlements and villages, forest authorities have taken strict measures to prevent encroachment into forest reserves. Vedda communities have thus challenged the rules and regulations restricting access to forest areas. Considering the rising concerns and protests by the Vedda communities and CSOs, the government recently granted the Vedda communities certain exclusive rights in the Maduru-Oya Forest Reservation. These include access to resources, work as guides and special identity cards to prevent them from being accused as “illegal encroachers”.

The Need for a Common Land Law

There is need for a common land law for the whole country that respects the culture and customary practices of minorities; this highlights the need for a comprehensive survey of all landholdings. Customary laws that accentuate the differences among ethnic groups bring about misunderstanding, unhealthy competition and occasional conflict among the multi-ethnic population.

CENTRALIZED and INEFFICIENT LAND ADMINISTRATION

There remains a lack of clear delineation of powers between provincial councils and the central government. Until powers are defined and devolved to provincial councils, most administrative functions will remain centralized at the Land Commissioner’s Department. This lack of devolution has led to highly politicized decisions on land, as well as to corruption in land administration. It also continues to affect the smooth functioning of agrarian services.

LAND TITLES and LEGAL FRAMEWORK of LAND TRANSFER

In Sri Lanka, land rights are transferred or passed to successors through conventional notarial deeds, but when landowners die intestate, the processes of land division among the next of kin, when there are many, become very complicated. To have clear land titles the successors need to go through time-consuming, costly court cases on land partition. In the absence of verdicts from the district courts, the land titles will remain unclear. Presently the Sri Lankan government has *Bim Saviya*, and hopefully this will correct the complicated notarial process the island has used for centuries.

THE CONFLICT and the WAR

The *de facto* conflict began in the mid-1970s but its roots date back to the beginning of the century, to the latter part of British colonial rule and the early days of the post-colonial era. A number of social, economic and political issues contributed to the emergence of conflict, including neglect of the Tamil language, lack of devolution of power to the Tamil dominant areas (the North and East provinces), economic marginalization after the introduction of the open market system in 1978,

and youth unrest that resulted from unemployment. In the post-independence era (after 1948), the Government of Sri Lanka established new settlements under a number of irrigation schemes such as Galoya, Minipe Ela, Elahara and Padawiya settlements, in parts of the North, North-central and East provinces as a measure to solve the landlessness among Sri Lankans. Land was distributed in accordance with the proportion of ethnic populations but since the majority is Sinhalese many perceived that the Government was establishing Sinhalese settlements in Tamil dominant areas and “threatening” the Tamil people with fears of losing land. The Tamil separatist movement started in the mid-1970s and by the 1980s it escalated into a full-scale war.

Displacement Due to War

During the war, the Tamil separatists attacked the bordering Sinhalese villages and due to the fighting many Tamil communities had to flee their land. Some sought refuge in camps in the southern Indian state of Tamil Nadu and many fled to European including Scandinavian countries, forming the Tamil Diaspora. People who could not leave the country moved to host families and internally displaced persons (IDP) camps elsewhere in the country. The most noticeable was the movement of displaced persons from Mannar district in the Northern Province to IDP camps in Puththalam district in Northwestern province in the mid-1980s. They have been living there for so long that they find it difficult to return to Mannar even after the war ended.

Massive Influx of IDPs at the Final Phase of War

The final phase of the war in 2008–2009 totally devastated the landscape and took a heavy toll on human lives in Killinochchi and Mulathivu districts in the Northern province. While the number of war casualties is still unknown, some 300,000 people were internally displaced and were accommodated in relief camps in *Manic Farm*, in the north of Vavuniya district. Many lost their property including houses and agricultural assets. The IDPs could not engage in any economic activity and they were completely supported by the Government of Sri Lanka, UN and affiliated agencies and by other CSOs including Sarvodaya.

