



# Asian Regional Workshop on

# Women and Land Rights

WORKSHOP PROCEEDINGS



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Organised By



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**Editing by:** Nathaniel Don E. Marquez, Catherine C. Liamzon, Gerard Jerome C. Dumlao

**Documentatio by:** Catherine C. Liamzon

**Written by:** Nathaniel Don E. Marquez, Julia Chitrakar, Dr. Sadeeka Halim, Dr. Abdul Barkat, Devasish Roy, Rowshan Jahan Moni, Ros Sopheap, Samson Pedragosa, Tanveer Arif, Jill Carr-Harris, Leena Dabiru, Nia Ramdhaniaty

**Layout by:** Gerard Jerome C. Dumlao

**Cover artwork by:** NANDIK, Bangladesh

# Asian Regional Workshop on **WOMEN AND LAND RIGHTS**

## **WORKSHOP PROCEEDINGS**



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# BACKGROUND

Last 25-26 October 2010, the Association for Land Reform and Rural Development (ALRD), the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and the International Land Coalition (ILC) jointly organised this Regional Workshop on Women and Land Rights, as a response to the urgent need to cast the spotlight on women and their access to and ownership of land. The objectives of the workshop were identifying strategic areas and developing a road map for 2011-2012, to strengthen ILC Asia's work on women's land rights.

Some 37 participants – more than half of them women – gathered in Dhaka, Bangladesh. They represented not only 7 countries, but also 7 diverse sets of perspectives, experiences, and lessons, as well as opportunities to advance women's rights to land. In those two days, they enthusiastically swapped stories of their successes and struggles. On the countless challenges surrounding women's access to land in various Asian countries, participants deepened their understanding, engaged in serious discussions, drew parallels and noted differences. To propel women's advocacy forward, they brainstormed on future campaign, research and policy dialogue activities. Most importantly, they formed close bonds of friendship, united in this essential struggle.

Indeed, many people left that workshop feeling inspired, hopeful, and renewed, to resume taking up the challenges lined up ahead. There are many people to thank for that. It also has to be said that the workshop was graced with the presence of eminent speakers – namely Dr. Abul Barkat, Raja Devasish Roy, and Dr. Sadeka Halim – who enabled those who were there to truly understand the context of women and land in Bangladesh. Moreover, distinguished government and intergovernmental representatives also imparted their thoughts and expressed their support for the workshop. And of course, finally, the participants themselves deserve the biggest thanks, for their unflagging efforts in the fight for gender equity, and for generously sharing so much of themselves during the workshop.

The workshop presentations and papers cover various themes. For obvious reasons, the keynote presentations focus on Bangladesh, but their messages will resonate. The country presentations provide the regional flavor, coming from Cambodia, India, Indonesia, Nepal, Pakistan and the Philippines. Highlights from the discussions have been included, as well as the roadmap for ILC Asia. All these have been strung together in this publication, in the hopes of reaching a wider audience and spreading the seeds of advocacy on women's land rights farther. This humble compilation aims to call attention, raise questions, and prompt action to make positive changes to improve women's lot not only throughout the Asian region, but everywhere as well. After all, women nourish and feed the world and deserve no less than the land.

# FOREWORD

It has often been said that there are never enough hours in a day for a woman to finish her work, while women bear the responsibility not just of caring for their children and other family members, but of making sure there is food for everyone to eat. However, women constitute a disproportionate number of the poor, especially the chronically poor in Asia. Across all of Asia, women-headed households are also becoming an increasingly marginalized sector in rural areas. Yet in female-headed households, women offer manageable family subsistence and cultivation, with little male assistance, and often without possessing a field of their own.

Gender equality has long been a quest for both rural and urban women. The urgency of which has already reached the international spotlight, as evidence to this are the numerous international agreements and conventions that have been ratified not only to recognize the role of women in society but also to provide for a much longer room wherein women can assert their rights.

As agriculture gets increasingly feminized, increasingly larger numbers of rural women and female-headed households will be left with the prime responsibility for farming and household incomes but without titles to the lands they cultivate. Adding insult to injury, the contribution of rural women to the agricultural and food sector are either unaccounted for or grossly underestimated.

On the other hand, while women's right to possess and inherit land is guaranteed by law in a number of Asian countries, such laws offer no protection for women against sexual discrimination that is rooted in tradition and religion. Thus, it is not sufficient to advocate for new agrarian reform legislations and policies; equal attention should be given to those existing laws and practices that currently curtail equal property rights for women.

It is in this context that ALRD, ANGO and ILC jointly organised this regional workshop for participants to share their struggles, opportunities and lessons as they strive to advance women's rights to land. For two days, the participants identified the potential of ILC in Asia in contributing to the efforts to ensure women's rights to land; and second, developed a road map toward promoting women's land rights for consideration of ILC Asia members for 2011 to 2012. It is hoped that through participants' support, positive action can be taken, in order to translate the workshop discussions into reality.

Our sincere thanks to the International Land Coalition for being a partner in this process. The same goes to the resource persons, moderators and participants of the workshop. Our gratitude to the staff of ALRD and ANGOC for the preparations and steering the regional workshop. Rowshan Jahan Moni, Deputy Director of ALRD, took the lead as Asia Regional Focal Point for Women and Land thematic area of ILC, in making this event such a success. We must appreciate her hard work and efficient coordination. Good appreciation as also deserved by Shamsul Arefin, Programme Officer of ALRD and Cathy Liamzon of ANGOC for their sincere services and commitment in organizing the workshop.

Finally, special thanks to the production team: Ms. Catherine Liamzon for editing the articles and documenting the discussions; Mr. Gerard Jerome Dumlao for the desktop services and NANDIK, Bangladesh for the cover design of this publication.

**Nathaniel Don E. Marquez**  
ANGOC Executive Director

**Shamsul Huda**  
ALRD Executive Director



## MINISTER'S SPEECH



Women all over the world including Bangladesh have made tremendous progress in different fields of professional and social life. But regarding access to land and other natural resources, their achievement and status has remained still very minimal and depressing. About 41 percent of women-headed families in Bangladesh live below poverty level. In most south Asian countries the situation is not fundamentally different. To overcome this situation and ensuring satisfactorily faster progress in this respect is one of the major challenges lying ahead all of us.



# SUMMARY

## MAJOR CHALLENGES TO WOMEN'S ACCESS TO/CONTROL OF LAND

### LAND OWNERSHIP

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

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

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

### CUSTOMARY RIGHTS OF INDIGENOUS PEOPLES, INCLUDING INDIGENOUS WOMEN'S LAND RIGHTS

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

### POLICY GAPS AND POOR IMPLEMENTATION

With regard to land policies, programs are gender-blind. Even when there are positive provisions in relation to land rights including land rights for women, law enforcement remains weak. Sometimes, laws that are pro-women conflict with other laws. Moreover, most governments are signatories of international commitments, such as the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), but such commitments go unfulfilled.

### PATRIARCHAL STRUCTURE AND CHANGING MINDSETS

In South Asian as well as Southeast Asian countries, the patriarchal structure of societies is arguably the biggest challenge for advancing women's land rights. Patriarchal values and attitudes, not only among men, but also women – permeating through society and bureaucracies, are dominant. Changing mindsets is an enormous challenge. Despite the crafting of laws and policies, women's rights are not safeguarded simply because certain biases against women prevail.

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

### LACK OF CAPACITY OR ORGANISATIONS TRYING TO ADDRESS THE ISSUE

Capacity building is needed for farmers, including women farmers particularly in terms of legal literacy, policy advocacy, and leadership. Civil society organisations and people's organisations alike are working to advance farmers' rights, in a gender-sensitive manner. But these organisations also need to develop leadership capacity of women, for

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*Based on the summary of Ms. Julia Chitrakar, CSRC Nepal, with additions from the workshop discussions.*

women to occupy leadership and decision-making positions within their organisations and in the bureaucracy. In countries like Nepal, there is not a single woman in the land bureaucracy or in the land administration, making it more difficult to promote women's land rights.

#### RESEARCH

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

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

#### OTHER ISSUES

Other issues related to access to land are emerging, which affect poor communities throughout the region. An important point made during the workshop was the underlying issue of poverty as structural violence. Women in poverty are more vulnerable and tend to disproportionately suffer more. "Development" that is not pro-poor is taking place, making it critical to examine how these emerging issues particularly affect women.

Such issues include land grabbing. Throughout the region, communities are threatened by commercial pressures. Logging, mining and large-scale land acquisitions or "land grabbing" exacerbate the struggle for land and displace poor communities. Climate change is another critical issue that has an impact on access to land. Climate change has devastating effects in a region already prone to many natural hazards. Bangladesh, for example, is subject to perennial flooding, and some of its lands are regularly lost and gained because of flooding. Intensified weather events have had adverse impacts on many rural communities, with lost, damaged or poor crops. Furthermore, some farmers feel devastated or hopeless about the land.

## RECOMMENDATIONS

#### MAINSTREAM GENDER

Gender perspectives need to be integrated in all land rights programs, campaigns and movements. It should be crosscutting and should remain a priority area.

#### DEVELOP WOMEN LEADERSHIP

Promoting women to take the lead in organisations should be proactively pursued. More women are needed in positions of leadership, as well as in the bureaucracy, including the land bureaucracy.

#### LEGAL REFORM IN FAVOUR OF WOMEN'S LAND RIGHTS

Laws should be reformed to favour women's land rights; but at the same time, these laws should be strongly implemented and enforced. International commitments should be exploited as an opportunity to further women's land rights.

#### MORE RESEARCH AND DOCUMENTATION

Creating more knowledge on the status of women's land rights in various countries, including how women are differentially affected by emerging issues such as land grabbing and climate change, is important to understand the situation better and to in turn inform policy advocacy. ■

# Women's Ownership Rights to Land: Barriers and Challenges in BANGLADESH

## Introduction

Land and livelihoods are central to the lives of people in countries whose economic development and subsistence depend on these resources. In Bangladesh, land is a key and scarce resource. More than 50% of the population depends on agriculture. Access to land is critical as only 10% owns 50% of the land, leaving small peasants dispossessed and landless. Women constitute about 48.5% of the total population and 70% of women belong to small cultivator and tenant households. Most are landless farmers who depend on casual labour, begging and other irregular sources of income. Approximately 10% of households are female-headed; and only 15-20% belong to professional trading or large-scale land-owning categories, who do not generally need outside employment (Halim, 2006a).

Women's access to and control over land have come into sharp focus. Women's economic participation and development are anchored to a large extent on their access to land and ownership rights. Moreover, climate change in all countries, particularly in Bangladesh and Nepal due to floods and glacial melting, have started showing impacts on women's land

rights and or access to food security. Women need to be assisted in devising coping mechanisms to confront these new challenges. Virtually all women in Bangladesh are landless since very few have property in their own name (Nazneen, 2004). In Bangladesh today, not much has been documented on the importance of women's land rights. There are few organisations working at national level although they have yet to produce comprehensive reports or papers on women's land rights. Also, more work is required in bringing civil society organisations, including women's movements, to dialogue on the issue of women's legal rights to land and property. Otherwise, without public pressure, the constitutional promises of gender equality will not be translated into action.

Against this backdrop, this paper attempts to place women's ownership and access to land in a broader legal, social and political context. Section I begins with the legal status related to women's access and ownership to land, in particular their rights to inheritance. It also examines related land policy issues. Section II then turns to the gender dimension of livelihood patterns, particularly focusing on women's rights as users of land, the feminisation of agriculture, women

*Dr. Sadeka Halim, a sociology Professor and presently the Information Commissioner on Deputation in Bangladesh, gives an excellent and concise introduction to women's access to and ownership of land in Bangladesh in this article. Here, she describes the legal, social and political context, while providing sharp commentary on the numerous challenges that deter women from achieving their rights to land. The article establishes why enhancing women's land rights are absolutely critical, and identifies avenues for advocacy and action.*



going beyond agriculture in search of livelihood, and aspects of women's relationship to social and political power structures that further reinforce their subordinate position. Section III examines the barriers in establishing women's rights to land and enhancing their productive capacity. Section IV focuses on the challenges in regard to overcoming those barriers and establish women's land rights.

## **SECTION I: Socio-legal context of women's access and ownership to land**

### **A. Social and Political Context of Women's Access and Ownership to Land**

Bangladesh is a classic case of patriarchal, patrilineal and patrilocal socio-cultural values that sanction sex segregation, the corporate organisation of households that make women dependent on men. Most rural Bangladeshi women are conditioned by informal social, cultural and religious traditions, which emphasise their domestic roles as docile daughters, compliant wives and dependent mothers.

Purdah (veil) as a practice has considerable impact on women's lives. Purdah implies restrictions on the mobility of women and their contact with the outside world. It is used as an ideological instrument of patriarchy. The circumscribed behaviour of women is credited to men whose izzat or honour, lies with their ability to protect i.e., seclude women. In rural Bangladesh,

confining women inside the home is the reflection of male chauvinism. Purdah creates various levels of dependency on men. It decreases women's ability to establish any kind of relationship with the outside world. Interlinking men's honour with women's modest behaviour increases the inherent need of men to control women. Most importantly, women have limited access to the sex segregated labour market, which is the centre of social, political and economic activities; they are forbidden to enter the mosque and seldom go to school. A sense of "individuality" is still an alien concept to most rural women (Halim, 2006a). This paper particularly depicts the situation of those women who belong to small and marginal farms, scheduled castes and marginalised adivasi women and draws on their experiences. Clearly women are not a homogenous group in Bangladesh and their social standing cuts across class.

At the outset, it would be appropriate to provide a qualitative feel about which women we are talking about. The current total population size in Bangladesh is 150 million distributed in 30 million households. Women in "poor" households which include the land poor, asset poor, and lower middle class comprise 83% of the total, i.e., 62 million women living in 24.8 million households. On the ladder of poverty, come women in extremely excluded and marginalised households including those in female headed households, absolute landless, low-end-low wage occupation, informal

sector, rural push migrants, slums, haor, baor-chars, scheduled castes, adivasis, religious minorities affected by the Enemy/Vested Property Acts and the poor under land litigation. These women number 30 million living in 12 million households. It is worth noting that while women in general are excluded, the extent of exclusion and deprivation increases as one goes down the ladder.

## B. Legal and Policy Framework

The overall legal framework comprises a number of laws at the national level for the protection of equal rights and opportunities for women. The Constitution of Bangladesh grants equal rights to women and men in all spheres of public life and has been supplemented by a number of legislations to safeguard women's equal rights. At the international level, Bangladesh has ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) agreeing to the optional Protocol in 2000. However, reservations on Articles 2 and 16 pertaining to marriage, divorce and inheritance remain in force.

Bangladesh has also made considerable progress in terms of reducing the discrimination between men and women. The National Policy for the Advancement of Women, which was adopted in 1997 and amended in 2004 and 2008, includes commitments to eliminate discrimination against women in all spheres. A National Action Plan (NAP) for implementing the policy



as well as meeting commitments under the Beijing Platform for Action (PFA) was approved in 1998. Following the PFA, Gender Focal points were appointed in all central government ministries and committees as early as 1990. The Bangladesh Poverty Reduction Strategy Paper (PRSP) was finalised in October 2005, while the PRSP II was finalised in 2008. Both provide comprehensive gender analysis with policy guidelines.

## C. Women and Land Laws

Important land laws of Bangladesh include the State Acquisition and Tenancy Act, the Non-agricultural Tenancy Act, and the Land Reform Ordinance. Land reform laws like the East Bengal State Acquisition and Tenancy Act sought to make peasants direct tenants of the government and eliminate absentee ownership and rentseeking interests, among others. The Government also drew up the Khas Land Management and Distribution Policy that guarantees joint ownership

# LEGAL AND POLICY FRAMEWORK FOR WOMEN'S RIGHTS IN BANGLADESH

## CONSTITUTIONAL STATUS

- Article 27 of the Constitution states: "All citizens are equal before the law and are entitled to equal protection of the law."
- Article 28(1) of the Constitution states: "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth".
- Article 28 (2) states: "Women shall have equal rights with men in all spheres of the state and of public life."
- Article 11, 15, 19 (1) 20(1): Protects fundamental rights, freedom respect, dignity worth of human person.
- Article 41 Stipulates freedom of religion.
- Article 42 Right to Property.

## NATIONAL LAWS PROTECTING WOMEN

- Family Court Ordinance of 1985
- The Child Marriage Restraint Act, 1929, amended in 1984, raised the legal age of marriage, of girls, from 15 to 18, and for boys from 18 to 21 years; violations are punishable offences.
- The Dowry Prohibition Act, 1980, amended in 1982, forbids anyone from demanding dowry and punishes violators with a fine and imprisonment.
- The Prevention of Oppression of Women and Children Act, 1995, amended in 2000, seeks to protect women and children against violence.
- Domestic Violence Act 2010

## INTERNATIONAL INSTRUMENTS

- CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) particularly Article 14 with regard to access to land and other property.
- United Nations Charter of 1945 (Arts. 1 and 55)
- Universal Declaration of Human Rights of 1948 (Art.2)
- International Covenant on Economic, Social and Cultural Rights of 1966 (Art.2)
- Convention on the Elimination of All Forms of Racial Discrimination

of husband and wife. However, despite such commitments, both laws and institutions frequently disregard women's rights. For example, rules and procedures for the distribution of khas land often disempower women. Application procedures prohibit a single woman or widow applying for khas land (government ownership); women can only apply jointly as a wife. A widow may apply along with her son. Such provisions not only undermine women's status as an individual, they also complicate the enjoyment of their substantive rights to own property (The Daily Star, 2010).

Other programmes include the village cluster programme (1988), Char Development and Settlement Project (1987) and Modernisation of Land Administration (1995-2003). The Char settlement policy is to grant land titles in the joint names of both husband and wife, with the wife's name coming first. Despite the policy directive and follow-ups, there is evidence that the joint ownership rights policy is not being broadly implemented. Findings (Sarwa et al. 2007) on Char women from Noakhali and Gaibandha show they were aware of this policy; however, there are only a few cases of government-granted land allocation in the joint names of husband and wife or the independent name of a woman. Even where joint allocation was given, female grantees were unaware they were joint owners. In addition, findings from Char areas of Gaibandha reveal that the major government-allocated char lands are redistributed through

the law of Bengal Alluvion and Diluvion Regulation of 1825, in which such char lands are distributed to the owners of the records whose lands are lost due to river erosion. No effort was taken to give women title on recovered char lands.

