Regional summary: 
A Perspective Overview of Land Conflicts in Six Asian Countries

By Antonio B. Quizon, ANGOC

Land governance is defined as “the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed” (FAO, emphasis supplied). As such, the definition of land governance involves three key elements, namely: (i) a set of rules, processes and structures, whether these are defined by legal, customary or traditional systems; (ii) decisions on land distribution, access and use, including the enforcement of rights; and, (iii) management of conflict due to competing interests on land.

It is widely recognized that land being a fixed and limited resource is an inherent source of conflict. Yet, any study of land conflict should also view and address the broader contexts in which land policies, structures and processes have evolved, and how land is allocated, and rights are protected and enforced.

OVERVIEW OF THE STUDY

Objectives

This assessment study aims to contribute towards a better understanding of land and resource conflicts that impinge on human rights, by providing

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evidence-based data for policy – towards the prevention and resolution of such conflicts.

The specific objectives are:

1. To describe the prevalence and nature of land and resource conflicts in each country;
2. To discuss the impacts and outcomes of land and resource conflicts on local communities and on land rights defenders;
3. To examine the nature and causes of land and resource conflicts; and,
4. To assess the effectivity of existing conflict resolution mechanisms in the country.

Process

The overall objectives, outline and methodology of the country studies were first discussed during the Asian regional planning meeting among researchers held in February 2018. Research studies were then undertaken in six Asian countries by civil society organizations (CSOs) working on land and agrarian issues. These include – the Community Development Association (CDA) in Bangladesh, STAR Kampuchea in Cambodia, Ekta Parishad (EP) and the Centre for Legislative Research and Advocacy (CLRA) in India, Konsorsium Pembaruan Agraria (KPA) in Indonesia, Community Self-Reliance Centre (CSRC) in Nepal, and Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) in the Philippines. The country research studies were carried out between March to November 2018.

With the exception of India, the draft reports were presented, discussed and validated at in-country workshops with participants from affected communities, and representatives of CSOs, community organizations, government agencies working on the land sector, and National Human Rights Institutions (NHRIs).

All six country studies were discussed at an Asian regional workshop, “Engaging National Human Rights Institutions Toward the Promotion of Land Rights as Human Rights,” held on 15-16 November 2018, in Bangkok, Thailand.
This regional report provides a perspective and summary of the six country studies and highlights key discussion points and recommendations from the Asian regional workshop.

**Concepts on land conflict**

*Case approach.* The data indicator used in the country reports are the “cases of land and natural resource conflict.” Conflict cases are defined as situations wherein “two or more stakeholders perceive that their interests are incompatible, express hostile attitudes, or … pursue their interests through actions that damage the other parties.” Interests can differ over: (a) access to and distribution of resources; (b) control of power and decision-making; (c) cultural, social, and political identity; and, (d) status, particularly those embodied in systems of government, religion, or ideology (as cited in Engel and Korf, 2005). In all the studies, land conflicts also cover disputes over water resources, trees, forests, and rights to natural resources.

*Latent and manifest conflict.* It is important to understand the context of conflict, as well as the behavior of stakeholders – particularly how they interact and respond as the conflict unfolds. All conflicts start as latent conflict – a situation wherein stakeholders may be unaware, or else aware yet not taking action on how their goals and interests are competing over control of land, resources, and decision-making. When there is inaction or withdrawal, the conflict remains latent. But when stakeholders contend or assert their rights or interests, it escalates into a manifest conflict or a situation where stakeholders take action to contend or assert their rights or interests over control of land, resources, and decision-making.

In cases where conflicts are not resolved, or the outcomes from third party facilitators are not acceptable, they can escalate into violence – a show of force or an imposition of will on another to achieve control through destructive means.

*Forms of violence.* All the cases studied had an incidence of violence that occurred within the period covered. The most visible form of violence is physical (i.e., killing, injury, incarceration, torture, eviction, and displacement). However, violence can also be psychological (grave threat, verbal abuse, harassment, defamation, discrimination), economic (denial of access to resources, services and opportunities, subjecting people to servitude, undue debt and exploitative conditions) and/or political (denial of participation and
self-determination, stifling of protests, or curtailment of political and civil rights).