Resettlement Process

By early 2010, the government started the resettlement process amidst immense international pressure to allow IDPs to return to their places of origin. Some could move to their places of origin directly while others had to spend considerable time in transit camps. But upon their return they could only find damaged and destroyed houses. Almost all of their economic assets were lost. The UN estimated housing needs at more than 80,000; the government's estimate was around 50,000. Many organizations worked to support the returnees with shelter by constructing transitional shelters and core-houses. But still many did not have roofs above their heads, so they lived in temporary huts and tents. While the majority of the IDPs could go back to their places of origin, some 8.5 *Grama Niladhari* divisions will be not available for resettlement due to security reasons and approximately 500 families will be relocated to a place called *Kombavil* in Mulathivu district.

Issues Related to Resettlement

Land demarcations were completely destroyed, and landmarks such as fences, small trees and buildings were no longer standing. Therefore, the returnees had difficulty in identifying the boundaries of their lands. On the other hand, many had lost their legal documentation including their birth and marriage certificates, national identity cards and land deeds. Deeds are vital in claiming land rights. Even though there is a possibility of recovering the copies of deeds from local land registration offices, a landowner should know a lot of information to retrieve deeds from registries, due to the complicated notarial systems followed in executing deeds.

High Security Zones (HSZs) and mine contamination have restricted farmers from accessing their land. Two and a half years after the end of the war, the extent under the HSZ has been considerably reduced, but large tracts of agricultural land still lie within the HSZ, to which farmers do not have access. Though mine-related accidents are relatively low due to extensive Mine Risk Education (MRE) programs implemented by the government and CSOs, wide tracts of land cannot be used for agricultural activities due to mine contamination.



Relocation in the Resettlement Process

Although resettlement works relatively well, relocation has created issues for IDP returnees. Relocation is done mainly for security reasons and the IDPs are prevented from returning to their places of origin. For instance the IDP returnees to *Kombavil* have been traditional fisherman, but they have been relocated away from the coasts. Meanwhile, the ownership and titles over the lands that belong to the refugees in India and elsewhere, will take a long time to resolve.

Devolution of Land Powers to the Provincial Council

The Government of Sri Lanka has already begun discussions with the Tamil political parties on possible solutions to address the root causes of conflict and war. The issue of land has again been highlighted as a major issue. Notwithstanding the 13th Amendment to the Constitution, the central government has never assigned land and police powers to the provincial council. To this day, this remains unresolved in discussions between the Sri Lankan government and Tamil political parties.

LANDLESSNESS and LAND TITLES

Tamil Populations of Indian Origin in the Tea Plantation Sector

Sri Lanka has been world-renowned for its high quality tea. But the human suffering behind the tea plantation sector is yet to be corrected two centuries after tea was first introduced by the British. Since the native Sinhalese refused to work in the plantations, the British brought almost 600,000 laborers from southern India. They arrived as families and started working in the tea plantation sector under highly deprived conditions. They were basically stateless and treated as slaves. They were treated as the “property” of the plantation companies and did not have access to minimum standards of life such as education and health. Native Sinhalese did not welcome the visitors and this made the workers’ lives difficult. After independence, as a result of positive discussions with the Government of India, a portion of the Indian laborers went back to India and others were given Sri Lankan citizenship.

Even though they have been given citizenship, their situation remains critical. They are considered as a

separate ethnic division as “Tamils of Indian origin”; while the Tamil populations in North and East provinces are considered as “Sri Lankan Tamils”. They live in long houses with their extended families in tea plantation estates, without land or land rights. There have been attempts by the government to encourage tea plantation companies to allocate land for their plantation workers, but still majority do not possess land rights.

Conflicts Between Tea Estate Workers and Villagers

Conflicts between plantation workers and adjoining villages have been minimal. However, tea plantation workers are rarely welcomed to the native Sinhalese villages around the tea plantation estates. Attempts to distribute land among the tea plantation workers have been strongly challenged by the villagers, whose ancestors were the original owners of the land centuries ago when they were forcibly evicted by the British rulers to create plantation estates. Due to the difficult terrains and extended families, the villagers also face immense pressure on land for their livelihoods, particularly farming.