## **SECTION II: Women's access to land and gender dimensions in livelihood patterns**

### **A. Women as owners of land**

Despite their socio-religious status, women in Bangladesh, similar to those in other countries, have the legal right to purchase and own land. If a family purchases land, a woman has no legal rights of ownership to it unless her name appears on the deed or another land document. Social customs dictate that Muslim (of the land holding class) and upper class Hindu women who own land almost never work in the fields. Even if women in these households have land titled in their names, they usually do not visit their land nor do they supervise cultivation. However, studies (Sarwar et al 2007; ILC and IFAD, 2010) show that these women may keep track of hired labourers' wage, especially if the payment is paid in terms of paddy or rice. These generalisations do not hold true for women from poor families. Women from poor families do not own land, but if they do, they usually cultivate the land themselves without the assistance of hired labour. Adivasi women also work in the field, mostly participating in jum cultivation. In rural areas, male

## **VESTED PROPERTY ACT (VPA): A DECEITFUL ENACTMENT**

In Bangladesh the VPA allows appropriation of Hindu property leading to 'property grabbing' by the majority with great ease. Barkat et al. (2008) has shown how the Act has not only led to appropriation of minority property, but it has also encouraged the process of out-migration by the Hindus, which also has gender-specific impacts. The following case would depict how this black law makes Hindu women socially and economically vulnerable.

Kallyani Chatterjee, a 42 year-old widow of Mr. Surendra Nath Chatterjee, a local freedom fighter killed by the Pakistani Armies in 1971. Mr. Chatterjee left behind seven children from the first wife; Kallyani has no

child of her own. She owned 40,44 decimals of land until she was affected by the VPA. She paid taxes up to 1977 in 1978-79 and 23,68 decimals of land were enlisted under the VPA. After that she was disposed of another 914 decimals of land property. Kallyani, upon returning to Bangladesh after the victory, leased some land to sharecroppers. However, opponents in the village Majed and Co. managed to bribe some sharecroppers and enlisted some land under VPA. Whenever she tried to go to the court, she received death threats. Opponents adopted scare tactics such as knocking at the window in the middle of the night and throwing stone and/bricks at her doors or roof. She filed a court case and the verdict given was in her favour. Although she received legal support, her opponent filed a false criminal case against her. No one from the authorities provided any sympathy. In order to fight against VPA, she spent more than Tk. 450,000 plus other assets and gold ornaments and sold 359 decimals of cultivable land. In the end she had only 403 decimals of land left as her own property (Source: Barkat et al, 2008:198-207)

members regardless of religious or class background generally participate in agriculture, and decide on the use of fertilisers and seeds and usually supervise labourers and women.

### B. Women as Users of Land

Regardless of their ownership of land, women play important roles as producers of food, managers of natural resources, nutrition, and security (see Halim) and are de facto managers of the household. Women are primarily responsible for food production but land is owned or controlled by men.

Women usually acquire user rights through their relationships to a man - a husband or father - and maintain those rights depending on those relationships. In agricultural production, women play a central role, although social norms and customs limit women's mobility, and in turn, women's labour market opportunities. Women's contributions include seed selection and crop storage. As well, they are largely responsible for producing food for the household and taking care domestic livestock. However, these contributions are regarded as work in 'non-public domain.' Whilst such gender divisions of labour still apply in Bangladesh, these roles are gradually changing with more and more women actively 'visible' in public employment in field work, like the food for work programme.

### C. Adivasi women's rights to land

There are approximately 45 adivasi

communities in Bangladesh who are yet to have Constitutional recognition. These adivasis mostly live in CHT (Chittagong Hill Tracts) and in the plains in Bangladesh. Adivasi women in most cases participate in agricultural activities. Their land is acquired through customary law. The inheritance laws of most adivasi peoples, including the most numerous groups such as the Chakma and Santal tend to be discriminatory against women. Exceptions are the Garos/Khaisa/Marma where women inherit property; however, control is in the hand of male members of the family. The common trend of the adivasi communities is that only sons inherit landed property. Not only are adivasi women deprived from their inheritance, they also face difficulties in terms of use of customary owned land. The monopoly laws of the State have reduced hill people's access to land. The resettlement of Bengalis in these lands have further alienated adivasis from their ancestral land. CHT Regulation 1900 that indirectly accounts for the use of custom-based laws has been formally acknowledged by legislative or executive orders. The best example is the right of adivasi people to homestead land and forest resources (Roy, 2000; 2002, cited in Halim, 2007). The East Bengal State Acquisition and Tenancy Act of 1950 (Act XXVII of 1950) is the major law regulating land administration in the plains. This law deals with the restrictions on the transfer of lands of 'aboriginal castes and tribes to any other than aboriginals domiciled or permanently residing in Bangladesh'.



However, there are widespread reports of non-implementation of this law, which leads to illegal encroachment by Bengali settlers in the plains and various development interventions like social forestry. The loss of customary land among adivasi communities generally affects adivasi women more than men, because like their Bengali women counterparts they are also de facto managers of the household. It has been reported by Mandi /Garo women that dislocation and eviction from traditional lands due to state forestry projects in the plains have induced them to migrate to cities to work in beauty parlours and as domestic workers (Halim, 2007).

### **SECTION III: Barriers to women's access and ownership of land and impacts**

#### **A. Feminisation of agriculture and its impact**

Agarwal (2003) points out the signs of feminisation of agriculture in South Asia and in several Southeast Asian countries. She noted that due to shifting of men to non-farm livelihoods, an increasing number of households have become dependent on women bearing the larger burden of farm management. However, most of these women, unlike self-employed men, are unwaged workers on male-owned family farms. Kelker (2009) also points out that in such circumstances women lack land titles, which is a cause of persistent gender inequality. Examples from Bangladesh resonate with this

experience of women in terms of access to land. Regardless of women's access and ownership to land in many rural areas of Bangladesh, agriculture is feminised as an effect of globalisation, which encourages young males to migrate in search of work and leave the agricultural task to women. This is transforming the traditional gender division of labour further. Women's mobility is increased as they go to the field to work, and to the local market to sell their products. Rural women also have a kind of empowerment in terms of control over household income, decisions about the sale of agricultural products, and the purchase of land and consumer items.

However, feminisation of agriculture in Bangladesh is not associated with women's empowerment. Studies (Parveen, 2001; kfw 2006; Sarwar, 2007) show that though women are engaged in agricultural activities, 48% are deprived of access to land, which has constrained their receiving credit and negatively affecting their productive capacity. The lack of education and



*Globalisation, technological and development interventions have affected women's access to land and control of land and resources.*

training and non-cooperation from the extension officers have also hindered the development of their effective productive capacity. Moreover, Parveen's study (2001) reported that women were not equipped to deal with tenants, the sale of produce, or reach lands located in distant places.

As pointed out by Kelker (2009), in the absence of secure user rights, which is partially available because of the law, women are not in the position to invest their own money in improving the land. Further, women not being perceived as 'farmers,' extension services and information on new technologies are exclusively directed at men, even when women are traditionally responsible. Thus, women's ownership of land can lead not only to higher and better production, but more importantly, to also enable them to improve their well being.

#### **B. Globalisation and its impact on women's work in agriculture**

Globalisation, technological and development interventions have affected women's access to land and control of land and resources. Globalisation has come in the form of commercial plantations, logging, dam construction, tourist resorts, and other energy projects, among others (Halim, 2006b), which is displacing rural families from their land with little or no compensation. Many women from these families are now driven to cities in search of employment. Conversion of large agricultural lands into prawn farms for the global seafood industry has

created gendered impacts, with men migrating out to cities, leaving women with small holdings to farm. Unable to manage their lands, women have become landless labourers in shrimp processing industries and garment industries, and hence have not only lost legal rights to land but also access to land and food production itself. Thus, these rural poor women in Bangladesh cannot only remain confined within agriculture, but instead are becoming increasingly visible in other economic spheres as well. This is quite evident in production and processing plants in the RMG (Ready Made Garment) and shrimp sectors. Shrimp farming and garment industries prefer female to male labour as it is cheaper (Halim, 2004a; ILC and IFAD, Rome: 2010). In the RMG industry, considerable horizontal and vertical segregation persist, with women employed in lower paid, lower skilled areas with little decision-making responsibilities. In such an export-oriented labour market, women are also often the first to lose their jobs in times of market fluctuations and/or reduced demand. The approximately 1.35 million women (or 90% of the workforce) employed in the RMG sector are particularly vulnerable (kfw, 2006). Women contribute to economic growth by participation in various economic activities in practically all spheres of livelihood. The recent declaration of the minimum wage scale of Tk 3000 is about \$43, an unwelcome figure for the majority of workers, activists and intellectuals. At the same time, union leaders and a fraction of garment workers have begun to demand a

minimum wage of Tk 5000 and the right to form factory trade unions in tune with the ILO Convention 87 and 98, since the existing trade unions are either politically backed or not registered with the labour department (The Daily Star, 2010).

A woman's increasing involvement in livelihood – both agricultural and non-farm work – has provided more opportunities for wage work and economic independence (Halim and Kabeer, 2005). The male-female ratio of engagement in non-agricultural employment has been 77:23 in 1995-96, and rose to 80:20 in 2005-06, implying the relative decline of females' share in non-agricultural employment. The anti-female bias is more evident in the annual growth rate: for males the annual growth rate of engagement in non-agricultural employment has increased from 0.88% during the period 1995-99 to 2.07% during 1999-2005; to the contrary, for females this has decreased from 2.05% to 0.12 % during above two periods (Halim, 2008). Therefore, in order to expedite the process of women's employment, it is imperative to undertake vigorous economic empowerment efforts for females.

### C. Laws of Inheritance and Women's Access to Land

With regard to women's ownership and access to land, inheritance plays an important role. Under Muslim law, the wife (or wives taken together) gets one-eighth if there is one child, and one-fourth if there is no child from

the estate of her husband though the husband gets exactly double. The mother gets from the estate of her sons one-sixth-when there is a child of her son or when there are two or more brothers or sisters or one brother or one sister of her son; and one third when there is no child and not more than one brother or sister of her son. On the other hand, the father gets from the estate of his son one-sixth if his son has a child, and in the absence of such, he gets the entire residue after satisfying other sharers' claims, and so on and so forth. It is significant that Muslim Law has provided that daughter, mother and wife would under all circumstances be entitled to some share in the inheritance and are not liable to exclusion from inheritance, however, women are not treated equally with their male counterparts, i.e. son, father and husband and to this extent rules of inheritance are discriminatory. In fact women have not been given parity in the matter of their shares and as a general rule; the female is given one-half of the share of the male (Sarwar et al 2007).

Religious minority women are also deprived of beneficial personal laws. Hindu women are deprived of equal rights due to the existence of the non-amended personal law, which does not allow equal rights of women in different aspects of life, even though constitutionally, women are bestowed with equal rights in the social and political arena. Hindu law, culture and patriarchal society deny Hindu women an individual identity. In Bangladesh,

*A woman's increasing involvement in livelihood – both agricultural and non-farm work – has provided more opportunities for wage work and economic independence.*

*Women's organizations and legal aid non-government organizations (NGOs) have proposed a Uniform Family Code demanding equal inheritance rights for women.*

the existing Hindu law is yet to be modified. In Hinduism, the law is considered as a branch of Dharama (ethical principle). Hindu women do not get any right from their customary law; rather, they suffer from discrimination. In Hindu law, there are two systems of inheritance: Mitakshara and Dayabhaga. The Dayabhaga school of law governs the system of inheritance for Hindus in Bangladesh; it only gives Hindu women life interest in the property. In respect of Sirdhan (women's property) a Hindu woman can deal with her property in any way she desires and after her death will pass it on to her own heirs (Halim, 2009).

These communities have diverse customs, cultures and religion. Although adivasi women have far greater social mobility than non-adivasi women in comparable rural societies in Bangladesh, in terms of inheritance, legal and political rights, decision making powers and so forth, their situation is little better than non-adivasi women. As mentioned earlier in Section 2 [c], the inheritance of the adivasis living in Bangladesh tends to be discriminatory as well.

There has been little legislative interference with the compulsory inheritance rules of Muslim women. Females are only entitled to half of what their male counterparts inherit from a parent's estate. As aforementioned, under the prevailing Hindu law of Bangladesh, women, have no right to inherit parental property. Furthermore, complex land administration and

management system, complicated legal procedures, and delays in the registration of land are all factors restricting women's access to land (Daily Star, 2010).

Women's organisations and legal aid non-government organisations (NGOs) have proposed a Uniform Family Code demanding equal inheritance rights for women (Pereira, 2000; Halim, 2003). There have been initiatives to have a gender-equitable Uniform Family Code that would apply to everyone and may be a desirable development indeed. Different organisations and activists proactively advocated for its application to all Bangladeshi citizens irrespective of their religious and ethnic backgrounds, in which women and men would have equal rights with regard to marriage, divorce, maintenance, child custody rights, inheritance, etc. (Halim 2004b).

#### **D. Dispute resolution systems and women's access to land**

Women's poor access to both traditional and formal justice systems further marginalises them in terms of access and ownership to land. In the rural context, participation in politics is still said to bring disgrace to the family. It is important to mention that since 1997, women are being elected as union council members, with seats reserved exclusively for women. However, economic inequality and discriminatory social and cultural attitudes reinforce women's subordinate position in rural society, constraining establishing ownership rights over land. Despite

the large-scale involvement of women in economic activities, “women are ignored socially, politically, deprived legally, exploited economically” (Halim, 2001). Violence, discrimination and injustice towards women and girls, in domestic and public domains, remain unabated. Law enforcing agencies riddled with corruption and tied down by political pressures, appear unable or unwilling to pursue justice on behalf of especially poor women. Meanwhile the State continues to proclaim its rhetoric of empowering women (Halim, 2004b:95). All these abovementioned contribute to less productivity, thereby affecting secure livelihoods of women in Bangladesh.

#### E. Women’s participation in leadership and access to land

The other important challenge is that most elected women are yet to have any major say in policy-making bodies. Many are ignorant about the decision-making processes and various laws protecting women’s fundamental rights. As long as these women from rural areas as the union council members do not have any major say in the policy formulation in various sectors and keep on conforming to the wishes of various interest groups and, bureaucrats, they will continue to be marginalised. In this regard, women’s active engagement in political leadership, both in union councils and in the highest body in the Parliament, is necessary; but results have not been encouraging. In the national arena, the majority women’s



network lobbied throughout 2003 for direct elections for women for Parliamentary seats. However, this demand was turned down; 45 seats have been given to women through selection by the majority in Parliament. The other factor hindering women’s effective participation in politics is limited leadership positions; there is still limited involvement of women in party hierarchical structures. Female members are conveniently used during election campaigns, organising meetings and allies, etc. The challenge then is to have farsighted policy interventions. Therefore awareness and mobilisation programmes to encourage direct involvement of women in mainstream politics is needed. Holistic policy interventions may include subjective changes of the decision makers, amendment of laws, particularly in terms of inheritance of Muslim, Hindu and adivasi women.

## SECTION IV: Challenges to establish women's Land Rights

Women's rights in the inheritance of property receive little attention from policy makers, activists, NGOs, major political parties and donors. An enabling environment is needed to establish women's ownership and control over land. All agencies concerned in terms of women's overall empowerment need to provide comprehensive efforts. The following are significant ways forward to help establish women's access and ownership of land.

### A. Strategies to promote gender equality in land rights

The important challenge is to evolve strategies for promoting gender equality in land rights. Many NGOs like ALRD, Nijerakori, Ain -O -Shlish Kendro (ASK), Samata, and Bangladesh Legal aid Services Trust (BLAST) are involved in advocacy for gender equality in inheritance laws and practices on a secular and uniform basis for all communities; promoting legal literacy; registering women's inheritance shares; and changing gender attitudes.

### B. Reform in the existing inheritance laws

This requires political and social commitment to bring necessary changes in the various inheritance laws. The current government has expressed willingness to bring

reforms in the various religious laws to remove discrimination with regard to inheritance of women.

### C. Hindu women's legal rights

Feminists in Bangladesh working on Hindu women's legal rights issues point out that protection of minority rights and non-discrimination based on religion is one of the tenets upheld, at least theoretically by all civilised systems of law, as it is in Bangladesh. However, this implies to mean non-interference with the personal laws of different religions and has in turn effectively ensured discrimination of the minority amongst the minority i.e. women belonging to minority religious groups (Halim, 2009).

### D. Struggle for adivasi women's land right

Challenge is to safeguard adivasi women's land security, collective property rights and legal reforms to establish full rights to inheritance equal to men (Halim, 2003 & 2006).

### E. Property Rights and gender equality

Women's rights require recognition under both formal and informal systems of tenure. This may lead to tackling constitutional and inheritance laws as well as land policy and legislation. Legal support is needed for the establishment of women's rights to property and recognition of co-ownership, for example, to ensure

*Women's rights in the inheritance of property receive little attention from policy makers, activists, NGOs, major political parties and donors.*



that women's agreement is obtained in cases of land disposal (Land Policy, 2002).

#### F. Women's entitlements to land often determined by inheritance

Examples from Asia and Africa show that legal recognition is not adequate to establish women's ownership rights to land. Women's land rights depend on whether they are socially as well as legally recognised. Legal reform is unlikely to be sufficient and the extensions of women's rights will be a long-term social process. Cultural change, advocacy and education play important roles (Land Policy 2002).

#### G. Political parties, Shalish and the role of government

To establish their access to and ownership of land, women require substantial political empowerment (i.e., making women vocal and active agents of social change rather than mere beneficiaries and participants in various decision making bodies); and in many instances legislative measures (such as affirmative action like reserved seats in elective bodies and other institutions like various forms of shalish) which can only be done through the government. Likewise, social and economic empowerment may require the combined efforts of the government, political parties, NGOs and other members of civil society.

#### H. Mobilising commitment to international covenants

Bangladesh has ratified CEDAW, but government has to take initiatives to withdraw all reservations to Articles 2 and 16.1, which aim to remove discriminatory laws regarding marriage and family relationships and give equal rights to women in terms of marriage and divorce as well as full implementation of CEDAW to take stand against all forms of human rights violations. However, the system of reporting within CEDAW system has no enforcing mechanism, and so little is known about the system and its impact on legislation. Executive action in Bangladesh seems to be quite minimal (Halim 2003: 73). National Policies on the Advancement of Women in Bangladesh need to address such diversity among women and provide support for establishing women's equal land rights. This recognition of women's ownership of land builds on a common opposition to gender oppression and male hierarchy.

#### I. MDG-3 and the Status of women

In terms of achieving MDG-3 there are several areas where women are at a disadvantage and gender gaps are quite apparent. While the country remains broadly on track in ensuring gender equity in basic needs, including the strengthening of opportunities through massive awareness to effectively sustain post-primary education for girls, progress remains poor in terms of girls' transition to tertiary level education and the workplace. Levels of female youth unemployment and underemployment are high. This results in more women in productive income-

*“Women's rights require recognition under both formal and informal systems of tenure. This may lead to tackling constitutional and inheritance laws as well as land policy and legislation.”*



generating activities, and in low levels of female participation in political and high public office.

#### J. Inclusion of women's agency

Feminist perspectives have explored women's exclusion, their subordinate position within the family, community and state, in several ways. Various feminist strands claim that women should have the same rights and freedom as men. By being excluded from conceptions of knowledge, rationality, and agency, women are denied identity or subjectivity.

Women are given little intellectual scope to contest these characteristics. Subordinate position and exclusion is reinforced by sexist constructions masked as natural or biological, and therefore non-political and leading to differentiated entitlements to resources. Further women's agencies need to be strengthened by providing them with information related to land issues.