**Two main types of land conflict.** It is also important to differentiate between two types of land and resource conflicts:

- A “land dispute” involves conflicting claims to rights in land by two or more parties, focused on a particular piece of land or resource, which can be addressed within the existing legal framework. These may include cases involving inheritance, boundary disputes, legal titles, and commercial transactions. Such land disputes may or may not reflect some broader conflict over land.

- By contrast, a “structural land conflict” involves competing claims to large areas of land by groups, of a breadth and depth not easily resolved within existing law. There is often no consensus on the rules to be applied, and the parties may have quite different understandings of the nature of the conflict. As used by studies in this paper, “conflict” implies tension and the danger of violence, but not necessarily violence itself, unless this is specifically mentioned. Latent conflicts based on structural or other fundamental problems may be triggered by events to turn violent.

All the country studies here focus on structural land conflicts. Many of these land conflicts raise questions of land governance, as they are related directly to national and local government policies, and to decisions of public officials. They involve not just individuals or single families but may affect entire neighborhoods and communities in significant numbers, causing physical and psychological harm, with extensive impacts on their social, economic, and political lives, as the studies will show.

**Methodology and data sources**

For the land conflict studies from Indonesia, Nepal, and the Philippines, the researchers themselves collected and analyzed hundreds of land conflict cases collected from both primary and secondary data sources. On the other hand, the land conflict studies from Bangladesh and India are based entirely on secondary sources. For the Cambodia study, STAR Kampuchea engaged with the Provincial Government of Kampong Chhnang Province to study the mechanisms for conflict resolution at the local level.

Table 1 on page 14 shows the sources of data collection on land conflict cases.
Table 1. Data collection sources of land conflict cases, per country

<table>
<thead>
<tr>
<th>Country/Researcher</th>
<th>Data collection sources for land conflict cases</th>
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| Bangladesh         | • Annual reports (2015-2017) by the Kapaeeng Foundation entitled “Human Rights Report on Indigenous People in Bangladesh” which analyze data culled from media reports and CSO networks across the country  
• Collected cases by Kapaeeng Foundation for January-June 2018 |
| Cambodia           | • Official summary reports from the Ministry of Land Management, Urban Planning and Construction (MLMUPC)  
• Monitoring reports from Radio Free Asia (RFA), 2017-2018  
• Data from the Provincial Government of Kampong Chhnang Province, 2016-2018  
• Discussions with commune leaders and local people in Teukphos district, Kampong Chhnang Province |
| India              | • Land Conflict Watch portal (https://www.landconflictwatch.org/) which is a network of researchers and journalists across India that records the major ongoing land conflicts in the country  
• In turn, the Land Conflict Watch portal draws its case data from:  
  • Regional newspapers  
  • Official documents (court papers, police records, public hearings, recordings or transcripts, memorandums and petitions, resolutions passed by village councils, etc.)  
  • CSO databases  
  • Internet sources (Google alerts)  
  • Resource persons and local non-profit organizations |
| Indonesia          | • Agrarian conflict victims who report directly to KPA National and Regional Secretariats  
• Land conflict victims whose cases are followed up by KPA through assistance or case reports  
• Data collection in specific localities  
• Field investigations of land conflict cases  
• Mass media reports (printed and electronic)  
• Reports from other organizations in specific sectors (fisheries and issues (palm oil)) – within the agrarian reform network |
| Nepal              | • Reports by households and communities at CSRC’s District Land Rights Forums (DLRF), based on a simple reporting format  
• Mass media monitoring of four national daily newspapers  
• Field follow-up of reported land conflict cases  
• Summary reports from CSOs and government |
| Philippines        | • Reports and documents from national government line agencies involved in land issues; Commission on Human Rights  
• Civil society organizations (CSOs) working with communities on land and natural resource issues  
• Online reports by human rights organizations  
• Mainstream mass media reports (online)  
• Leaders from affected communities attending the FGDs and national consultations |
Primary sources consist mainly of narratives and written accounts provided by affected communities to CSOs, specifically in the cases of KPA-Indonesia and CSRC-Nepal – which have extensive networks and regional offices within their countries. Secondary sources consist of written accounts, case reports and research studies of CSOs, reports from national government agencies, and CSO monitoring of mass media reports (online and press).

Few of the documented cases come from judicial court files; in many countries, restrictions are imposed against commenting on sub judice cases (or cases under litigation). Moreover, access to court documents is often restricted or inaccessible, and court systems often do not maintain centralized databases with categories for land cases unless these are handled by special courts. In Nepal, however, the Supreme Court Annual Report provides summary data on the types of cases pending in courts.