Some of the second and third generations of tea estate workers have started vegetable cultivation in the upper catchments of their hilly terrain. In some cases, excessive use of fertilizers and pesticides has polluted the water in the streams, which nourishes the rivers downstream. Presently this is a concern to environmentalists and also to dominantly Sinhalese villages downstream.

OTHER LAND-RELATED ISSUES

- One issue is the plight of the forgotten poor in *purana* (old) villages who are dependent on minor irrigation systems in areas that are highly vulnerable to severe droughts. Another is the need for land among the urban poor and displaced people.
- Another issue is the availability of utilizable land in certain districts especially in the north and east. Land and ethnic issues continue. Lands may be allocated for religious institutions, as religious groups tend to grab lands and establish places of worship, sometimes resulting in open conflict. There is a need to look into unused and idle land

(both state and private) so that they can be utilized. Irregularities in land administration have reached serious proportions, victimizing the weaker segments of society.

- There is a lack of field-level officers like *krupanisa* (village agricultural workers) in the north, south and east districts, causing undue delays in service delivery. There should be relocation of people from hazard-prone lands along the coast, and people aggrieved by relocation must be given realistic resettlement alternatives.
- Rural out-migration for employment in industries locally and in the Middle East has affected the availability of female labor for agriculture in the rural sector. On the other hand, the population of young males has dwindled in war-affected areas in the north and east due to armed conflict and out-migration. Natural out-migration from villages leaves only the educationally backward youth for land-based employment.
- The *Mahinda Chintana* policy supported by fertilizer subsidies and higher prices for rice helped to some extent in arresting the decline in the paddy sector, and in keeping farmers in cultivation.
- Climate change is a threat to food security and land. In recent years rainfall patterns have changed: either rains do not come on time, or if they do, they come with high intensities that often result in flashfloods. In 2010, Sri Lanka experienced waves of flash floods that devastated almost 40% of the total harvestable crop. The government and civil society organizations are focusing on local food security based on maximum utilization of available land.
- There is limited availability of land information required for planning and decision-making.
- Land degradation may increase the stresses on poor people who often occupy marginal lands.

EFFORTS of CIVIL SOCIETY in SAFEGUARDING LAND RIGHTS

Issues pertaining to land are not just of technical or legal importance. Land is a sensitive subject and needs to be handled with care irrespective of ethnic and social differences. Also, land is more than merely an economic asset: the legacy of land in Sri Lanka is much connected to the culture of different communities living in the country.

People value land and other fixed assets more than other movables such as cash, vehicles or luxury commodities and they are devoted to safeguard the same for the future generations. The customary marital and land laws focus on the preservation of ancestral land within the nuclear families. For instance, a few centuries back in the upcountry Sinhalese communities, two brothers could have one wife, and the intent was to preserve the land within the family without division. Under the provisions of *Thesavalamai* law in the northern peninsula including Jaffna, traditional Tamil communities cannot sell their land without giving priority to family members who may be interested in inheriting the land.

Opportunities in Addressing Land Issues

RELIEVING LANDLESSNESS and the BURDENS of LITIGATION

The end of the war and the ensuing relative peace provide opportunities for developing long-term solutions to landlessness and the burdens of litigation. The registration of landless people has been initiated at the administrative district level. The government has established special tribunals to handle the volume of litigation that has piled up for long periods in the courts.

POSSIBILITY of ATTRACTING EXPATRIATE COMMUNITY for INVESTMENT in LAND DEVELOPMENT

The migrant population in 2008 was around 1.8 million, while around 250,000 are employed abroad. Foreign remittances amount to nearly \$3 billion annually. Since the sale of developable land to foreign nationals is generally considered undesirable, there is an opportunity to harness the expatriate community to develop land, particularly in the north and east.