Finally, the challenge for policy makers is perhaps devising ways that are practical, implementable, culturally sensitive, and pro-women. In order to meet all these demands of gender equality policy, there has to be gender analysis of existing land policies, programmes and practices, as well as thorough knowledge of gender relations and social dynamics for policies to be shaped most effectively. ■





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# Advocating for Women and Land Rights in INDIA

*This article shares the rich experiences of two organisations in India, namely Ekta Parishad and Social Development Foundation, which have been actively mobilising communities of the landless, in great part through empowering poor women to secure land rights. Small victories have been won; the challenge, then, is to ensure that policy gains are implemented.*

## Quick Facts

In India, 65-70% of people live in rural areas, majority of which are women. Small and marginal farmers make up about 80% of the farming community, but they use only 43% of the land area. Thirty-seven percent of the land under cultivation is owned by large farmers, who comprise a mere 3.5% of the population. Ten percent of the population is landless.

## Ekta Parishad: Social Force at Work

Ekta Parishad is a large people's organisation composed of the landless poor, tribals (*adivasis*), small farmers and other marginalised people. Women make up 70-80% of this group. Creating community leaders to enhance the poor's control of natural resources for their livelihoods is the focus of its work.

Some 40% of the women involved are community leaders.

Firstly, one of the critical issues on the subject of women and land rights is to move beyond titles, beyond women as farmers, beyond community rights – and to shift the discourse into strategic thinking about how women hold on to the land once they get their titles. Ekta Parishad's experiences show that one of the only ways by which a woman can retain her land is with a group formation to back her up. It cannot be emphasised enough how important community organisation is for establishing women's land rights.

Building and growing a community organisation entails developing women's leadership. Ekta Parishad started with a group of women in one small village. Because of this predominantly female base, women from other communities began to join. In the course of 25 years, Ekta Parishad has developed an ever-expanding community organisation into a social movement.

*Mobilising women as a real social force is an important element in succeeding in a land rights campaign. Only when women come together in a large formation and assert themselves will*

*Based on the presentations of Ms. Jill Carr-Harris, Ekta Parishad; and Ms. Leena Dabiru, Deputy Director of Social Development Foundation (SDF).*

the State implement their laws. In other words – it is women’s power, or people power primarily with women at the helm, that enables community organisations to transform into a vital social force.

However, community organisation often does not jive with State laws and policies. In response, Ekta Parishad organised *Janadesh*, a twenty-five thousand strong non-violent march of the poorest of the poor in India, in October 2007. From Gwalior to Delhi, for one month, including the holidays of Dussehra and Diwali, they walked. The journey was long, but it was graced by the landless poor. Some in far-flung areas had to walk 20 kilometres, get on a train for two days, come to Gwalior station, alight and walk to a central depot to join the 25,000 other people gathered over three days, and then on 2 October 2007, began the 340-kilometre march to the national capital. They marched in line with flags, song, and happiness. Rather than threatening state power, they engaged it as an all-inclusive people’s power.

To illustrate social force at work: At the start, policymakers tried to ignore the 25,000 gathered, in the hopes that these would simply be discouraged and leave; but they tried in vain. The crowd pressed on, and come the 20<sup>th</sup> day, the Rural Development Minister came, initiating negotiations on the land reform policy. They pressured the government to recognise their land and livelihood rights, not only those of industry and wealthy communities. By



the time the marchers set foot in Delhi, the government had agreed to their demands, so they would return home.

Although only 40% of the marchers were women (since it is very hard for women to leave their families), they were at the forefront. These women played non-conventional roles that can only happen when there is a social action. While marching, they were carrying their babies, jute bags atop their heads. They were leading. At night, they were watching the traffic and keeping people in line. And they were happy, with the knowledge that this was their way. What is truly remarkable is the extent of empowerment of these women. They had never before stepped beyond their districts, but they were then marching to meet the Prime Minister of India. When they returned to their local areas, they demanded their land rights.

*Janadesh* also eventually won for the poor a national land reform document: the *Report of the Committee on State Agrarian Relations and the Unfinished Task in Land Reforms*. The document’s 360 pages include revenue land, forest land, community land, waste

## SOCIAL MOVEMENTS

Without social movements, people's voices are not heard by government. Social movements provide the necessary basis for policies and laws. However, it usually happens that good policies and laws lack the necessary enforcement and implementation.

Social movements are an instrumental part of the process. The struggle moves in a circle: first, social movement; then policy creation. Another movement takes place to push for implementation. The cycle continues.

Social movements are essential, even though success is never guaranteed. Yes, sheer numbers matter. But highly critical to the success of a social movement is women's participation. This is the experience not only from South Asia, but in parts of Africa as well. In addition, engaging society at large – including the engagement of male counterparts – is a prerequisite for success.

[Rowshan Jahan Moni, ALRD]

land, not to mention a complex set of relationships on land. In terms of revenue land, it covered land ceilings, tenancy, sub-tenancy, homestead land, and community property. Moreover, gender was mainstreamed in the report. But the document has been sitting on Manmohan Singh's table for the last one year, without so much as a council meeting on this document.

In response, in 2012, *Jan Satyagraha* will build up to one *lakh*<sup>1</sup> people to march from Gwalior to Delhi. To express their solidarity, groups in some 60 countries around the world are planning parallel activities. Ekta Parishad has invited thousands of people to India to join the march. They are pushing to get 25,000 postcards written to India's Prime Minister. Films are being made, and countless events and activities are being organised.

It is important to note that Ekta Mahila Manch, as Ekta Parishad's women's wing, helps enlarge the space for women in the organisation to take on leadership for this upcoming campaign. Out of the 250 senior leaders in EP, almost a third (80) are women. Women community leaders number around 4,000 out of the 12,500 community leaders. At the grassroots, women's participation is somewhere between 70-80%.

Their rallying cry: that land needs to stay in the hands of women, in the hands of the small cultivators who comprise 65-70% of the population. It is only when people can feed themselves and develop livelihoods from some asset

<sup>1</sup> 1 lakh = 100,000.

base that real development in India can flourish.

A social force sufficiently large enough can push for reform. The first stage is to push for implementation; only after can the agenda be pushed higher.

### Social Development Foundation: Empowering Women to Reclaim their Rights

The Social Development Foundation (SDF) is working for holistic community development towards land as a right for all through meaningful and sustained land reform. It focuses on human rights, particularly land rights and the right to food, and natural resource management. Land literacy is one of SDF's key programs, which has successfully "produced" women as leaders. Because women's empowerment – not only socially and politically, but also economically – is an integral element in the discussion on land rights, SDF has programs to develop women's skills to retain their land. SDF is also going to the grassroots, and working with the academe to conduct policy analysis. They are striving to make women aware of their rights, and empower these women to come together to demand these rights.

Women have actively participated in SDF's land-related programs and activities. Some have even formed state-level alliances, and have held their own elections within their groups.

Other capacity development and advocacy activities of SDF include: para-legal training, community resource mapping, and the documentation of people's lives. SDF also provides the necessary legal aid for victims of violence. To improve living conditions for those in the rural areas, SDF is demanding to increase the National Rural Employment Guarantee Act's assured days of employment to villagers, from 100 to 365. SDF is also calling for increased minimum wages in keeping with the rising costs of living. SDF has been actively working in Uttar Pradesh and Uttarakhand.

### **The Women's Resource Access Programme**

Women own less than 2% of all land, despite their major role in agriculture and food security. The International Land Coalition's Women's Resource Access Programme (WRAP) recognises women's access to land as directly related to rural development and food security. WRAP discusses various national, international, and regional dimensions of women's access to land.

In 2001, SDF produced "Women's Access to Land and Other Natural Resources in India" as part of WRAP's "Voices from the Field" project. It was the fruit of a series of five workshops conducted with poor rural villagers in Madhya Pradesh and Uttar Pradesh. It has reinforced the principle that women's equal participation in decision-making at all levels is necessary to ensure equal

economic opportunity, including access to land and other natural resources.

### **Peaceful foot marches –Padyatras**

SDF regularly organises many foot marches or *padyatras*, of 400 to 500 kilometres each. *Why foot marches?* Because in so doing, SDF can reach out to people, learn about their local issues, and then take these to the state and national levels<sup>2</sup>.

On 13 August 2010, on the eve of Independence Day, hundreds of women marched to their district headquarters.<sup>3</sup> They presented their memorandums, demanding their land rights as well as their rights to government schemes, which hitherto they had not been able to benefit from due to the high level of corruption and bureaucracy. Left with no options, the district heads addressed the mass rally. They gave assurance on the women's demands. With that, the women returned, successful.

### **National Land Alliances (NLA)**

SDF has spearheaded its land rights movement by bringing grassroots organisations together under state-level platforms. In turn, these state level land alliances have coalesced into the National Land Alliance (NLA).

The national land alliance serves as an

<sup>2</sup> Land is a state subject in India. Every state government has to actually implement laws that have been passed by the state or the central government.

<sup>3</sup> India is politically subdivided into states and districts. Each district has its own headquarters.



*Community rights over the land should be given, and economic programs for women need to be made a priority. In addition, women should have inheritance rights. They also should be entitled to individual or independent land titles, and not only joint titles.*

instrument for advocacy, which aims to bring a national level awareness on land rights and advocate land reforms, for letting grassroots voices be heard. The Uttar Pradesh Land Alliance and the People's Alliance have campaigned against untouchability, which is practised in India in large parts. They launched a signature campaign in the state of Uttar Pradesh, targeting 100,000 signatures be collected from villages. The demand: 5 acres of land to every landless, marginalised woman for socio-economic security. The signatures will be presented to the local assembly by the end of December 2010.

### **Conclusion**

Much work still needs to be done. There are a set of actions and recommendations that need to be taken up. Foremost, land should be given to the landless. Women should be recognised for their key role as farmers, especially at a time when public support and subsidies for agriculture are dwindling. After all, it is mostly women who are left to work the fields. Their participation and leadership in the Gram Sabha is also important, as part of their empowerment.

India is a huge country that is not only divided geographically, but also culturally. Customary practices vary from region to region, and ethnic complexities abound. Women tend to be more empowered in some places in the south, such as Tamil Nadu. There, women have been given inheritance rights. Women have also developed a set of technical skills, and some

have even emerged as entrepreneurs. Whereas in some rural areas in the northern regions, women enjoy less rights and privileges. It is worrisome that female infanticide is being committed, to avoid sharing property, among other reasons.

Community rights over the land should be given, and economic programs for women need to be made a priority. In addition, women should have inheritance rights. They also should be entitled to individual or independent land titles, and not only joint titles. There are cases of husbands deserting their wives, remarrying and starting new families. The abandoned women should gain [individual] property rights over their land. This is to reflect the real situation: that women are generally less mobile, and have to stay.

Beneath the veneer of macro-economic development, India is acting as an anarchist country where the rights of the poor are routinely ignored. India's role in the region has to be critically analysed, especially in light of its policies that violate land laws. This is a time when lands are being grabbed for industry, mining and infrastructure development, when parks are pushing out tribals from forest areas, and when housing and land prices are turning out the poor, as in the case of the 250,000 people who lost their homes in the city of Delhi due to the Commonwealth games.

The government has violated ceiling laws to provide large land tracts of land

for special economic zones (SEZs) and industries, using the land acquisition act, a law meant to acquire land for public purpose. The expansion of SEZs is displacing hundreds of people and using fertile agriculture land. More and more agricultural land is being converted for non-agricultural purposes, while unregulated land speculation has driven up land prices. Therefore, a complete moratorium on such land acquisitions in the so-called name of development should be imposed.

Furthermore, the Government of India has diverted huge swathes of forest land to mining companies, thereby ignoring the Fifth Schedule of the Constitution of India that deals with tribal rights. Government should immediately stop exploitation of forests, forest produce, and the environment. There should also be a moratorium on all mining and acquisition of forest lands.

These serve to exemplify the direction of the government, which on the one hand, lets land policies be implemented when they benefit the rich. On the other hand, when it is a question of land acquisition or mining, land policies get implemented immediately. But when it is a question of serving poor people, land policies are not being implemented, the reason being that *land is at the essence of a country's power relations*. For the poor in India, who are without land as an asset, they have neither dignity nor livelihood. Worse, they become cheap captive labour in the hands of a group of people who wish to use and misuse their capacities.

As it is, the numbers of landless are already high. Such policies actually increase the number of landless, and pose a threat to food security.

Finally, the government should fulfil its responsibilities to its people by giving fair hearing to the problems of the masses, and by stamping out corruption from all its departments. ■



# Women's and Ownership of Land in NEPAL

A good starting point for tackling women's land rights in Nepal would be the concept of "**Bhumi Mata**," or Mother Land, in essence rooted in Nepali consciousness and wisdom, which is in favour of women's land rights. In keeping with this, politicians and policy-makers must recognise Nepali women's historical role; women have been managing the country's agricultural lands for centuries. Women's land rights are rooted in age-old cultural practices, and must therefore be respected.

## Context – the evolution of the discourse on land

"Land reform" and "land to the tillers" have been key phrases in the Nepali political-economic discourses since the 1940s. Some reform attempts were made in 1959 and 1965; however, "land reform" in its true sense is yet to be achieved as in other countries. Currently, debates rage on reform modality: "land reform," "scientific land reform" or "revolutionary (or progressive) land reform?"

The agenda of "women's land rights" began to appear in the political arena, or within the land reform discourses, in the last decade, when grassroots women's

*Presented by Ms. Julia Chitrakar, Director of the Centre for Studies in Gender, Society and Development, and Vice Chair of the National Land Rights Concern Group. Ms. Chitrakar represents the Community Self-Reliance Centre (CSRC) in this workshop.*

*BHUMI MATA (Mother Land) is the Mother of Mothers.*

*Bhumi Mata (Mother Land) gives life to us, nourishes us and protects us. Our mothers and sisters, with the help from fathers, brothers and others, have been taking care of the 'Mother Land' for centuries!*  
*-Nepali wisdom-*

groups and civil society organisations began to engage in strengthening the land rights movement in Nepal.

## Land and livelihood

Land is still the primary source of livelihood in Nepal, as nearly three quarters of the population are engaged in agriculture as their primary occupation. The absolute majority of farm workers are women. Nepal is economically poor, and the majority of the 'poor' and 'poorest of the poor' are either landless or land-rights deprived groups; in order to achieve the secured livelihoods of the people land right is crucial. Therefore, land reform is still a vibrant political and social movement agenda. At the same time, only by including women's land rights can the land reform agenda be complete.



## Critical issues - women's land rights and women's social status

Women comprise 51.1% or more than half of the population in Nepal. Nepali rural women are the major producers, managers and providers of food in the country. Women are economically more active than men, but they disproportionately own so little of the land. Even though they contribute 60.5% to agriculture, they only hold 10.8% of land. Only 4% of households have female ownership in house and land. This highlights the societal injustice.

In fact, it is these existing landownership patterns – of men controlling over 90% of landholdings – that have produced the existing unequal gender power relations. In most parts of the country, women, particularly from the land poor and landless families, suffer more from violence and discrimination. This is also the case in many other countries. Furthermore, historically, as women farmers were excluded from their right to land, they have also been denied from their identity and citizenship certificates. Because land continues to be a major source of political, economic and social power, access and control over land determines women's social status. By owning land, one does not only enjoy the land rights – s/he earns respect in society, and obtains access to other services as well.



## Actions needed for change

Women's land rights must firstly be recognised as a human rights issue, by government, the international community, and other groups concerned. [Married] men and women should have joint land ownership or occupancy rights, while single women, divorcees, and widows managing the field should have independent land rights.

Equally important, gender perspectives must be well integrated with ethnic and *Dalit* perspectives in setting the land reform agenda and context mapping. This gender-sensitive land tenure context mapping is needed at all levels, from the village development committee (VDC) to the national level, so that all specific cases are taken into consideration.

*Land rights are an imperative. The conventional centuries-old wisdom rooted in Nepali culture, as well as current reality, point to this. But the existing gender inequality and gender power-relations are a product of present gender-insensitive land ownership patterns.*

At the community level, women's groups should be given collective rights to manage previously unused lands. However, there remains a need for critical scrutiny in the cases of so-called "fallow land;" the State normally regards communal lands conventionally managed by indigenous or other ethnic communities as fallow, as such lands might not have been registered as collective land. And in the case of managing communal lands and other public lands, a management committee composed of at least 50% women should be formed, bringing in the community people concerned.

### **Opportunities**

Democracy is newborn in Nepal. Nepal is still struggling to achieve genuine democracy for all, a democracy not limited to the elite or rich. As the country undergoes the process of democratisation, movements are forming and taking place, and women's participation is significant. Women are asserting themselves as they struggle to secure land rights. Furthermore, as an example of strides made for women's land rights, the interim Constitution has a provision on inheritance that grants equal property rights to daughters and sons. Of course, implementation is crucial, and is one area where CSOs can focus their efforts.

The Community Self-Reliance Centre (CSRC) is an organisation actively engaged in the issue of land rights, including women's land rights. In recent years, more organisations have begun

to place women's land rights high on their agenda. Involvement in politics has been necessary for these groups, which are working to raise voices, advocate, and lobby for women's land rights at various levels in Nepal. Some land rights activists are members of the Constitutional Assembly, signifying a real opportunity to influence national policy.

### **Conclusion**

*Land rights are an imperative. The conventional centuries-old wisdom rooted in Nepali culture, as well as current reality, point to this. But the existing gender inequality and gender power-relations are a product of present gender-insensitive land ownership patterns. Clearly, without land rights, real development in the country is not possible. Women's empowerment is impossible without the right to land; nor is it possible to talk about women's rights and human rights without engaging in discourse in favour of women's land rights. These issues must be taken together. ■*

# Overview of Women's Land Rights in PAKISTAN

Pakistan is confronted with several critical issues that stand in the way of land rights for women. Their empowerment is mostly perceived as limited to welfare. Their improved access to education, health and non-farm assets are considered indicators of women's empowerment. Women's economic status is only measured in terms of employment.

Secondly, women's relationship with land has always been mediated through their relationship with their male relatives, a situation which has rendered women dependent. On this note, pursuing women's land rights would most likely mean compromising their relationships with men, and rendering them dependent on men for food and shelter.

Furthermore, in the tribal social arrangement, women are kept in with strict *pardah* (hiding). This is something specific to Pakistan. The practice of *pardah*, which entails wearing a veil, is restrictive for women in terms of mobility and freedom.

In terms of legal issues, Pakistan's Civil Laws do not discriminate against women. However, matters related to succession and inheritance are guided by the West Pakistan Muslim Personal

Law, which stipulates that women be accorded half the share of a male sharer. This in itself is discriminatory against women.

There have been three State-led land reforms in Pakistan, under different governments, none of which recognised women as a separate group of stakeholders where property rights are concerned. The 1959 land reforms, which aimed to redistribute land to the landless, imposed a land ceiling. Rather than give up surplus land, land owners circumvented the law and transferred land to their female relations. The inadvertent outcome of these land reforms was that women began to have land in their names.