For the Indonesian and Philippine studies, efforts were made to verify and validate information from multiple sources. Focus group discussions and consultation workshops were conducted in each country. In the Philippine study, 51 collected cases were excluded from the final analysis due to missing or inaccurate information (on stakeholders, location, inclusive dates, and nature of the conflict).

Scope of the studies

Table 2 on page 16 shows the coverage of the data on land conflict cases per country. All the studies are national in scope. The specific period under study varies for each country, although all documented land conflict cases occurred between 2012-2018, with many conflicts still ongoing.

Limitations

The studies here are not all-inclusive, as many land conflict cases go unreported. Governments do not readily disclose reliable information about land conflicts. Thus, any research on land conflict needs to gather information from other sources, including media and CSOs, in order to get an idea on the real size of the problem. However, media often focuses on events that are deemed newsworthy, such as violence and crime, rather than on long-standing land conflicts. CSO offices and networks in each country also have limited reach, with the more remote and inaccessible areas least likely to be reported on.
Moreover, CSO monitoring of land conflicts is not conducted regularly, except in Indonesia and Cambodia, and partly in Bangladesh.²

The cases in this study have been selected on the basis of “incidence” of any form of violence within the stated period of study. Thus, it excludes many cases with latent conflicts that remain unresolved.

² The Konsorsium Pembaruan Agraria (KPA) has been monitoring land conflicts in Indonesia since 2008. Similarly, the NGO Forum, along with several other CSOs (LICADHO, ADHOC, etc.) have been monitoring land conflicts arising from the issuance of Economic Land Concessions (ELCs) in Cambodia. For Bangladesh, the Kapaeeng Foundation has produced annual reports on land conflicts involving indigenous peoples in the plains and the Chittagong Hill Tracts.

Table 2. Extent of coverage of data on land conflict cases, per country

<table>
<thead>
<tr>
<th>Country/Researcher</th>
<th>Extent of coverage of data on land conflict cases</th>
</tr>
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<tbody>
<tr>
<td><strong>Bangladesh</strong></td>
<td>National overview of land conflicts based on secondary sources</td>
</tr>
<tr>
<td>Community Development Association (CDA)</td>
<td>Specific focus on indigenous peoples in the plains and in the Chittagong Hill Tracts (based on 2017 study by Kapaeeng Foundation)</td>
</tr>
<tr>
<td></td>
<td>Period covered is 2015-2018</td>
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<tr>
<td><strong>Cambodia:</strong></td>
<td>National overview of land conflicts based on secondary sources</td>
</tr>
<tr>
<td>STAR Kampuchea</td>
<td>Specific focus on land cases and dispute resolution in Kampong Chhnang Province (based on provincial government data)</td>
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<td></td>
<td>Period covered: 2012-2018</td>
</tr>
<tr>
<td><strong>India</strong></td>
<td>National summary data, based on Land Conflict Watch portal (<a href="https://www.landconflictwatch.org/">https://www.landconflictwatch.org/</a>)</td>
</tr>
<tr>
<td>Ekta Parishad</td>
<td></td>
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<tr>
<td>Centre for Legislative Research for Advocacy (CLRA)</td>
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</tr>
<tr>
<td><strong>Indonesia</strong></td>
<td>National coverage, with 937 recorded land conflict cases from all districts and provinces in Indonesia</td>
</tr>
<tr>
<td>Konsorsium Pembaruan Agraria (KPA)</td>
<td>Reported conflict area covers a total of 624,239 hectares</td>
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<td></td>
<td>Period covered: January 2017 to August 2018</td>
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<tr>
<td><strong>Nepal</strong></td>
<td>Study covers 12 districts in the country</td>
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<tr>
<td>Community Self-Reliance Centre (CSRC)</td>
<td>Period covered is six months in 2018</td>
</tr>
<tr>
<td><strong>Philippines</strong></td>
<td>National coverage, with an analysis of 352 documented cases</td>
</tr>
<tr>
<td>Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)</td>
<td>Reported conflict area covers 1,281,390 hectares</td>
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<td></td>
<td>Period covered is January 2017 to June 2018</td>
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</tbody>
</table>
Moreover, in some countries, existing conflicts over land and resources are conveniently ignored by official policy or by public officials. The Bangladesh government, for instance, recognizes the indigenous peoples (IPs) in the Chittagong Hill Tracts (CHT), but often ignores the existence of lowland IPs. In the Philippines, there are four large indigenous peoples’ tribes near Metro Manila who are continually driven away from their ancestral lands by the influx of lowland migrants. And yet, this passive form of land conflict is not written about and often goes neglected.