OPPORTUNITIES for AGRICULTURAL MODERNIZATION

Demand for agricultural labor due to demographic change and out-migration is increasing, providing opportunities for modernization and more extensive

forms of agriculture, as shown by the gaining popularity of combine harvesters and agri-roads. New developments in biotechnology irrigation technologies (such as drip and sprinkler methods for dry-zone lands) and technological advances in land and resource surveys (GPS, GIS and satellite imagery) can be utilized to increase productivity.

HARNESSING HIGHER LITERACY

Sri Lanka's high literacy rate (over 90%) offers opportunities for innovation, diffusion and creating greater awareness in better land management. It should be harnessed for adaptation to global climatic changes, managing pests and diseases, and obtaining and optimizing productivity.

SECURING TITLES to LAND

Registration of land titles is now in progress although still experimental in small areas. This may reduce the volume of land litigation and facilitate the land market. New strategies are needed to capitalize on this opportunity. The government is thinking of creating land tribunals to address the chronic issue of delays in land related cases in courts.

CONFERRING FREEHOLD LAND OWNERSHIP

Empirical evidence suggests that owner-cultivators have the highest overall yields per acre in agriculture. There is an opportunity to confer freehold rights to peasants currently under leasehold or tenancy arrangements.

LAND INFORMATION DATABASE for LAND DEVELOPMENT

The Land Commissioner's Department and the Survey Department have an available land database. The *Bim Saviya* is also doing database development. By law, it is the duty of the Surveyor General to provide parcels-based information for developing a land information system (Section 8, Survey Act No 17, 2002). Agencies must be equipped with the needed technical know-how to enable them to develop a sound land information system that would facilitate decision-making on land policy.

Endnotes

- ¹ Simpson, R.S. (1976) *Land Law and Registration*, Cambridge University Press, U.K.
- ² Among these are Buddhist Temporalities Ordinance of 1956; Service (Paraveni) Lands Ordinance 1852; Kandyan Law Declaration and Amendment Ordinance 1956; Kandyan Succession Ordinance of 1956; Kandyan Marriage and Divorce Act, 1956.
- ³ Among these are Thesavalamai Ordinance No.5 of 1869 and its regulations; Thesavalamai Pre-emption Ordinance; Jaffna Matrimonial Rights and Inheritance Ordinance of 1911 and 1947.
- ⁴ This includes the Muslim Intestate Succession or Wakfs of 1956; Muslim Marriage and Divorce Act of 1956
- ⁵ Le Mesurier, 1983
- ⁶ Moore, 1987
- ⁷ HARTI, 2008

References

Sri Lanka has a relatively rich array of writings of the subject of land from colonial times. The bibliography presented below is not only a list material referred in the text. In order to provide a deeper understanding of the subject, some of the key writings have been included. It may also be noted that some annotations have been provided with regard to some key publications.

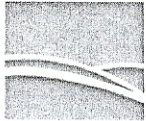
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The International Land Coalition is a global alliance of civil society and inter-governmental organizations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue and capacity building.

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CARRD



PAFID



SALIGAN



SARVODAYA

Land Watch Asia (LWA) is a regional campaign to ensure that access to land, agrarian reform and sustainable development for the rural poor are addressed in national and regional development agenda. The campaign involves civil society organizations in eight countries—Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, Philippines and Sri Lanka. It aims to take stock of significant changes in land policy; undertake strategic national and regional advocacy activities on access to land; jointly develop approaches and tools; and encourage the sharing of experiences of coalition-building and actions on land rights issues.

This expanded edition presents regional and country perspectives on access to land for the rural poor from the eight countries mentioned above. It makes assessments of land reforms and their implementation, and the legal frameworks and conditions necessary to advance land rights. The publication also examines the changing roles of government, the private sector, NGOs and civil society in influencing agrarian reform and sustainable development for the rural poor. Finally, it puts forward an agenda for actors and activists in pursuit of more equitable access to land in the Asian region.