Islamic law accords women some rights, although these rights are unequal to that of men – but this section of Islamic law has not been enforced. Land transfer and ownership continue to be governed by customary laws that exclude women altogether.

## Opportunities for CSOs to advance women's land rights

At the national level, the National Policy for Development and Empowerment of Women, crafted in 2002, highlights the need to remove inequities and

*Based on the document prepared by Mr. Tanveer Arif, CEO of the Society for Conservation and Protection of the Environment (SCOPE), as presented by Ms. Rowshan Jahan Moni.*



imbalances in all sectors of socio-economic development, by ensuring access of poor rural women to land, agricultural and livestock extension services and micro-credit. However, this policy does not even mention women's inheritance rights and the issues arising from customary laws.

International laws could be used to improve national laws to benefit women. For example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international law that sets an agenda for national action, and as its name implies, to end discrimination against women. Pakistan is a signatory to CEDAW, but its Constitution dictates that national laws supersede those dictated by international covenants. This completely undermines the opportunities offered by international law to improve women's conditions. Women's unequal

rights to land, governed through national laws, cannot be rectified.

The third Millennium Development Goal (MDG) is to promote gender equality and women's empowerment. The Government of Pakistan's report in 2005 recognises the link between land access, ownership and inheritance and women's empowerment, but the government has yet to develop and implement programs that effectively address women's issues.

### **What needs to be done?**

Given that land ownership enhances women's status within their families and society, land redistribution laws and policies must be gender-sensitive and pro-poor. Joint titling for married couples should be introduced to give women access to land. It is important to note that men must be recognised as a separate group, and therefore

accorded rights as such. As long as they are not recognised as a distinct group with distinct needs, efforts will remain inadequate. Effective and regular follow-up and monitoring are thus needed to ensure that any possible loopholes in the policy and law are not exploited at the expense of landless poor and women.

While it is true that some women do hold titles to land, they generally exercise little control over it. This signals a need to develop women's capacity, through training and awareness-raising to help women manage land on their own.

Agricultural work should be brought into the formal economy so it could be regulated and workers could be protected. Then, women's contribution would be more recognised and valued, and the multiple issues of agriculture labour could be addressed more effectively. Corollary to that is targeting women as farmers, providing women extension services like access to agricultural loans and inputs. Knowledge building is essential to women farmers and this needs to be enhanced.

Taking into account religion and women's land rights, *Shari'a* law is practised and the most widely accepted means of granting women the rights to own land through inheritance. Therefore, religion can be relied on to demand women's equal rights, as are the cases in Turkey and Somalia, where both male and female children inherit equally from the father's estate.

Finally, the Pakistani Courts accept the widely practised *Tanazul*, whereby a woman has the right to forgo her share of inheritance. This is also called the "good sister" concept, under which a sister is almost expected to willingly give up her share. Due to familial pressure, this is rarely challenged in the Courts. Policy should dictate that cases of *Tanazul* be monitored and examined rigorously to ensure women are not relinquishing their land under duress. ■

*Given that land ownership enhances women's status within their families and society, land redistribution laws and policies must be gender-sensitive and pro-poor. Joint titling for married couples should be introduced to give women access to land.*

# Women's Perspectives: A Case Study of Systemic Land Registration in CAMBODIA

**A**t the end of the Pol Pot regime, no family in Cambodia had any land titles. This is a serious issue today. In 2001, the Royal Government of Cambodia, embarked on the process of land administration with donors, in order to give access to land for the poor and develop land markets. The Ministry of Lands Management, Urban Planning and Consultation (MLMUPC) began systematic land registration after the 2001 Land Law was passed, as part of the Land Management and Administration Project (LMAP). Thus far, systematic land registration<sup>1</sup>, in its first five year plan, from 2002 – 2007, has been implemented in 11 out of 24 provinces.

With that, Gender and Development for Cambodia (GAD/C) embarked on a research to see and identify the gaps in the process of land titling registration. The purpose of the study was to identify the emerging issues regarding women's access to land in Cambodia. This would entail looking at cases of separated, divorced, and abandoned relationships, paying attention as well to multiple marriages and domestic violence, before systematic land

registration was put into place in the country.

Since 2008, when the study was conducted, over 1 million titles have been issued to individuals and families during LMAP's first phase, both in rural and urban areas. According to the 2002 Interim Land Policy Framework, land policy must be responsive to women's needs, including the principle that titling will be available as joint ownership between husband and wife. The survey covered 2 provinces in Cambodia. Its results indicate that: 20% of land titles are issued in the wife's name; 5% in the husband's name; and 70% of titles are jointly owned by wife and husband. However, despite efforts of the Royal Government of Cambodia (RGC) to incorporate gender perspectives into land reform laws and policies, concerns linger about overall implementation.

## Joint Ownership of Land

Joint land ownership is an indivisible right of ownership equally shared by husband and wife. Land ownership for women in particular can have an impact on intra-household decision making and their overall role in the household economy. Only land can give benefit to everyone. It is a

*Based on the presentation of Ms. Ros Sopheap, Executive Director of Gender and Development for Cambodia, representing the Cooperation Committee for Cambodia. The presentation is gleaned from the same-titled publication.*

<sup>1</sup> Systematic land registration is a State-initiated process of land titling through a determined jurisdiction, and is done on a commune by commune basis.

particularly critical resource for women when the household breaks down. In many cases, land ownership spells the difference between dependence on family support and the ability to form a viable, self-reliant female-headed household.

Individual or joint ownership can ensure that women have access to, and control over land. But within joint ownership are many cases of husbands deserting their wives or remarrying. Joint land ownership has posed several challenges for women, which the following cases seek to illustrate.

### **Vignettes of Separation, Divorce and Abandonment**

Mrs. Saro is a 47 year-old mother of 5. Her husband left her 13 years ago when she was 7 months pregnant. He has never returned. The land given to her by the State is her main source of livelihood. However, upon examination of the land title, it was clear that the land had been registered jointly with her husband. This, in spite of the fact that she had discussed her husband's abandonment to the land registration officer. She worries, "*What if he [the husband] comes back and claims the land?*" She has child custody, while he already has another wife.

The story of Mrs. Saro is similar to more than 15 cases in the two provinces where the study was conducted. The women had thought their lands had been registered only in their names. The actual titles showed their names,

but they also included the names of their [former] husbands.

Then there is the story of Mrs. Nath, 46 years of age and a mother of 5 children, whose husband left her over 10 years ago. At the time of registration she was asked to provide a supporting letter from the commune council to confirm her husband's abandonment. She was told by the village chief that only in the event of her husband's death could they solely put her name on the land title; and that, were her husband simply somewhere else, she could not register alone and get an individual land title.

In Mrs. Nath's words: "It is unfair. He destroyed lots of property before he left. He is a gambler and always drunk. I told the land registration officers this and argued to put my name and only my name."

### **Land Adjudication Guideline (2004)**

The Land Adjudication Guideline indicates the steps to follow in cases of separation, divorce, and abandonment. Both separation (or traditional divorce) and divorce are recognised for the purpose of systematic land registration.

Informal separation or abandonment is very common in Cambodia. In this case, the Guideline specifies that the land registration officer shall record the land as the individual property of the spouse who resides on and takes care of the land, even if the land was acquired



together. But it does not specify the timeframe, i.e., how many years of separation before the land can be registered with the remaining spouse. The duration of the separation is given only as an example: "Land given by the state in 1984 and that the separation took place in 1988 or 1989." Based on this example it has been interpreted that a minimum period of four to five years is needed to recognise the separation. Neither laws nor guidelines state an explicit period.

The new policy conflicts with the Constitution, which states that if a spouse has disappeared for more than one year and one day, it automatically counts as divorce. The spouse left behind can approach the village chief, file for divorce, and register the property in his or her name (most often it is the wife left behind). This was before the land registration policy was created.

Although everyone knows about the benefits of joint land ownership, interviews with Land Registration Officers and local authority revealed that this is not the case where detailed procedures stated in the Land Adjudication Guideline on separation are concerned. Officers are generally uninformed about the policy.

The consequences may be severe for women. In many cases in the provinces where the study was conducted, land

acquired during the marriage has been registered jointly, even if the husband had abandoned the wife for more than ten years.

### Cases of Domestic Violence and Multiple Marriages

Thirty-five year old Mrs. Thavy, mother of four, was given land by her parents, which is now in the process of being registered. Over the course of the last ten years Thavy was the victim of an abusive relationship. *"When he needed money he put a knife to my neck until I gave it to him. Finally I decided to move and stay with my mother but he still comes and makes lots of noises."*

Mrs. Thavy says she will register her land under her mother's name, for fears that her husband will threaten and intimidate her to sell it for money were it in her name. The land has already been given but she has so far been unable to claim it.

Mrs. Sokha's husband is married to another woman. He and his new wife live in a different commune. According to Mrs. Sokha, *"My husband bought land in another commune with my money. I have all the receipts to prove this claim. What worries me is if he registers my land as joint property with his other wife."* Because after 30 years of marriage, she does not have a marriage certificate, she fears that she will not be able to claim her rights. She is trying to get a marriage certification, but she is deeply concerned: *What if he has already registered the second marriage? Will it*





*mean that my marriage is not legal?"*

The story of Mrs. Mak, mother of one son, follows. Mrs. Mak inherited land from her parents, but could not explain principles or implications of joint titling. She discovered that, much against her wishes, her land had been registered jointly with her husband, who had left her about 14 years ago. She was unaware that the land title is under her husband's name as well, since she told the land registration officer and commune chief to issue it in her name.

### **Unregistered marriages**

Women face difficulties when their marriage is not registered. Many Cambodians do not register their marriages due to the costs and complications. Another difficulty is that they do not know how much a marriage certificate costs, since the law does not indicate such. Although GAD/C does not know the actual figures of couples that register, from their work in remote areas they found that in one village alone, about 95% do not have marriage certificates. GAD/C has worked on that problem. There have also been cases wherein the second wife is "smarter" and registers her marriage, and in the process she becomes the legal wife. In addition, many births in Cambodia are unregistered, posing problems for marriage. The legal age for marriage in the country is 18 years, but without birth certificates, ages cannot be firmly established. The general absence of birth certificates has also been a hindrance to migration.

In the city, the story is different, as people are generally able to pay for registration.

### **Other civil society interventions**

Gender and Development for Cambodia is an organisation that works on human rights, women's issues, agriculture and health. It has a gender development network comprising some 60 NGO representatives. It advocates for law enforcement, and ensures that laws are gender-sensitive. As well, they have the Cambodian Men's network, initiated in 2000, also working to put an end to violence against women. Men and women are working together to push for development issues in the country. Finally, recognising the need to work with policy makers, GAD/C works closely with the Ministry of Women's Affairs and the Ministry of Interior. ■



# “Silent Voices of Women in Local Struggle, INDONESIA

## Overview

Indonesia is endowed with land and other natural resources. Local resource tenure arrangements have many dimensions, because of its tropical rainforest ecosystems as well as the social and cultural diversity of over 300 ethnic groups.

To promote development, the Government has adopted policies driven by international institutions such as the World Bank, the International Monetary Fund (IMF), and the Asian Development Bank (ADB), through 12 sectoral regulations. This so-called “development” has treated natural resources as mere economic commodities, therefore subject to logging and mining concessions, and large-scale commercial monocultures like palm plantations. This has led to ecosystem destruction.

More importantly, it has brought a change in the control over and access to land and other natural resources. Post 1998, in the aftermath of decentralisation and regional autonomy processes), land-related conflicts have increased tenfold. Each year, there are some 15,000 land-related conflicts that have yet to be resolved by

the Government<sup>1</sup>. KPA’s records show about 2,889 conflicts.

In terms of land regulations, over the past two decades, a dual system of land administration has emerged where: approximately 39% of lands are within the jurisdiction of the Land Agency (BPN), while an estimated 61% of lands are administered by the Department of Forestry.

Governing land issues has met with challenges, foremost among them: a complex and weak legal framework to secure land rights for people; and poor institutional capacity among government bodies to handle land issues. In 2010, the Government of Indonesia implemented its land policy reforms through a number of initiatives. The Draft Government Regulation of Agrarian Reform and Stewardship of Land has not been validated and is still being discussed. The Bill of Land Acquisition for Development for Public Interest has been discussed at the Legislative Assembly. However, the Bill was criticised for prioritizing market over people’s interests, and pushing for a greater role of the private sector. Koalisi Anti Penggusuran is a network of NGOs calling for an immediate stop to discussion of the bill, which they claim would only legalise seizure of

*Based on the paper and presentation of Ms. Nia Ramdhaniaty, Programme Manager, Community Empowerment and Advocacy of RMI – the Indonesian Institute for Forest and Environment.*

<sup>1</sup> Royat – BAPPENAS 2004

communities' lands. They are urging the government to immediately conduct a reshuffling of ownership, control and utilisation of land and natural resources in accordance with the Basic Agrarian Law No. 5/1960 on Basic Regulation of Agrarian Affairs. This push continues in effect until the 50<sup>th</sup> anniversary of the National Agrarian Day last 21 October 2010. President Susilo Bambang Yudoyono conveyed the important message that BPN should still help resolve land conflicts in the country. Unfortunately, no messages specifically referred to women peasants. At present, policies over land and natural resources are far from having a gender perspective.

Through the Government Regulation (PP) No. 11/2010 on Control and Efficiency of Land Abandoned as a revision of the Government Regulation No. 36/1998, about 7.3 million hectares of abandoned land have been identified as areas for land reform.

## **Women, land and natural resources**

Land and food are inextricably linked. With regard to land tenure and natural resource management, women and men have a pattern of power relations, where the division of roles and positions are equal and clear, and complementary contributions of each of these actors is necessary. In many places, women's contribution to overall family well-being is greater than that of men. One small example is the division of labour between men and women

in the paddy fields and ladang or field for dry rice cultivation. The results of the research of Prof. Dr. Nurhayati Judge (1991) show that for all field occupations, ranging from cultivating the land to selling the products in the market, the average contribution of women was 21 points, while the male contribution was only 12 points<sup>2</sup>.

Hidayati<sup>3</sup> mentions that natural resources become the centre of political and economic interests, which often leave local communities, especially indigenous women, at the losing end. In the event of changes caused by global and national development processes - which still rely on resource exploitation - and the intervention of outside parties, sometimes the pattern of power relations, and the division of roles and positions, are unable to maintain conditions of equality and justice among women and men. The case below illustrates the challenges presented by development on women, and describes their responses.

## **The Halimun Ecosystem Area**

The Halimun Ecosystem Area functions as a water catchment area and supports many living organisms. Rich ecosystems interact with the social, cultural and economic systems. But the ecosystems are increasingly being disturbed. The indigenous group,

<sup>2</sup> Dewi, K inside Terompet, Edition No. 12 years of 11/1994

<sup>3</sup> Paper presented in Lokakarya Community-Based Land Rehabilitation and Management Project, Cipanas 25 - 27 August 2003, organized by Directorate General of Community and Village Empowerment, Ministry of Home Affairs of the Republic of Indonesia.



Kasepuhan Banten Kidul, classify forest management into three types. Leuweung Titipan refers to protected forest areas; Leuweung Tutupan are conservation forest areas maintained by the Kasepuhan community. Various communities in the area utilise forest resources for firewood, to cultivate paddy fields, harvest food (tubers, vegetables and fruits) and traditional medicine. Leuweung Garapan are areas the community can manage to meet such daily needs. Because of government policy, most of the Halimun Ecosystem Area is now for the UPT (Technical Service Unit) National Park of Halimun Salak (TNGHS), state-owned enterprises (SOEs) and private companies have hindered the access of communities to forest resources. All three types are being placed under the management of UPT TNGHS, and PT Perhutani, an SOE.

RMI – the Indonesian Institute for Forest and Environment – works for the establishment of conservation or protected areas.

Each household in the community manages an average of only 0.64 hectare, per household, while the rest is in the control of the government, state owned enterprises, and the private sector<sup>4</sup>.

In a context of bountiful natural resources, women are forced to deal with two layers of pressure. First, they must face the pressure from outside

parties, which are threatening to take over the living space of communities in some hamlets.

Second, in the cultural life of the community, which is still strongly patriarchal, women have to deal with the domestic injustices. A classic issue is the social construction that women should stay in the households and act as good housewives. Even the *adat* or indigenous peoples subscribe to this “belief.” Even before investors came to the area, violence as well as the additional burdens of productive and reproductive work have taken their toll on women. “... Women never stop working; they stop when they are dead!” says Mrs. Rumnah from Wanasari Village in Lebak District.

Furthermore, the work division pattern between women and men peasants has also changed. The youth and men peasants have been forced to seek off-farm labour in big cities. In effect, those who cannot survive on their small parcel of land, nor find work in cities, have limited options. Often they are left no choice but to engage in socially fragile, destructive and illegal economic activities, ranging from “illegal” cultivation in conservation or protected areas, or forest concession areas; “illegal” mining in mining concession areas; or illegal logging. Some of those who turn to [overseas] migration are trapped into trafficking modus operandi.

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4 Hanafi, et al.

Women are confronted with numerous conflicts on land and other natural resources. They face increasing difficulties in fulfilling basic needs and the risk of disasters triggered by natural hazards like landslides, floods, and droughts. These challenges have prompted several women peasants' groups to explore opportunities for improving their life situation through various collective actions. These collective actions could be taken to indicate not only awareness and social acceptance of, but more importantly, support for women peasants at the household, community, kampung or hamlet and village levels.

These problems of injustice are a result of the poor access to and control over land and natural resources. Women peasants should challenge the notion that their place is in the home, and engage in collective actions. As it were, women peasants are being increasingly alienated from their gendered local knowledge on natural resource management. Their rights to land, water and natural resources are diminished, both in quality and quantity. Likewise, their participation in democratic processes through environmental politics and grassroots activism is also reduced.

### **The Dynamics of Struggle: The Response of Women Peasants**

In the fight to secure land rights and natural resources, strong collective actions and pressure from women are needed to effect real change.



These must move towards genuine gender justice in tenurial resource management. The first real step is to increase legal understanding among women, local government bodies and other institutions involved in the Indonesian tenurial system.

Another is to protect communal rights, in part by lending support to women's groups and organisations. The Hamlet WithThe Conservation Purpose (KDTK) is based on the community-based forestry management (CBFM) concept of collaborative forest management between farmers and the Halimun Sala National Park. Now, the farmers in Nyungcung Hamlet, Malasari Village, Bogor District has signed a Memorandum of Understanding with the national park to manage the conservation area. Other women's movements are gaining ground in campaigns on the right to reproductive health and the environment. In the Halimun Ecosystem Area, these women movements have worked together to get clean water for daily consumption.