Finally, the country studies here do not focus on land conflicts arising from war and refugees, including the transboundary migrations of people (e.g., Rohingya people), or internal displacement arising from natural and ecological disasters and the longer-term impacts of climate change.

**COUNTRY CONTEXTS OF CURRENT LAND AND RESOURCE CONFLICTS**

Land tenure systems today face increasing stress due to growing demands for food and housing, while environmental degradation and climate change reduce the availability of land, fisheries and forests. Inadequate and insecure tenure rights increase vulnerability, hunger and poverty, and can lead to conflict and environmental degradation when competing users fight for control of these resources.

Land and resource governance is crucial in determining whether people, communities and others are able to acquire rights, and associated duties, to use, manage and control land, water, forests and natural resources. Many land and resources conflicts arise because of unequal distribution of land and resources, lack of access to land especially for poor people, unclear or insecure tenure rights and weak governance.

Weak governance adversely affects social stability, sustainable use of the environment. People can be condemned to a life of hunger and poverty if they lose their tenure rights to their homes, land, fisheries and forests, and their livelihoods because of corrupt tenure practices, or if implementing agencies fail to protect their tenure rights. People may even lose their lives when weak tenure governance leads to violent conflict. Responsible governance of tenure conversely promotes sustainable social and economic development that can help eradicate poverty and food insecurity, and encourages responsible investment.
This section examines the different country contexts – historical and policy-related causes – which drive land conflicts to occur.

**Bangladesh**

*Land and people.* Bangladesh is a low-lying, mainly riverine country, with almost 80 percent of the country consisting of fertile alluvial lowland. Historically, highly complex and elaborate land tenure and tenancy systems developed in the rich alluvial plains of the Bengali Region. Some 60 percent of the land is under agriculture, and 64 percent of the population are in rural areas. With one of the world’s most dense populations (1,265 people/km$^2$) and given the scarcity of land, Bangladesh has been marked by land conflicts. Moreover, the country is highly vulnerable to natural hazards (floods, tropical cyclones, storm surges, erosion, and drought) and to the effects of climate change – which sometimes lead to destruction of housing and property, loss of livelihoods, displacement, and migration.3

*Land ownership structure.* Rural poor sectors – landless poor and marginalized peasants, indigenous peoples, fisherfolk, and female-headed households – comprise majority of the rural population yet they are often constrained in accessing land and resources. Land ownership is highly skewed – 60 percent of all Bangladeshi households are functionally landless, owning only 4.2 percent of lands, while about 6.2 percent are rich landowners that own 40 to 45 percent of lands (Barkat and Suhrawardy, 2018). Landlessness has been on an increasing trend in recent decades.

*Land reforms.* The country has a rich history of land rights movements. During the period of Indian partition, the East Bengal State Acquisition and Tenancy Act of 1950 (EBSATA) abolished the *zamindari* (intermediary rent-collectors) system earlier established under British Rule4, and gave the control of land back to their tillers. Subsequent land reform laws also provided for tenure security of sharecroppers, established a minimum daily wage for agricultural labor, and stipulated sharecropping arrangements between landowner and tenants. There were brief periods of land reform in 1972 and 1991, but the implementation of reforms was protracted under a succession of civilian governments, military coups, and military regimes. Government lacked

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3 In Bangladesh, the annual monsoons often cause massive erosion and accretion in the rivers, creating sandbars as small islands or attached to riverbanks, known as “chars” (small islands). These highly-disputed char lands comprise as much as 1,723 square kilometers or 1.2 percent of the country’s land area.

4 Bangladesh was then known as East Pakistan; it gained independence from Pakistan in 1971.
the political will to recover all ceiling surplus lands, and many landowners circumvented the law through illegal land transactions and corruption.

**Water rights and land issues in the CHT.** In Bangladesh, discussions about land conflict includes disputes over access to water bodies and inland fisheries, as about 11 percent of the total population, or over 17 million people are involved in fisheries for their livelihood, majority of them on seasonal basis (FAO, 2016).