## Three ways to define “communal”

### Conceptual dimension:

How we categorise and think

*Up to now, our patterns and systems of thought make gender hierarchy invisible.*

**Organizational dimension:** How we can act

*Gender is still rendered invisible primarily by the androcentric focus on what men do.*

**Normative dimension:** How we evaluate

*We are still dealing with the common notion that gender differences and hierarchy are natural, are apolitical and bear no moral cost.*

Learning from the dynamics of the struggle of women farmers in Halimun Ecosystem Area specifically and in Indonesia in general, it is essential to emphasise women’s rights over basic resources, most especially land) given the intense competition for these resources. In many cases this competition has led to irreversible destruction of the natural resource base.

Not so much due to a growing population, as it is because of the current global economy, many groups are interested in acquiring vast tracts of agricultural land, forest areas, estate lands, and vacant lands. Without compensation of displaced communities, such large-scale land acquisitions often have a negative impact. Consequently, the relative claim of women on land is further weakening, because formal ownership of land is usually only given to men<sup>5</sup>, despite the important role women play in ensuring food availability.

Given that land and other natural resources are a fundamental source of social security and can be a tool towards substantially reducing poverty, women must have rights to land. By providing protection of women’s land rights, natural resource productivity can increase, thereby economically contributing to families and villages. Moreover, when land

rights are protected, gender equality can be achieved, and both sexes can be more empowered. Women’s socio-political role can be recognised better, according them a higher bargaining position. In this situation, women can question and develop the ability to see the position, relationships and roles appropriate to a better life.

It must be emphasised that women need to have critical consciousness and fight for their rights. Therefore, women should be given the opportunity to access information, to be free from the pressures that occur – whether internal (from within the family) or external, and to negotiate with others to make decisions that are fair to women. Women also must have the capability of political lobbying.

A situation wherein mothers, fathers and children in marginalised communities are happy, is one that we hope for, and can be made possible through encouragement, support from various parties and a commitment to fight for women’s rights. ■

<sup>5</sup> In Mekarsari Village, Lebak District, just 32.4% of the Calculation of Tax Payable Letter are in the name of women. The rest are in the name of men.

# Women's Land Rights in the PHILIPPINES

## Opportunities

Philippine legislation is progressive in terms of women's rights and access to land. That is beyond debate.

Government agencies are slowly recognising women's capacity to act especially in concluding contracts – in terms of land ownership and property relations. For example, the Comprehensive Agrarian Reform Law (CARL) that governs the implementation of the agrarian reform program in the country states that all qualified women members of the agricultural labour force must be guaranteed and assured equal rights to land ownership, equal share of the farm's produce, and representation in advisory or appropriate decision-making bodies with regard to any agrarian-reform program implementation. The Department of Agrarian Reform, the primary agency mandated to implement agrarian reform in the country, has come up with administrative regulations consistent with CARL's gender-equality provision stating that land titles must be issued to the names of both husband and wife; or, in the case of unmarried couples living under consensual union, they are

also allowed joint titles, provided such spouses are jointly working and cultivating common tillage of the land.

According to the revised Family Code of the Philippines, property acquired in unions with or without marriage is covered under national co-ownership and joint-ownership laws. The presumption is that if two people live together, their land is owned jointly. This presumption is broader than in many countries, where co-ownership and joint ownership presumptions applied only to formally married couples. Furthermore, this presumption addresses the specific needs of many rural couples, who are not formally married.

In particular, indigenous peoples in the Philippines have their own customary marriage laws. Even if they indigenous peoples are married under such customary rules, outside the church and other legally sanctioned ceremonies, such couples still benefit from the Family Code. Also, both partners' written consent is required for land transactions, regardless of whether the land is registered in the name of both or was obtained by only one of them, if the land was obtained during the marriage or cohabitation.

*Based on the presentation of Mr. Samson Pedragosa, Deputy Director of the Philippine Association For Intercultural Development (PAFID).*

*The Indigenous Peoples' Rights Act of 1997 also mandates that IP women shall enjoy equal rights and opportunities as men, as regards the social, economic, political and cultural spheres of life.*

The Indigenous Peoples' Rights Act of 1997 also mandates that IP women shall enjoy equal rights and opportunities as men, as regards the social, economic, political and cultural spheres of life; and their participation in the decision-making process at all levels, as well as in the development of society, is given due respect and recognition.

The Department of Environment and Natural Resources (DENR), the primary agency mandated to promote and protect the country's environment and natural resources, is also in charge of land classification. It has amended its regulations on alienable and disposable public lands in 2002, thereby granting women - regardless of civil status - equal rights as men to apply for the purchases or lease of public lands. Forest lands are considered as government land. Once a portion of land has been declared alienable and disposable, anybody can apply for a pre-patent or lease over those lands, and over these the law provides for equal rights for men and women.

### **Critical issues**

Firstly, while Philippine laws affirm women's equality with men, there are still significant gender imbalances in practice, as well as customary laws that discriminate against women. This is more pronounced in the rural areas, where the gap in education and employment opportunities between men and women is wider.

Second, although there are no longer any legal variations in men and women's

access to land and property, in practice men are still perceived as the primary property owners with bigger collaterals. Thus, sometimes, men receive bigger loans; while, women, on the other hand, are limited to small loans.

Customary laws, primarily prevalent in rural areas, also make it difficult for women to enter into contracts or agreements. Customs, sometimes, are very difficult to overcome. Customary and religious laws in the Philippines have a major impact on how vigorously civil law is followed or enforced. For example, under Muslim personal law in the Philippines, a woman must have her husband's consent to acquire any property by gift, except from her relatives.

Indeed, customary laws and practices differ from region to region and province to province. In some regions or provinces, women are equal with men in rights to land ownership, although in many areas, men administer or manage the conjugal property.

### **Recommendations**

PAFID as an organization has always respected the rights of IPs to self-determination and cultural integrity as mandated in the IPRA; such respect demands that they be allowed to address perceived gender inequalities at their own pace and determination. This means that it is highly unethical and even illogical for an outsider to make judgements about the community on, for example, gender imbalance. Rather, the community



should determine for itself whether gender imbalances exist within their community. And whatsoever they determine, they should be given their own rights and space, at their own pace, to decide whether or not to address those challenges.

To help bring about this process requires continuous dialogues, interactions and information dissemination and gender education. While PAFID does not overtly try to intervene in the communities where they work, they continue dialoguing with them. In the process of merely communicating with them, they are creating some change.

The Philippine experience demonstrates that gender integration can be pursued by promoting awareness of women's land rights and disseminating information. The country certainly does not lack laws and policies pertaining to gender. But there still remain many things to be done:

- identifying gender-sensitive policies and services;
- using gender-sensitive processes for implementation;
- evaluating implementation in terms of gender impacts;
- developing guidelines for gender-appropriate practices and the participation of women;
- fostering strong participation of women; and
- changing operational and organisational policies.

The importance of gender disaggregated data cannot be emphasised enough, especially to enhance efforts to address gender imbalances in the country. In the absence of disaggregated data, it is necessary to extrapolate data from the general population. But progress is being made with the 2010 population census, which has begun to collect gender-disaggregated data, including data on indigenous peoples. ■



# Political Economy of Women's Empowerment and Land Rights: Issues to Ponder Upon

## Why women?

**W**hy women? For many reasons. Firstly, women constitute half of the human population. They are also the reproducers. Second, woman is the mother of civilisation. Women have played an important role in the development of the primitive communal economy as well as the industrial revolution. How can one think about the industrial revolution in the UK without the participation of women? Or about the development of Bangladesh without women workers? About 90% of women workers [in Bangladesh] are trained.

They are "home engineers." (We no longer employ the term "housewife" in the Census). Women can perform up to 92 activities [see Table 1]. They are not only the real producers but also reproducers of the economy. They are the key persons in maintaining family bonds, directors in ensuring the family's economic survival and food security, protectors and guarantors of households, and protectors of natural resources – land, water and forestry. They – not corporate managers – are the leading experts on time management because they can carry out, on a daily

basis, so many activities.

Furthermore, women are most knowledgeable about disaster coping strategies. This is why majority of disaster training programs is done with women. Also, they are the knowledge producers as well as the innovators of local and traditional best practices.

Most importantly, they are promoters of peace at the household, community, national and international levels.

But despite all that they do, women are the most discriminated. They eat last and least. They are late to bed and early to rise. How many hours do our mothers sleep? They are the last to be hired and first to be fired. They are subject to inequality and ill-being. They are subjugated to the power of patriarchy. They are subjects of isolation, powerlessness, vulnerability, deprivation, distress, and destitution. They are the "missing population." In Bangladesh also, their contribution to economy is never recognised. Women are economically not empowered; they cannot take on an agency role. They are subject to tokenistic participation. Though they may be members in a council, their participation is not real.

*Dr. Abul Barkat is an eminent economist in Bangladesh who has done groundbreaking work on land rights. From a political economy standpoint, he offers a strong argument for women's empowerment, especially in securing land rights. In attempting to understand women's real contribution to society and the economy, he introduces what he calls the economics of love. He ends with ten thought-provoking concerns in establishing women's land rights in Bangladesh. Though he describes a specifically Bangladeshi context, readers will find that most of these issues strike a similar chord in other developing countries.*

Likewise, inheritance laws are not pro-women. Women are subordinated to the concept of “good sister,” where that sister is best who gives up her land for her brother. But the reverse does not hold; no concept of “good brother” in terms of inheritance exists.

Women are key targets of various forms of violence. In conflict situations, the differential impact on women is alarming. In conflicts ranging from land litigation to war, women suffer the worst.

These depict the dire situation women find themselves in. So, why women? Given all this is true, then why not? Why not give women rights to land and other assets?

## Women’s empowerment

Women’s empowerment, including their economic empowerment, is an issue of true human and humane development. It is enshrined in the Constitution of Bangladesh (1972); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), Women’s Development Policy (1997); Millennium Declaration and Millennium Development Goals<sup>1</sup> (2000), Beijing Declaration and Platform for Action (BPfA) (2005); Vision 2021<sup>2</sup> (2008), and the ILC Kathmandu Declaration (2009). Furthermore, it is essentially about ensuring opportunities for women to have a full life. It is about extending real

<sup>1</sup> MDG 3 is “to promote gender equality and empower women.”

<sup>2</sup> This is the Election Manifesto of the present government administration in Bangladesh.

freedoms women should enjoy: political participation, economic opportunities, social facilities, transparency guarantee, and protective security. Further, it is about enabling women to find substantive freedom; about expanding their choices to live lives they value; about removing all sources of “un-freedom” to women; about respecting constitutional and justiciable rights; about inclusion of the excluded; and about breaking the deprivation trap.

## Women’s empowerment and land rights: constitutional rights

The Constitution of Bangladesh makes provisions in favour of women in at least 24 articles. For one, all citizens are regarded as equal before the law (Article 27). Article 7(1) is the most powerful article. It is the basis of the Constitution, and says, “All powers”—not “power”—“all powers belong to the people.” Are women part of “the people”? The answer is of course yes.

The Constitution declares in Article 28(2): “Women shall have equal rights with men in all spheres.” Article 10 provides for the right to ensure the participation of women in all spheres. Equal opportunities are also granted in the Constitution. Further, Article 29 (2) asserts that women have the right not to be discriminated, while Article 19 (2) specifies that they are not to be discriminated on the basis of sex. Removing social and economic inequality (Article 19 [2]) and ensuring radical transformation through



agricultural revolution (Article 16) are also mentioned.

The question left hanging therefore is: why do stark inequality and discrimination in women’s ownership and access to land persist?

### Socio-economic class matters

Of course socio-economic class matters. But the question of socio-economic class is an unpleasant one. Though it is seriously discussed, not only in Bangladesh, but in almost all Third World countries, substantive, empirical data is not widely available.

The socio-economic class situation as represented in this pyramid [see Figure 1] is probably similar across various developing countries in Asia.

The pyramid can be divided into three parts. At its apex are the rich. My estimates point to 4.1 million rich, out of Bangladesh’s population of 150 million. At the bottom are the absolute poor, numbering 98.9 million – almost a hundred million. The central part corresponds to the middle class, comprising 47 million people. This part can be further subdivided into three groups: lower middle (25.4 million), middle-middle (14.6 million), and upper middle (7 million). If one adds the base of the pyramid, with the lower middle class, s/he will have almost 130 million, out of 150.

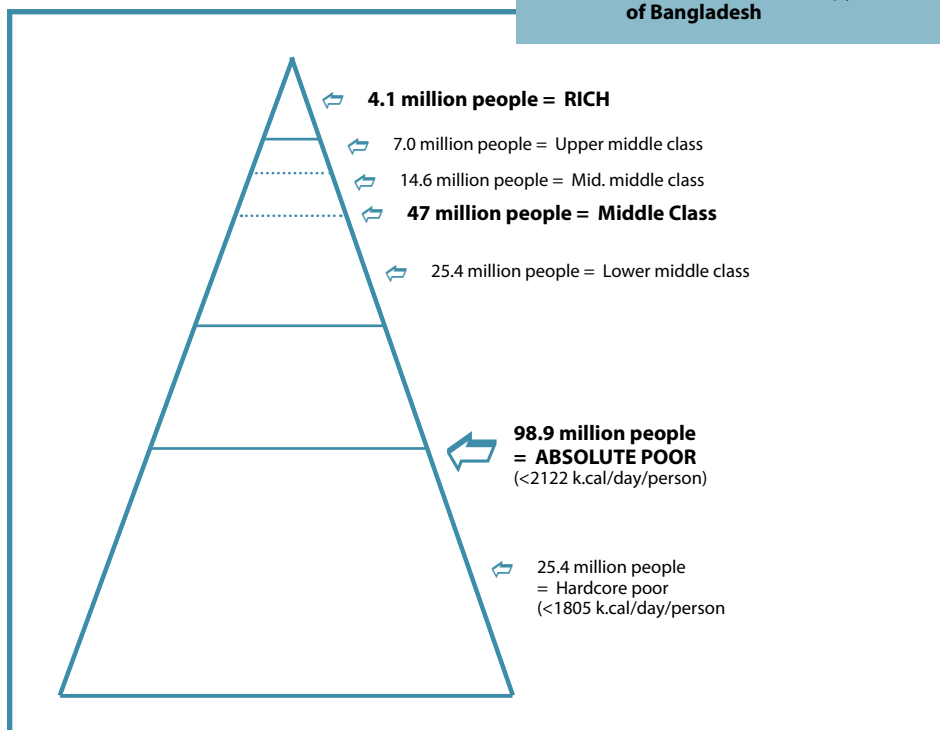
Where women are in this pyramid should also be looked into. Women are doubly poor. First, they are poor and deprived. Then, they are women.

### The economics of love<sup>3</sup>

Women’s contribution remains unrecognised. The “economics of love” pertains to the monetary value of the love economy of Bangladesh in 2008. Simply, this refers to the monetary and time value of women’s productive and household related work, which they do, according to men, out of love. [See table 1]. Indeed, women perform up to 92 different activities, but such is neither recognised nor monetised in the national accounting system. The annual time spent for household work by all women in Bangladesh amounts to an estimated 166 billion

<sup>3</sup> The “economics of love” and the estimations presented herein have already been presented by Dr. Barkat in the second biennial conference of the Bangladesh Economic Association in the Keynote presentation.

**FIGURE 1: Socio-economic class pyramid of Bangladesh**



hours. The figures are disaggregated into rural and urban areas. Instead of taking the average monetary value of work carried out by women, I have taken the monetary value for the actual work which they do. For example, if a woman devotes time for nursing her father-in-law or mother-in-law, I use the money value of an average nurse. If she works in agriculture, I use the weighted money value of that as well. The monetary value of these 166.4 billion hours, as shown in the last row, is 2,496 billion taka.<sup>4</sup> This is the monetary value of the economics of love.

Four conclusions arise. First, the officially recognised contribution of women in GDP is 20%. If the other work that women do is added to the existing GDP, GDP will increase. Women's true share in the GDP will make up 47.8%, or almost half, though this may even be an underestimate. As such, women's work has never been included in GDP accounting. For the last century, the monetary value of their work was being ignored; this is a very strong point for affirmative action for women, especially for poor and marginalised women in society.

### Understanding women's ownership and access to land

Land ownership is fundamental, being a key determinant of poverty and inequality. The reality is, household ownership of land determines: real income, food intake, expenditure (both food and non-food), literacy and access

**TABLE 1: Money value of "Love Economy" of Bangladesh, 2008 (time and money value of women's 'household' work)**

Indicators	Rural	Urban	Total
Total female population (10+yrs; in millions)	40.78	12.88	53.66
Time spent for HH work/woman/day (in hrs)	10.76	9.00	10.34
Time spent for HH work by all women/day (in billion hrs)	0.4388	0.1159	0.5547
Annual time spent for HH work by all women (in billion hrs) (Assumed 300 work days a year)	131.6	34.8	166.4
Annual money value of "Economics of Love" (in billion Taka)	1974.6	521.5	2496.1

to education, knowledge and practice of health, access to public facilities (governance and social service), and electric connectivity. It is no coincidence that land-poor households are the most excluded and deprived. And in such households, women are relatively even more deprived than the men. Changing land ownership patterns in Bangladesh indicate a trend of building landlessness and pauperisation, as well as concentration of land in the hands of a very few or increasing inequality.

Some conceptual issues need to be discussed. De facto ownership is not the same as de jure ownership. In the same vein, access does not necessarily translate to ownership, and ownership may not be real or effective ownership. To illustrate, in urban areas mostly, women's ownership in land and real estate has more to do with tax evasion than with real ownership. Women are not only merely nominal owners; they are also used by men with ill motives to make women tax evaders. And, secondly, 85% of the part owners in

<sup>4</sup> One US\$ is worth about 70 – 72 Bangladeshi taka.

Dhaka City are mothers-in-law; 40% of whom are dead. So ownership is clearly not a simple issue.

Ownership involves many things. It can be private ownership of inherited land, or private ownership of government's khas land. It could also mean cooperative ownership of khas land. It must be said that government, in the last 18 months, has claimed that more than 58,000 households have been given more than 28,000 hectares of khas land, which was a promise in the ruling party's election manifesto. In the national budget, it is clearly mentioned that during the annual development plan period or fiscal year, 25,000 households will receive 17,000 bighas of land.

Access to common property and forestry resources is important; but as important are not just land, but land-related interests, which include: tenurial arrangements, wage, land use, inheritance, marketing, subsidies, inputs, land litigations, technology, administration and management, public institutions on public land, agri-process industries, and the contribution to and share in the whole process of production-exchange-distribution –and-consumption cycle.

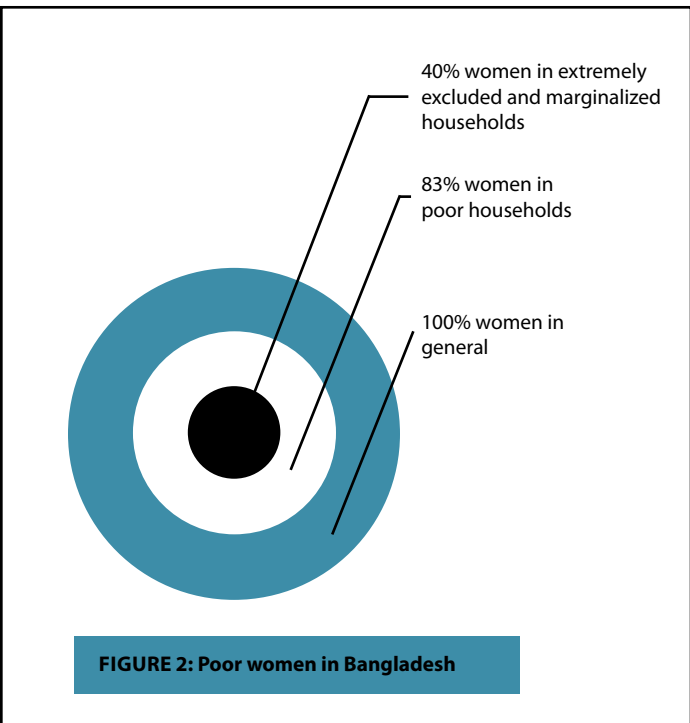
### Which women are we talking about?

The women in Bangladesh are represented here by concentric circles. The whole circle represents all women. Assuming that 50% of the population is composed of women, then there are approximately 75 million women in 30 million households in Bangladesh.

Inside the second circle are women in poor households, which include: the land poor, asset poor, and lower middle class. These women make up 83% of the entire population of women, or sixty-two million women in 24.8 million households.

The innermost circle contains women in extremely excluded and marginalised households. In rural areas, 10% of households are female-headed – and almost 100% of these are marginalised. Also included are women in: absolutely landless households, households with child labour, low-end low-wage jobs, the informal sector, slums, urban areas, and haor-baor-char areas; women who are rural push migrants; poor women under litigation; and women who belong to scheduled castes, indigenous groups, or religious minorities affected by the Enemy Property Act (EPA) or Vested Property Act (VPA). Altogether, these deprived women constitute 40% or a staggering 30 million women, out of a 150 million population, living in some 12 million households.

While women in general are excluded, in terms of land ownership, inheritance laws, and even in terms of denial of



their constitutional rights, the extent of exclusion and deprivation increases as one enters the inner circle.

## Ten Concerns

Women empowerment and land rights face ten major concerns about women empowerment and land rights. The issues mentioned are not merely concerns of Bangladesh; they are applicable for many countries as well.

### 1. Lack of information - knowledge

Who knows the percentage of adult women with land ownership in different countries? Who knows about the proportion of female-headed households having ownership of land? Who knows about the male-female share of khas land ownership? Who knows about the percentage of female-headed households among all recipients of khas land? And who knows about the percentage of women having land ownership, who also have command and control over the same land?

And the answer is: only God knows!

[In Bangladesh], women's share in privately owned agricultural land would be less than one percent.)

### 2. Lack of seriousness about land reform

The term "land reform" is not limited to land per se, but subsumes agrarian reform, land reform, and aquarian or

water reform. Out of 5 million acres of khas land, only 10% or 0.5 million acres have been distributed. The rest of the 4.5 million acres are lying with the land, water and forest grabbers. Under these fall many concerns.

- Where lies the problem of releasing 4.5 million acres of khas land from the land, water, and forest grabbers? Who are the grabbers?
- What happens with the women's ownership of distributed khas land in the case of the husband's death, separation, or divorce?
- Why does a large part of marginalised and female-headed households not get a chance to be included even in the listing for khas land redistribution?
- What is the proportion of female-headed households receiving khas land?
- Why are women from marginalised households not prioritised in khas land distribution?
- Why is the non-retention rate of khas land so high, at nearly 60%?

It is important to look at effective retention of khas land that is distributed to poor and marginalised farmers. Sixty percent is a high proportion of farmers who lose command over their land within a year. Effective ownership and retention of the land entails having the land title, the right to use and the right to harvest from the land.

## TEN CONCERNS

1. Lack of information - knowledge.
2. Lack of seriousness about land reform.
3. Lack of seriousness about the rights of indigenous peoples.
4. Ignoring women as human beings.
5. Lack of seriousness about the rights of religious minorities.
6. Unfair laws of inheritance.
7. Most of us are non-responsive, but some are over-active or hyperactive.
8. When corruption and legal complexity reign.
9. Poor people themselves are dormant.
10. An issue of political will and commitment.

*Why is institutionalizing gender equality in inheritance of land and other property difficult?*

### **3. Lack of seriousness about the rights of indigenous peoples**

Why are indigenous peoples, irrespective of whether they live in the hills or plains, losing their land, water, forest at a rapid pace? Why has the capture of their land by outsiders become a rule? Where lies the problem in instituting the Permanent Land Commission in the Chittagong Hill Tracts (CHT) in line with the CHT Accord? Why cannot IPs in the plains also have a similar mechanism?

### **4. Ignoring women as human beings**

Where lies the problem in recognising the monetary value of women's economic and household activities and including that in national accounting of GDP?

### **5. Lack of seriousness about the rights of religious minorities**

What prompts a civilised state to continue to perpetuate the deprivation cycle of the Hindu religious minority in the name of Enemy or Vested Property Act (VPA)? This cycle involves 5 interrelated dimensions of deprivation: powerlessness, isolation, vulnerability, poverty and physical weakness. Women, as compared to men, suffer more in the process. VPA has been a major source of violence against women in the Hindu community. What prevents us from resolving this last issue, even after the enactment of the Vested Property Repeal Act 2001? What prevents us from returning the

property affected by the VPA, at least to the female headed households (since all female-headed households in all rural areas are poor)?

### **6. Unfair laws of inheritance**

Existing inheritance laws, patriarchal values and social practices only serve to strengthen discriminatory attitudes towards women. The "good sister" concept prevails, irrespective of Shari'a (Islamic law) or Daibhag (Hindu law). Why is it next to impossible to amend discriminatory inheritance laws and make them more faithful to the spirit of the Constitution and the spirit of justiciable rights? Why is institutionalising gender equality in inheritance of land and other property difficult?

### **7. Most of us are non-responsive, but some are over-active or hyperactive**

Attitudes towards establishing women's rights to land differ; but whatever directions they take, the result is usually to women's great disadvantage. On the one hand, why are state and government institutions passive? Why is civil society not active enough? Why is it that in general, the NGO community, as well as those engaged in land rights advocacy, are not that vibrant? (Vibrancy transcends workshops and mere noise-making). On the other hand, why are the religious fundamentalist political parties and their allies so active against equal rights for women?





## 8. When corruption and legal complexity reign

The entire land administration and management bureaucracy is corrupt. What should be done to make the entire land bureaucracy poor friendly and women friendly? Land laws are written in complicated language, which is not only difficult to understand, but also contradictory. What can be done to redesign land laws so as to make them more understandable for the common people?

## 9. Poor people themselves are dormant

Why are poor people – men and women – themselves not organised to realise their constitutional and justiciable rights on land? Why has it been forgotten that in all land struggles, women have always played a front-running role? What are the problems in organising them?

## 10. An issue of political will and commitment

Land for poor men and women ultimately boils down to political will and commitment. How can the

needed political will and commitment be mobilised? Who should do what to realise this political will and commitment?

## Towards Empowering Women and Establishing Women's Land Rights: What Can Be Done?

First, the State – encompassing government institutions, and agencies – in line with the spirit of the Constitution, should take the lead role in empowering women. But the task is not left entirely to government. Political parties, Parliamentary Standing Committees (i.e., on women, land, law, local government, finance, and planning), local governance institutions, professional bodies, NGOs and other civil society bodies also have decisive roles to play: in movements/struggle; research; advocacy; lobbying; legal support; participation in identification, recovery and distribution of *khas* land to the poor, among others.

While many economists maintain that land reform is a non-issue, we disagree. Land reform, agrarian reform, and aquarian reform are a serious issue.

## WOMEN'S ACTIVITIES IN BANGLADESH

### **Agricultural Activity**

- Preparing field, plant seedlings, weeding etc.
- Employ agricultural labourer
- Work in the homestead vegetables garden
- Reaping crops
- Thrashing
- Collecting seeds, drying
- Preparing seed bed
- Irrigation
- Harvesting
- Drying crops
- Boiling rice
- Husking
- Winnowing (dust off)
- Storing/preserving seed
- Other agricultural activities

### **Income Generating Activity**

- Treatment of poultry and cattle
- Agricultural labour
- Non-agricultural labour
- Shop keeping
- Pulling rickshaw/van, boat
- Doing other IGA
- Mechanical works
- Potter works
- Timber works
- Painting works
- Mason works/construction
- Service/office works
- Trading works

### **Poultry and Animal Husbandry**

- Taking care of chickens and ducks (cleaning, feeding, setting free in the morning, caging in the evening)
- Taking care of cows, goats
- Taking cattle to field for grazing
- Milking cows
- Collecting eggs
- Selling eggs/milk
- Cutting grass for cattle

### **Handicrafts**

- Bamboo/cane works
- Handloom/knit works
- Weaving mat
- Weaving net
- Weaving *chhika*/rope
- Making dresses
- Sewing clothes
- Embroidery works

### **Personal Tasks**

- Prayer
- Taking meals
- Morning business
- Bath
- Personal washing (for prayer)
- Study
- Going to office for any purpose
- Physical exercise
- Walking/roaming
- Taking part in local adjudications (*Shalish*)

### **Household works**

- Cleaning house/sweeping/wiping
- Cleaning house sides
- Smearing floor
- Washing HH utensils
- Washing clothes
- Drying clothes
- Ironing clothes
- Cooking
- Serving meals
- Cleaning hurricane lamps, etc. and putting fuel into them
- Collecting fuel wood
- Making kindling (*ghute*)
- Collecting water
- Supervising HH works
- Helping others in HH work
- Making *chira/muri/khoi*
- Making cakes

### **Leisure**

- Gossiping
- Watching TV
- Listening Radio
- Taking beetle leaves/tobacco
- Visiting relatives/friend
- Resting
- Sleeping
- Attending social function
- Going to club/ meeting/cooperatives/ organizations
- Doing tasks related to hobby

Finally, “conscientisation of women” should be promoted. This process of liberatory education for social change, process to critically respond to dominant culture, process to realize women’s agency role, must be instituted. This will break the culture of silence, change the mindset of men, promote collective action of poor and marginalized, and accelerate the process of ensuring poor people’s well-being.

## A PARTING THOUGHT

Then, if all the above is true or partly true, then why not devote more time, energy and resources to expedite the process of women’s conscientisation and agrarian-land-aquarian reforms, which in turn will form a solid knowledge and action base for establishing women’s land rights? ■

# Land Rights, Women and Indigenous Peoples

Indigenous women face multiple discrimination. Simply by being women, they are already at a disadvantage. This disadvantage is exacerbated by being indigenous or *adivasi*. The biggest challenge is reflected in the reality that men are not reaching their self-determination, let alone women, resulting in a mindset that self-determination for IPs should be pursued first. However, the struggle to realise self-determination for IPs must be taken in parallel with the struggle for indigenous women's self-determination. Otherwise, the goal of self-determination cannot be achieved.

## IP Land Rights under International Law

- Recognition of Traditional and Other Land Rights on Ownership, Use and Occupation
- Right to Restitution and Compensation
- Right to Efficacious Remedies in accordance with Customary Regimes
- Safeguards against Land Alienation

Bangladesh, India and Pakistan have ratified the ILO Convention on

Indigenous and Tribal Populations No. 107, while Nepal has ratified the more progressive Convention No. 169. Both ILO conventions and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) recognise traditional and other land rights of ownership, use, occupation; and the right to restitution and compensation.

The UN Declaration does not create a new law. It is a declaration, not a treaty. What it does is reinterpret, with examples, those rights that apply to indigenous peoples. "Indigenous peoples," given that no formal definition exists, are those who had no role in designing the architecture of the modern state. Nor did they have a role in drafting the constitutions – not even a comma or semi-colon. Because of the historical process of exclusion and structured discrimination by the state – IP cannot realise those rights, which they should otherwise be exercising as citizens, but forgetting their ethnic (and other) identity. IPs are still struggling to redesign the state, but with generally little success.

*IPs, as opposed to other peoples, practise customary law and have traditional institutions.* Whether or not these leaders from IP groups are recognised by the state or not is the question. This

*Barrister Devasish Roy, appointed as a member of the United Nations Permanent Forum on Indigenous Issues, offers snapshots of some of the challenges facing indigenous peoples (IPs), especially women, with a focus on Bangladesh. Using a legal lens, he identifies the opportunities available for IPs to secure their land rights. He summarises IP land rights under international and Bangladeshi law and reviews the status of indigenous women. Insightful and candid, this article makes the case for de-gendering the land rights regime as well as for representation and self-government for indigenous peoples.*

*Barrister Roy describes himself as merely "a foot soldier in the struggles to achieve indigenous peoples' rights, minorities' rights, human rights, and women's rights."*

## UN Declaration on the Rights of Indigenous Peoples

### ARTICLE 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognise and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

### ARTICLE 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

## ILO Convention on Indigenous and Tribal Populations Convention No. 107 of 1957

### ARTICLE 11

The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized.

is particularly the case due to the fact that *adivasi* representation in elective forms of local government is low.

*It seems that in every major country in the world, indigenous peoples have derived little benefit from national majority ruling political parties.* IPs have not been able to properly engage in the political and electoral system, with its machinery of money, muscle, contacts, and companies. Indigenous peoples' numbers in the plains are so low that they get very few leaders elected to the different tiers of local government. In fact, one of the demands in the ongoing debate on constitutional recognition of indigenous peoples is reserved seats for them. India has reserved seats in both Houses of Parliament for Scheduled Tribes and Scheduled Castes.

Moreover, come election time, remaining indigenous by ethnicity is a problem. I always jokingly say, that even if there are elections tomorrow in district and regional councils, everybody is going to try to dance to the tune of the majority group. Nobody is going to do the jute or bamboo dance, because politics is about money and campaign funds. That is where we have to really try to restructure governance, participation and decision-making, beyond the so-called democratic system, which is really not democracy; rather it is majoritarianism. It is a numbers game.

A deputy commissioner is not an elected person, but neither are we traditional. *Those elected are not necessarily the only ones representing the people.* A study

conducted by the International Work Group for Indigenous Affairs conveyed one message loudly and clearly: indigenous peoples, political parties, and elections—one gets the worst out of them. The first priority is to get elected. Unless and until indigenous peoples can find ways to deal with this system, their voices will not be heard.

How do we get remedies under international law, when there are dysfunctions within the system itself? *International human rights law has no teeth.*

Nepal's treaty law prevails over its Constitutional law, as with some Latin American countries,<sup>1</sup> and unlike Bangladesh, India or Pakistan. This means that one cannot simply invoke the ILO Convention, for instance, in the Supreme Court of Bangladesh. And although Nepal is faced with many such opportunities, it is weighed by many problems. The future of *Adivasi Janajati*<sup>2</sup> rights is uncertain. Such difficulties are compounded by the fact that indigenous peoples – especially indigenous women – still need to build capacity and increase synergies with other organisational networks that are fighting to mainstream indigenous women's rights into the overall struggle for indigenous peoples. *That is the crux of the problem.*

<sup>1</sup> This is guaranteed by the Nepal Treaties Act, 2047 (1990). Under the Nepal Treaties Act, 2047 (1990), in case of divergence between the provisions of Nepalese law and provisions of an international treaty to which the Kingdom is a party, the provision of the treaty shall apply.

<sup>2</sup> *Adivasi Janajati* or indigenous peoples nationalities is a movement in Nepal that has advocated for greater inclusion of IPs in development.

The ILO Conventions and the UNDRIP provide safeguards against land alienation gain the ILO conventions.

Article 27 of the UNDRIP recognises the rights of IPs. The UNDRIP, amongst other things, also states that IP rights must be recognised, and that these rights must be adjudicated fairly and expeditiously.

Theoretically, the Bangladesh Land Disputes Resolution Commission would be a model for other countries, owing to its inclusive process. The majority members of the Commission are indigenous leaders. The Commission does not have to follow complex civil procedure; it does not need lawyers. But its rulings enjoy the full powers of a civil court; thus government executives must carry them out. In addition, the Commission has to account for customary law. Hopefully, this will come soon.

ILO Convention 107 makes provisions on the ownership rights – collective or individual – of the members of the population concerned over lands they have traditionally occupied. Moreover, one of the UNDRIP articles mentions that these rights apply to both collectives and individuals, to women as well as men. These international laws, read with other provisions of non-discrimination, for example, CEDAW and national constitutions, which always have contained fine albeit unimplemented provisions on women's rights, can be invoked.

Article 34 of the UNDRIP recognises indigenous people's customary laws,

traditional systems, and juridical systems<sup>3</sup>. However, one of the greatest challenges confronting customary law is “accordance with international human rights standards.”

Now, on the one hand, *customary law is a law indigenous communities have control over*. The Chief Justice of Bangladesh cannot be the one to say what is IPs' customary law. Thankfully, the Bangladeshi system does recognise customary and personal law; the State does not impose. On the other hand, the issue is whether or not we can and should have a uniform family code of application across the religious-ethnic divide. That struggle is extremely difficult.

*Religious conservatism* is a sensitive topic, one which poses as another challenge to women's and indigenous communities' rights. Unfortunately, religious conservatism has unfortunately led to an impasse. A uniform family code cannot be enacted without Muslims invoking Shari'a. A Bangladeshi Parliament, being a Muslim-majority country, will dare not touch Shari'a or Islamic law; but neither will India's Hindu-majority Parliament.

Since the Bangladesh government will not impose on *adivasis*, the challenge therefore is for IPs to gather themselves and collectively decide to change their customary law to undo polygyny,<sup>4</sup> apply equal inheritance for men and women,

<sup>3</sup> Juridical system encompasses judicial legislative procedure, customary law and traditional systems.

<sup>4</sup> Polygyny is the practice of a man having more than one wife. It still takes place in some places, though the practice is in decline.

## Power and Responsibility

*As chief, I have had to sit as a judge for tribal cases. In Chakma customary law, by tradition on child custody, if the baby is weaned and the baby stops breastfeeding, then the right rests with the father. While the baby breastfeeds, the mother has custody over it.*

*In one recent case, I gave a ruling, based on the fact that I haven't seen any case in the past thirty years – nor in my father's cases – where any man has exercised his so-called right to take custody of the child, even after the baby has been weaned. There is a difference between power and responsibility. In general, a man, not wanting to be bothered with child custody, and in the event of a divorce, lets the former wife look after the baby.*

*Therefore that right, not having been exercised for three decades, must be forfeited; even if it may be argued that rights cannot be undone. It must be recognized that Chakma society and its customary law is not static; and this has to be dealt with. There is no such thing as customary laws being static and traditional – one's grandmother's law was not the same as her grandfather's and her grandmother's and so forth.*

*Customary law is like a path over a field. One has not stopped walking on the grass, but it is no longer a path. It is a grass, a field, a jungle.*

## The Chittagong Hill Tracts Land Commission

The Land Commission's role is to sit as a tribunal to deal with land disputes. The Land Commission can only deal out decisions like a court, but it is not going to allot lands. What is needed is a commission that will handle land allotment as well. We have the district councils in the Hill Tracts. It would be good if there were a Land Commission for the plains as well. Or as an alternative or supplement, the district judges or sub-judges could sit one day a week to deal with non-commercial agricultural lands, where it could be, say, one *bigha*<sup>1</sup> or two *bighas*, or three acres, rather than corporate city holdings? Why do we need to have that under the civil procedure court? Why cannot it be done without having to go through laws? I see no problem. If we could cut across those and say, "No appeal! No appeal to the high

<sup>1</sup> *Bigha* is a unit of measurement of land used in South Asia.

court!"—unless somebody said this were a matter of great legal and constitutional importance. Why only *adivasi*? Why cannot even Bengalis go to such a Land Commission in the future and say, "I lost my one *bigha*. Somebody took it." and simply go to the district court, without need for any lawyer, holding only one piece of paper with the name of whoever took the land. It would be similar to the Land Commission in that it would follow procedure. But our own rebel justices create problems to dish out injustice to us.

I found an order from the Ministry of Land and actually shared copies with some friends in different parts of Bangladesh, where *khas* land, crown- or state-owned land was supposed to be given out in settlement to *adivasis* as a priority. But nobody has even invoked this. So it is lying somewhere in the Land Ministry.

for example. Other problematic areas relate to child custody, maintenance and inheritance. The opportunity to introduce reforms does exist. However, there is patriarchy everywhere, even within indigenous communities. The problem sometimes is that indigenous peoples' movements tend to sweep gender issues and women's rights under the carpet.

In the plains<sup>5</sup> there is a perception that *adivasi*, indigenous or hill women are actually much freer. Although *adivasi women may enjoy greater mobility*

<sup>5</sup> The plains region of Bangladesh (as opposed to the hilly, mostly Chittagong Hill Tracts areas) are generally referred to as the "plains."

and social freedom compared with Bengali women, this certainly does not automatically translate to the recognition of women's rights even under their own system. With regard to our traditional systems of governance, women are severely underrepresented.

The crux of this article is that customary laws should be respected, but these **must not fall below the standard of international human rights**. International human rights subsume women's rights, including the right to non-discrimination.

## IP Land Rights under Bangladeshi Law

Peering at Bangladeshi law in the plains through a magnifying glass and trying to find how many laws refer to indigenous peoples, one would find nothing. There are only two laws, apart from the Cultural Institutions Act, where only twenty-seven indigenous peoples have been recognised. And the only substantive law is the East Bengal State Acquisition and Tenancy Act, based on the Chota Nagpur Tenancy Act from India and the Bengal Tenancy Act, which are in turn characterised by rather paternalistic systems of preventing land alienation to non-*adivasis* without the permission of the district officers or deputy commissioner. The biggest challenge with this law is rooted in the system of titling introduced by the British, who thought controlling the transfer of titles was tantamount to controlling occupation and possession. However, this has not been the case in Bangladesh; nobody cares. In fact, it

# Beyond land entitlement: Experiences from India

Ekta Parishad works with the adivasis in the Fifth Schedule areas in India. Among the many issues they have found, one is the massive land grabbing by non-tribals, in spite of many laws. British tenancy laws and other laws are being undercut by devious land grabbing methods. The concern is that because tribals are losing so much of their land, women are migrating to the cities as cheap labourers, maidservants and construction workers. In just one small town in Chhattisgarh, 45,000 women had left for Delhi to work as maidservants. In fact, majority of maidservants in cities like Delhi are adivasis from Jharkhand and Chhattisgarh areas. This out-migration of women must have some impact on customary law, since customary law is not static.

Moreover, a Forest Rights Act for forest dwellers was passed in 2006. Despite having forest rights committees with reserved seats for women, women are unaware they are on the forest rights committees, as findings from all of Ekta Parishad's surveys show. This somehow echoes the problems India has encountered under joint forest management and social forestry, similar to the case of Bangladesh, where women do not even know there

are seats, or they have absolutely no power in the forest committees.

There have been instances in India, where the Forest Department uses the forest committee to pay off a certain tribal group like the Gonds, to oppose and push the more primitive tribal Baigas out of their forest dwelling. This is highly complicated, and the impact on women is tremendous in the sense that they lose their forest land rights.

Women in the Sahariya tribal belt recounted to Ekta Parishad that fifteen years ago, because of the expansion of the Madhav National Park in Shivpuri, in one area near Chambal, western Madhya Pradesh, the Forest Department took their land titles in hopes of securing land in the buffer zones outside the forest. However, when they went outside the buffer zones, they found there was no land at all. They still do not have electricity, or schools, or other basic necessities.

The kind of land grabbing and lack of implementation of forest rights is so great that a larger connection on those issues, beyond land entitlement, is needed.

Mining in India has completely overrun the Panchayat Extension to Scheduled Areas Act (PESA). PESA came in 1995

as a way to give the gram sabha<sup>1</sup>, the local village, basically, powers over forest areas, as well as to give community rights. PESA is theoretically one way of addressing *adivasi* representation. It applies only to peninsular India, and not to northeast India. However, PESA is not serving the spirit that the Indian Government set out. Mining companies have simply come in, without any question at all of consulting with any local communities in forest dwelling areas. Additionally, small-scale illegal mining is taking place in almost every forest area across India, often backed by political interests.

Networking across regions is an absolutely critical piece to deal with complex land issues. It is yet difficult to make headway against land grabbing, at the speed it is taking today, unless groups come together and use laws as their tools and weapons.

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1 *Gram sabha* refers to the body of men and women above the age of 18 in the *gram panchayat* or local government in India.

is possible to bribe one's way into the land registry office.

Bangladesh shares a common heritage of laws with India. British rule over indigenous peoples' areas stretched from India and Pakistan to what used to be called upper Burma, and was indirect, installing a supervisory mechanism and

a chief administration system. There were chiefs and headmen. Bangladesh, India and Nepal have all gone on in different ways in terms of dealing with indigenous people, their land rights, and self-government.

The CHT is somewhat similar to the northeast Indian states, with varying

degrees of autonomy. Their level of autonomy is far less than, say, Nagaland, Mizoram or Meghalaya, and perhaps is somewhere in between the north-eastern states and some of peninsular India, such as Madhya Pradesh. In northeast India there are the autonomous states. In between there are a series of what Barrister Roy calls *matryoshka* models of autonomy, based on the Russian dolls placed one inside the other. So there is the Assam state, then the borderland council, then the district council, regional council and so forth. These similarities are shared by Bangladesh and its neighbouring states.

The Chittagong Hill Tracts is home to many *adivasi* communities in Bangladesh. In the CHT, the law, strengthened by the Peace Accord of 1997, recognises limited autonomy; although the word “autonomy” is void. Political leaders have not prioritised the implementation of the Peace Accord, or the granting of greater autonomy. Nonetheless, customary land rights have a stronger footing in the CHT than in the plains. There are elected councils at regional and district levels. On the other hand, the “plains” refer to those parts of the country outside the Chittagong Hill Tracts. In contrast to the CHT, the *adivasi* populations in the plains are much more dispersed. Moreover, the self-government system of the *adivasis* is not recognised by the State.

The Vested Property Act (VPA) was a result of the war between Pakistan (of which Bangladesh used to be a part)

and India. Those with links to India were branded as enemies and subsequently divested of their property. The VPA has been used indiscriminately against religious minority people, particularly Hindus in Bangladesh as well as *adivasis*, mostly in the northern plains. Many people do not know if someone is, say, Santal, low-caste Bengali, or Hindu; the fact is that many have lost their property in the name of the Vested Property Act.

There are safeguards against land alienation provided for by the Bengal State Acquisition and Tenancy Act, and also the Hill District Council in the CHT. The Hill District Council has the authority to provide land grounds, but also to have a shield against arbitrary land titling and land leases by the district authorities. But that is also not fully implemented as yet. This is a scope within which, for example, women could be holding land titles or somehow getting a more equitable and de-gendered way of dealing with resource management.

Bangladesh, unlike India, which has the Forest Rights Act, still does not have a Forest Dwellers Rights Act. We are still struggling to see if we can get village forest rules in amending the forest act. Particularly in the plains, IPs have encountered the severe problem of being locked up under the Forest Act.

I am associated with an NGO dealing with community forests. One of the greatest struggles, with regard to community forest management is including women as fully and formally





# The Philippine Experience

*The Philippines is another place to look at for their Indigenous Peoples' Rights Act and the National Commission on Indigenous Peoples (NCIP), which distributes certificates on ancestral titles and domains. Some lessons perhaps could be applicable in South Asia.*

Although the Philippines famously has a National Commission on Indigenous Peoples (NCIP), this commission has increasingly become the biggest stumbling block to the realization of indigenous peoples' rights, rather than the advocate for IP communities it was meant to be. Fortunately, a new government administration is in power, and with that comes a significant opportunity of recommending new commissioners. The NCIP comprises seven members; but six of those members have resigned or have been forced to resign, leaving only one commissioner. PAFID including some civil society organisations working with indigenous peoples, under the sponsorship of the Chair of the House [of Representatives] Committee on Indigenous Peoples, has been invited to shortlist nominees for the new President to appoint as Commission

members. In the Philippines, only indigenous peoples are allowed to be nominated and appointed as commission members. Unfortunately, these are not the *marginalised* IPs. Many members of Congress are IPs themselves.

PAFID is presently involved in an initiative to create a common IP agenda for the country. The Commission has failed to benefit the IPs. The free, prior and informed consent (FPIC) process has been corrupted, and the NCIP has been seen more to work for the interests of mining companies. Money is collected from mining companies in exchange for the Commission's forcing indigenous communities to sign blank papers and then make it appear as if the IPs have indeed given their consent to external investments. There are also experiences where companies offer many goodies, have a community representative sign on the dotted line to supposedly mean FPIC.

Therefore, having a good law actually is only half the success. Implementation is the more difficult part.

The NCIP is a merger of three former government agencies, namely the Office of Northern Cultural Communities, Office of Southern Cultural Communities, and the Office of Muslim Affairs. The Senate was warned that there was not much wisdom in retaining and absorbing into the new commission the very same bureaucrats who did little for indigenous peoples before. Over time, nothing much has changed for IPs. Old habits die hard: corruption cannot be stamped out. Part of the problem lies in the tenure security guaranteed by the Philippine Constitution and the Civil Service Commission for government employees. It is only possible for Government to lay off employees by offering compensation, for which it does not have sufficient funds.

Nonetheless, PAFID remains hopeful that this opportunity to recommend commissioners will result in positive change, with commissioners sympathetic to the plight of indigenous peoples.

**Sam Pedragosa, PAFID**

as committee members, granting them equal rights to vote and deal with community forest resources.

Collective land rights are recognised under Chittagong Hill Tracts Regulation 1900 and customary laws, but of course, we are fighting a huge battle, not made any easier by people from the plains, including unfortunately a retired judge as chair of the CHT Land Commission who has repeatedly emphasised the use of surveys. But surveys connote the imposition of a plain land, individual title, crown land concept on a customary regime that is

definitely flatter. Although it cannot be denied that there have been difficulties within the traditional structure of head men chiefs and all-male bodies, largely a man's show. But at least indigenous peoples have a say regarding their land.

The challenge is to retain some of the customary commons in the Chittagong Hill Tracts, by using the district council law and invoking customary practices and so forth – if not a sword, then a shield – to keep at bay the privatisation regime enveloping every part of the CHT. There are all kinds of companies – small, medium, big, national,

“It is extremely important to note that governments are still sensitive to criticisms or oversight by international bodies, making it all the more imperative to keep on.”

multinational – but regardless of shape or size, a company is a company. In the case of the CHT, all of these have been taking leases for lands. There have been incidents wherein IPs have been arrested for resisting the taking of their lands. At least there are steps that can be taken to address this challenge.

The Chittagong Hill Tracts has been the setting for militarisation, artillery camps, and training grounds and human rights violations, not to mention a twenty-year conflict of guerrillas versus government troops. Conflicts between settlers and *adivasis* persist in the Chittagong Hill Tracts. The women have had to obviously bear the brunt of these.

## Status of *adivasi* women in Bangladesh

### Legal status of indigenous women under international, national and IP customary law

CEDAW is moth-eaten with its reservation clauses,<sup>6</sup> its implementation poor. Debates have gone on for years on whether to withdraw those reservations, rather than on the constitutional provisions that do apply. Nonetheless, despite the dysfunctionalities in implementation within the international system, it remains important to use any tool available; in which case, CEDAW is one

<sup>6</sup> Upon accession, the Bangladesh Government made reservations on Articles 2, 13 (a) and 16 (1) (c) and (f) as “they conflict with *Sharia* law based on Holy Quran and Sunna.” In 1997, it withdrew its reservations on articles 13 (a) and 16 (1) (f). Source: United Nations Treaty Series.

stick to use. There is no alternative but to continue with international processes to fight for *adivasi* women’s rights.

Unfortunately, *adivasi* women suffer from so much discrimination. What are Bangladeshi women doing with regard to CEDAW? How many *adivasi* women are actually participating in polls? How many Bangladeshi women have a window or informed perspective on *adivasi* land and women’s issues? The picture is not a happy one.

It is extremely important to note that governments are still sensitive to criticisms or oversight by international bodies, making it all the more imperative to keep on. International processes should be connected to one another. To illustrate, a shadow report on CEDAW should tackle *adivasi* issues. The ILO Convention monitoring committee was cross-referring to other special rapporteurs and processes within the human rights system, linking up religious intolerance and the status of women with the ILO Convention. But of course these reports are not self-implementing. Ultimately, they must be used at the national level, disseminated to the media, and shared to encourage civic and political action.

Personal laws are gendered, and thus need to be more equitable and do away with discrimination altogether. Because even in matrilineal societies like *Garos* and *Khasis*, there is patrimony. Though the youngest daughter inherits the ancestral house, not all women receive ancestral property.

## Political, social and economic status of indigenous women

In terms of political status, overall in Bangladesh, women's seats in Parliament are just filled up by the major political parties. India has struggled with it. The Indian Parliament now has one-third of seats reserved for women. The limited political status of women occurs at all levels of government —whether at the level of union *parishads*, union councils, or sub-district councils. The Chittagong Hill Tracts system of regional council and district council has severe problems of underrepresentation of both the smaller ethnic groups and women. The interim hill district councils have one woman out of fifteen seats. At the regional council, as well, there are problems in the traditional system concerning inheritance systems and again the severe underrepresentation of women. Again, *adivasi* women suffer multiple discrimination.

### Impediments

#### Fossilising "TRADITION"

Digging up history can shed light on discriminatory inheritance laws, which have been passed off as tradition. But a century ago, we only had *jum* shifting cultivation. There was nothing to inherit, only the house, the pots and pans. It can thus be invoked that traditional laws on Inheritance were not necessarily so gendered. It is when the British came, introduced private property and implemented land administration and individual titling, that inheritance laws became discriminatory.

## The Plight of Tea Estate Workers in Bangladesh

Tea is one of the world's favourite drinks, and is a major export of Bangladesh. But the conditions surrounding those working on tea estates are little known.

Many people from *adivasi* communities, particularly the Oraon, Munda, and Khyang, work in the tea estates in Bangladesh's Sylhet area. In ways, the tea plantations seem like a British colony. The rights of *adivasi* workers in the tea gardens – mostly women – are always neglected, and their situation is extremely dire. The *adivasi* communities in the tea estates face a number of problems – poor health, poor access to water, no access to education, and no land ownership. Daily wages are miserably scant, falling below one dollar: a mere 48 taka. Though there is some public protest to raise wages for government workers, there is none for tea garden workers.

Neither the Bangladesh Nationalist Party (BNP) nor the Awami League does anything for tea estate workers knowing that these people will not cast votes for them. One Parliamentarian was largely elected by tea estate workers, but to what

extent does he speak about tea estate workers' issues? To make matters worse, tea estate owners' rights are specifically protected in the first schedule to the Constitution, and nobody can challenge these laws.

Support for tea estate workers has been next to nothing. Much clearly needs to be done for these tea estate workers, whose situation is probably worse than that of the average *adivasi*, worse than in the Hill Tracts, worse than even the plains region in most cases, essentially because *there are no land rights*. Neither husband nor wife has any land – so what of women's rights to land? They live in a house they cannot call theirs, on soil that is not theirs. Their plight reflects some degree of servitude and slavery in modern-day times, a vestige of the British colonial system.

Some tea estate leaders have joined the *adivasi* networks, including a recently established one in Sylhet. Hopefully they will be able to take on some of the issues the *adivasi forum* has not yet been able to take up, to bring more attention to Bangladesh's tea estate workers.

Child labour practices still exist, even amongst some *adivasi* women, who send off their daughters to work as domestic helpers. These are [practically] slavery laws whose practices still exist even amongst my society as well. Children, particularly girls, have to bear the brunt. However, amongst indigenous peoples I have not heard that female children receive less protein or less of the good food, or that boys are given the egg, and the girls the vegetables, though it may exist. It is a common practice in the plains.

#### **POLICY IMPERATIVES**

One problem Bangladesh is facing is that its two former women prime ministers did not necessarily take women's issues forward as a policy imperative.

#### **SOCIAL FORESTRY**

The government [of Bangladesh] runs social forestry projects— which are actually plantations —and there they have room for women to be full committee members, so they can get recognition like men.

#### **ORGANIZATIONAL WEAKNESSES**

There are women networks, including in the Hill Tracts, trying to move inheritance rights and indigenous women's issues forward. However, most of these movements are rather oriented towards towns and cities, as well as middle class women. But of course one has to start somewhere. One project had a facilitator, a young woman of nineteen, who had to deal

with the grandfatherly figure of the village *karbari*<sup>7</sup>. Working at the village level, in terms of sensitising and pushing for rights, is difficult. People continue putting off the issue.

Finally, postponing women's rights until people's rights are achieved is a major impediment.

### **Opportunities**

Challenges lie in getting forth land rights, but there are opportunities. For one, we have *relatively less religious conservatism*. This implies that if we want to reform the inheritance laws of the Chakma or the other indigenous groups to say women will get equal rights, then we can do it. Some groups, including Chakma society, sometimes already share property with women, in some cases equally. In some cases, people are leaving wills. In some cases, there is an understanding. But of course one might counter that perhaps such cases are because of rights, and not because somebody is truly agreeing with the principle. So there the problem still lies.

Another opportunity is the *greater social freedom* indigenous women enjoy, which can be used for greater mobilization.

A *semi-autonomous administrative system* is in place in the Chittagong Hill Tracts, with district councils, regional councils and traditional systems, within which it is possible to create some new rules.

<sup>7</sup> In Bangladesh, a *karbari* is the head of a village.

“Digging up history can shed light on discriminatory inheritance laws, which have been passed off as tradition.”

Finally, *participation in international processes*, despite its difficulties and dysfunctionalities this is something that we need to still use.

While it is true that women are still doing most of the backbreaking work, such as transplanting paddy, some men also participate. The Chakmas have this concept of *malaya*, which means one can draw upon the community to give labour of one day. Instead of each individual tending to his or her patch of paddy field, villagers engage in community labour, doing one patch at a time. This is to show that there can be more equitable burden sharing between men and women, though this is unfortunately not always the case.

There is a little window, but in other cases, the laws are still extremely difficult.

## Summary<sup>8</sup>

- Indigenous peoples should not be subjected to non-traditional customary systems; at the same time, they are not static and we must continuously reflect on challenging these traditions.
- The second point is how to use and maximise international agreements and conventions to pressure governments. While most of them are not binding, they are nonetheless instruments to exact moral obligation from the government.
- Thirdly, having a policy does not automatically translate to implementation. Therefore,

there is a need for vigilance. We also need to look beyond legal means to address the rights of indigenous women. One way is to develop capacities of women to participate in available platforms or mechanisms.

- Finally, CSOs working together can also work with the UN Permanent Forum on Indigenous Issues to advocate for land rights for indigenous peoples, notably indigenous women. ■

<sup>8</sup> As summarized by Mr. Nathaniel Don Marquez, ANGO Executive Director.

# Exploring the Africa Learning Route

*The representative of the ILC Asia focal point for women, Ms. Rowshan Jahan Moni was granted the opportunity to participate in the Africa Learning Route organised in Uganda and Kenya in March 2010. In this article, she shares her experiences and reflections on the issues women face in Africa and civil society's responses. Asian CSOs working on land rights can learn from the experiences of their African counterparts.*

## Background

The purpose of the 'Action-Oriented Research and Policy Influence for Women's Access to Land in Africa' Learning Route was to analyse the main obstacles to and opportunities for women's access to land in Africa. ILC organised the event jointly with PROCASUR and Uganda Land Alliance on 8 – 16 March 2010, incorporating a plan to visit ILC supported projects in various districts in Uganda and Kenya. Participants consisted mostly of African ILC members. In addition, representatives from Bolivia (Latin America) and Bangladesh (Asia) were present, and are expected to take the lead roles in promoting women's access to land in their respective regions. The Association for Land Reform and Rural Development (ALRD) is the focal point for Asia.

Learning Route is a methodology involving peer-to-peer approaches through workshops, interviews, conversations and other infield activities in which the local actors become the trainers. It is a capacity building tool that includes spaces for exchange, analysis and reflections in a continuous process of training.

The Learning Route participants visited different projects implemented both in Uganda and Kenya targeting the protection of women's land rights. The projects deal with a range of women's rights issues seen as crucial in the African context. The most noteworthy ones include: ensuring that women secure land title deeds; the successful enforcement of the Spousal Consent Clause of the 1998 Land Act in Uganda's Kayunga district; the valiant Women Watch Dog Groups on human rights violations against women in the Gatundu district of Kenya; the high-impact Young Widows Advancement Program spearheading women's empowerment in and around Nairobi. These are but a few examples; community-specific success stories abound. The thriving initiatives of the Uganda and Kenya Land Alliances in bringing different actors together in pursuing women's land rights issues through a coordinated approach are also laudable.

*Based on the presentation and paper of Ms. Rowshan Jahan Moni, Deputy Director of ALRD. As Asia focal point Ms. Jahan participated in the Africa Learning Route.*

## Problems that Need Redress

African women face serious challenges, because of male dominance, disintegration among different tribal communities, the lack of social capital, and a strong sense of tribal identity over national identity, to name a few. Statutory laws granting women access to land are either weak or non-functional, whereas customary practice on women's land ownership hardly favours women. Take the common practice of polygamy, irrespective of class and community, which has resulted in widespread HIV/AIDs. Infected husbands leave behind infected widows, who must fight against poverty and hunger, while taking care of their many children, often numbering between 5 and 10. As wives generally do not inherit their husband's property – with the exception of the first wife and her son, in most cases they are chased away from their husbands' homes and lands. Sometimes the first wife is not spared either from such evictions. This is one illustration of how denial of women and girl's land rights (as customarily, female children have no rights to inherit parental lands) is deeply rooted in African society. The existing social system and its practices make addressing women's rights all the more difficult.

Fierce unending tribal conflicts, civil conflicts and war, have also escalated the suffering and internal displacement of different communities in Africa. The impact on women among internally displaced people (IDPs) is alarmingly

negative. Women living in camps have become the worst victims of rape, forced and early marriage and other forms of sexual violence. During the last presidential and parliamentary election in 2007, massive violence erupted in Kenya, a complicated issue that remains to be resolved. A National Accord was signed and a program by the Kenyan Government was launched, embarking on a process called "Operation Rudi Nyumbani" meaning 'Operation Return Home.' However, this process has allegedly become a forced repatriation of displaced communities. No effectual measures have been taken for their protection, security and reintegration into their respective communities. The greater emphasis on tribal identity over national identity has slowed down the social capital building process.

Moreover, corruption in government agencies dealing with land and related issues remains rampant, which only exacerbates the already disheartening situation women face in terms of access to land.

There is also the issue of underutilised land. Women could productively use parcels of fertile lands in Uganda and Kenya for agriculture. Unfortunately, communities have not been entirely supportive of women farmers' initiatives. Thus, women's opportunities contract, while their rights are not fully realised. This has made hunger and poverty worse.

## Hope for a Better Future

The Ugandan and Kenyan Governments as well as CSOs supported by ILC

*I was amazed to see those courageous women, mostly widows living with HIV/AIDS, asserting their rights and control over lands to fight poverty and hunger, feeding the world. Their experiences ... will inspire women in other parts of the globe to take a step towards achieving their land rights. I salute them.*

and coordinated by Procasur are undertaking special initiatives and processes towards bringing more equity and justice in the arena of women's land rights, as follows:

- Kenya is undergoing the process of drafting its new Constitution and Land Reform Policy. The Kenya Land Alliance is effectively engaged in this process so that women's rights in general and land rights in particular are well articulated.
- Women are becoming more aware of their rights. To ensure their voices are heard at the policy level, they are organising themselves under several umbrella groups, and planning and implementing activities, many of which are supported by ILC.
- Information flow is being ensured, resulting in strengthened linkages and networks, which in turn bear the fruits of women's confidence, enhanced bargaining capacity and the tackling of various land rights issues.
- The proactive involvement of male counterparts in the processes of ensuring justice to women positively indicates increasing social capital in some communities, which can eventually help mobilise the whole community towards a better and sustained future.

Team members of the Learning Route recommended that ILC include of climate change and commercial pressures on land besides providing further support to activities relating to women's empowerment in Africa.

## **A Wake Up Call**

The Learning Route was overall a successful experience that brought a diverse group of people together to discuss a common advocacy, and ended up being an eye opener for many participants. Continuing the learning route process will definitely bring positive changes in the lives of women in Africa, as well as in other parts of the globe. For my part, I was amazed to see those courageous women, mostly widows living with HIV/AIDS, asserting their rights and control over lands to fight poverty and hunger, and feeding their children. Their experiences of working with long-term forward-looking strategies to overcome challenges in their embattled lives will inspire women in other parts of the globe to take a step towards achieving their land rights. I salute them. ■



# Road Map for ILC-Asia Towards Enhancing Women's Access and Control of Land

## Introduction

In 25-26 October 2010, the Association for Land and Rural Development (ALRD) and the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) jointly organized the “*Regional Workshop on Women and Land Rights*” in Dhaka, Bangladesh, with the support of the International Land Coalition (ILC). Around 37 participants from NGOs, academe and social movements from seven Asian countries covering Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan and the Philippines shared their experiences, knowledge and analysis of women's struggles in pursuit of advancing land rights.<sup>1</sup>

This document contains the consolidated reports of the South and Southeast Asia groups on the major challenges and proposed intervention – to inform ILC Asia's work plan for 2011 and beyond.

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<sup>1</sup> Due to flight unavailability, a participant from Pakistan was not able to join the workshop. However, a powerpoint presentation was submitted and was presented by ALRD in Dhaka.

## Rationale of ILC Asia's Involvement on Women's Land Rights

Gender inequality has long been a primary obstacle to development in Asia, where women, especially rural and indigenous women, are disproportionately poor. Women play many important roles – they ensure household food security, manage finances, take care of the family, participate in agriculture, and bear the brunt of household work, to name but a few. Yet the reality is that women's efforts are largely unpaid and unrecognized. Many women are not empowered. Also, according to studies conducted in South Asia, systemic bias prevails against women in terms of intra-household benefit sharing of male-controlled resources; and women without independent resources are highly vulnerable to poverty and destitution in case of desertion, divorce or widowhood. Indeed, the dominant patriarchal societies in many Asian countries, as reflected in its mindsets and attitudes towards women, do not uphold women as equal.

## Opportunities for ILC to advance women's rights to land:

- ❑ International agreements on women's rights
- ❑ ILC's relations with some Asian governments and IGOs
- ❑ Country members and partners
- ❑ Establish link with UN Permanent Forum for Indigenous Peoples

Throughout the region, feminization of agriculture is a growing trend. Because of high outmigration of men, the number of women-headed households is increasing. Ensuring women's access to land would therefore be of utmost importance. However, women's access to land remains poor. When pro-women policies do exist, there is a yawning gap between them and their implementation. Women's land ownership is severely constrained. In many cases where women hold the land titles, ownership is not genuine and is merely nominal. Inheritance laws tend to favor men and are concretely biased against women. The customary land rights of indigenous women are unrecognized.

The challenges confronting women's access to land are formidable. Nonetheless, there exist several avenues for action advance women's land rights in Asia. For instance, many Governments have signed international agreements on women's rights – getting them to keep their commitments is one action. Moreover, CSOs lack the necessary capacity to adequately address women's issues. Developing capacity, especially on women's leadership, is a step closer to women's empowerment. Also, to deepen understanding of women's issues, highlight various local contexts, and bridge the knowledge gaps, more research has to be made through the documentation of cases. Finally, sharing positive lessons and experiences in working on women is encouraged.

## Strategic Niche of ILC Asia

ILC Asia will contribute in addressing the complexities and major challenges CSOs face in advancing women's land rights. It will mainstream gender perspectives into its various areas of work.

ILC Asia, as a coalition, reaches out to the region through its country members and partners. It has established relations with some Asian governments and intergovernmental organizations (IGOs) – and will serve as a bridge between them and its members and partners. It will help enable CSOs' advocacy on land to reach expanded audiences that include policy makers.

## Proposed Interventions

ILC Asia should commit to mainstreaming gender in land rights programs and campaigns. The table found next page is a consolidation of the South and Southeast Asia groups' proposed action plans for the region. The activities mentioned will focus on development of women leadership in CSOs and in the bureaucracy; policy reforms favoring women's land rights and their enactment; the ratification of international commitments; the recognition of indigenous peoples' customary land rights; and the protection of women's land.

## Ways of Working Together

An e-group will be created by ANGOC/ ILC Asia to stimulate discussions and foster better cooperation on work on women's rights.

## Postscript

The outputs have been presented in the ILC Asia Regional Assembly. A priority theme for ILC Asia will be women. ■



Area for Action	Intervention (Country, Region)	Who	Outputs and Outcomes
<b>Research</b>	Country specific land research and documentation	ILC-Asia Country Members	Generated data and information required in advocacy
	Monitoring access to land using gender-disaggregated data	ILC-Asia Country Members	Monitoring reports, increased CSOs capacity in monitoring
	Documenting various land related movements, legal interventions and success stories	ILC-Asia Country Members	To strengthen the ongoing struggles
<b>Advocacy Campaigns</b>	Country-specific campaigns (e.g. Land Watch)	ILC-Asia Country Members	Gender equitable policies
	Women's Land Rights Day	South Asia	More visibility on women and land rights
	Footmarches	South Asia	Mass mobilization/contact
	Media campaign at regional and international levels	ILC-Asia members	Increased public awareness
<b>Policy Dialogue and Knowledge Sharing</b>	Different campaigns, e.g., signature campaign, cultural program, petition on-line	ILC-Asia	Mass mobilization/contact
	Regional summits, workshops or conferences	ILC-Asia members, other stakeholders from government, private companies, etc.	Regional interaction, increased knowledge of land issues
<b>Capacity Building</b>	Training programs	ILC-Asia members	Improved capacity of ILC members on research and advocacy
<b>Network Building</b>	Recruitment	ILC-Asia members	Expanded ILC-Asia network

# List of Participants

<b>Name</b>	<b>Organization</b>
Ros Sopheap	Gender and Development of Cambodia (GDC) representing Cooperation Committee for Cambodia, Cambodia
Jill Carr Harris	Ekta Parishad, India
Leena Dabiru	Social Development Foundation (SDF), India
Nia Ramdhaniaty Wihadi	RMI, The Indonesian Institute for Forest and Environment
Dr. Roshan Chitrakar	Community Self-Reliance Centre (CSRC), Nepal
Julia Chitrakar Phnuyal	Community Self-Reliance Centre (CSRC), Nepal
Nathaniel Don Marquez	ILC Asia and ANGO, Philippines
Shem Toledo	ILC Asia and ANGO, Philippines
Catherine Liamzon	ILC Asia and ANGO, Philippines
Samson Pedragosa	Philippine Association for Intercultural Dev't. (PAFID), Philippines
Afzal Hossain	RULFAO, Rajshahi, Bangladesh
Uzzal Azim	Indigenous People's Dev't. Services (IPDS), Bangladesh
Syeda Amirun Nuzhat	Transparency International Bangladesh (TIB)
Sha-E-Mobin Jinnah	Community Development Association (CDA), Bangladesh
Kartick Ch Mandal	DANIDA
Gourangh Ghosh	Nijera Kori, Bangladesh
Mohiuddin Mahim	University of Dhaka, Bangladesh
Shanjida Khan Ripa	Society for Environment and Human Dev't. (SEHD), Bangladesh
Dr. Abdul Barkat	University of Dhaka, Bangladesh
Nazmul Huda	University of Dhaka, Bangladesh
S.M. Foysal	University of Dhaka, Bangladesh
Mozibur Rahman	Shariatpur Dev't. Society (SDS), Bangladesh
Dr. Sadeka Halim	Information Commission, Bangladesh
Dilafroze	Information Commission, Bangladesh
Hla Shing Nue	Balipara Nari Kallyan Samiti (BNKS), Bangladesh
Nigar Sultana	ActionAid Bangladesh
Chan Chana Chakma	Hill Women's Federation CHT, Bangladesh
Shakti Pada Tripura	President, Khagrachari District Headman Assoc., Bangladesh
Advocate Rafqul Alam	INCIDIN Bangladesh
Ranglai Mro	Mro Social Council
Orpa Kuzur	Caritas Bangladesh
Md Kamal Uddin	Association for Realisation of Basic Needs (ARBAN), Bangladesh
Barrister Raja Devashish Roy	Advocate, Supreme Court, Bangladesh
Shamsul Huda	Association for Land Reform and Development (ALRD), Bangladesh
Rowshan Jahan Moni	Association for Land Reform and Development (ALRD), Bangladesh
Shamsul Arefin	Association for Land Reform and Development (ALRD), Bangladesh
Rafiqul Islam	Association for Land Reform and Development (ALRD), Bangladesh
Rafique Ahamed Sirajee	Association for Land Reform and Development (ALRD), Bangladesh
Dhitabrata Sen Liton	Association for Land Reform and Development (ALRD), Bangladesh
Nashied Reza	Association for Land Reform and Development (ALRD), Bangladesh



## **ILC's Program on Women's Access to Land**

For ILC, addressing the gender dimension of secure and equitable access to land is part of a pro-poor approach to land governance. Women have a key role in ensuring food security and sustainable natural resource management, the potential of which cannot be fulfilled without secure and equitable access. In a context in which commitments remain largely rhetorical due to a lack of political will, the challenge for ILC is to continue to promote women's access to land by identifying and supporting practical solutions, particularly at the grassroots level, and advocate with policy-makers for their replication.

The goal of working together on women's access to land is to influence global, regional and national processes on land to enable secure and equitable access to land for women. This will be achieved by enhancing the understanding of obstacles women face in accessing land and promoting approaches to overcome these. ILC will support members and capitalise on their knowledge in the following areas:

- facilitate the exchange of information and enhance communication by gathering, synthesising and disseminating information from the experiences and activities of ILC members and partners;
- generate knowledge on operational approaches and solutions that enable poor women to access land;
- promote women's empowerment to maximise women's voice and participation;
- build on the existing experience of members and generated knowledge to promote gender-sensitive and pro-poor land governance; and,
- coordinate with other relevant actors in the thematic area and thus ensure integration of ILC members' knowledge in wider advocacy initiatives to promote gender equality and women's empowerment.

As agriculture gets increasingly feminized, increasingly larger numbers of rural women and female-headed households will be left with the prime responsibility for farming and household incomes but without titles to the lands they cultivate. Adding insult to injury, the contribution of rural women to the agricultural and food sector are either unaccounted for or grossly underestimated.

On the other hand, while women's right to possess and inherit land is guaranteed by law in a number of Asian countries, such laws offer no protection for women against sexual discrimination that is rooted in tradition and religion. Thus, it is not sufficient to advocate for new agrarian reform legislations and policies; equal attention should be given to those existing laws and practices that currently curtail equal property rights for women.

It is in this context that ALRD, ANGOC and ILC jointly organised a regional workshop, from 25-26 October, 2010, for participants to share their struggles, opportunities and lessons as they strive to advance women's rights to land. For two days, the participants identified the potential of ILC in Asia in contributing to the efforts to ensure women's rights to land; and second, developed a road map toward promoting women's land rights for consideration of ILC Asia members for 2011 to 2012.

It is hoped that through participants' support, positive action can be taken, in order to translate the workshop discussions into reality.

*(from the Foreword)*



The Association for Land Reform and Development (ALRD) was established in January 1991 as a single focused rights-based independent national policy advocacy and networking organization committed

to the promotion and strengthening of land rights and agrarian reform. Thus, from its very beginning, ALRD has been bestowed with the mandate of raising awareness and mobilizing the grassroots peoples with the civil society as allies for claiming and establishing the rights of the poor and marginalized communities, including the indigenous peoples (adivasis), over land and other natural resources.

Association for Land Reform and Development  
0/11 Iqbal Road, Block-A,  
Mohammadpur, Dhaka – 1207,  
Bangladesh.  
Phone: +88 02 9114660; 8142031  
Fax: + 88 02 8141810  
E-mail: alrd@agni.com

URL: [www.alrd.org](http://www.alrd.org)



Founded in 1979, ANGOC is a regional association of 20 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 some 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, 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 in Asia – providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives.

Asian NGO Coalition for Agrarian Reform and Rural Development  
73-K Dr. Lazcano Street, Barangay Laging Handa, Quezon City, Philippines  
Tel: +632-351-0581 / 351-0011  
E-mail: [angoc@angoc.org](mailto:angoc@angoc.org)  
URL: [www.angoc.org](http://www.angoc.org)