Also, the historical encroachment into indigenous peoples’ lands in the plains and the hills has continued unabated, with a major portion of IP lands already land-grabbed. State-sponsored migrations and plantations (tea, rubber, horticulture) into the Chittagong Hill Tracts, along with heavy militarization, have changed the region’s demography, with most of the indigenous peoples already displaced and with large numbers having fled into neighboring India.

**Khas lands.** As of 2014, the total khas land and water bodies under the government is over two million hectares, of which only about 24 percent are agricultural lands. The rest are inland water bodies (24 percent) and non-agricultural land (52 percent) that are located mostly in the Chittagong Hill Tracts. Yet, only a portion of valuable agricultural khas lands were distributed, and these often involved the payment of bribes and corruption. Much of the khas lands supposedly under government custody for distribution to the landless, have been illegally occupied by rich peasants. Also, only five percent of the khas water bodies have been leased out to poor fisherfolk, as 95 percent of khas water bodies have been grabbed by local elites.

The Bangladesh government is also currently custodian of some 850,000 hectares of land under the Vested Property Act, plus some 405,000 hectares under the Abandoned Property Act (Barkat, 2007). These consist of lands confiscated by the government from fleeing Hindu families following the Indian partition of 1947. However, these lands have not been returned to their rightful owners despite a Supreme Court ruling in 2001.6

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5 Khas land refers to government land and water bodies.  
6 The Indian partition in 1947 caused a massive population migration of an estimated 3.3 million people spilling in both directions on the eastern border between India and Bangladesh (East Pakistan). Bangladesh instituted a series of laws, known as *Vested Property Acts* against non-Muslims, allowing the government to confiscate property of individuals it deemed to be enemies of the State, especially the lands of fleeing Hindu families. Nearly 750,000 families were dispossessed of agricultural lands. (Barkat et al, 2000: 37-38). The Act was repealed by the Supreme Court of Bangladesh in 2001, citing that it violated provisions of the Bangladesh Constitution.
Legal disputes. Meanwhile, land-related conflicts are common, and land cases continue to clog the judicial courts. About two million hectares of land are currently under litigation, while land related cases need an average of 9.5 years for settlement.

Cambodia

Land in historical context. Cambodia is the only country that has experienced four major shifts in property regimes within a single generation, due to decades of internal war and foreign occupation. The period of French colonization ended with a return to monarchical rule (1953-1975), followed by land collectivization under the Khmer Rouge (1975-1979), then partial de-collectivization under Vietnamese occupation, and finally the shift towards private property under a liberal economy after 1989 (Quizon, 2013b). In 1975-79, the Khmer Rouge regime abolished private property, destroyed cadastral maps and wiped out the entire administrative and institutional infrastructure of the land system. Over three million people were killed. Decades of war and forced relocation resulted in the massive dislocation of millions of people and the loss of their property rights.

Restoring property systems. After the Vietnamese departed in 1989, all lands were considered as State property, as all ownership of the pre-1975 period was lost. Sub-Decree 25 was enacted, which permitted Cambodians to buy and sell land. However, land disputes arose in the process of reclaiming lands. In the 1990s, Cambodia opened its borders to a free-market economy. In 1992, the Basic Land Law was promulgated; but in the period of 1993-2000, the recourse to land markets, land grabbing and abuses of power, and the absence of effective measures to protect peasants resulted in landlessness, land concentration, and land insecurity. Public institutions were weak and unable to tackle land conflicts. In 2001, the Land Law introduced a cadastral system, a central registry of titles, and a land classification system.

State-owned lands, ELCs, and land conflicts. In Cambodia today, the State controls and manages 80 percent (14.5 million hectares) of the country's 18.1 million hectares. However, State land management has favored the granting of large-scale economic land concessions (ELCs) to private entities, while disregarding customary land rights. This has triggered conflicts between companies with State backing and local communities. As of 2016, over 20...
percent of State lands (3.6 million hectares) had been awarded to large-scale agricultural concessionaires, including foreign corporations.\(^7\)

In the wake of heightened violence and conflict between concessionaires and displaced communities, the Prime Minister in May 2012 earlier issued a moratorium on granting ELCs, and Order 01 to initiate a land titling campaign in those areas of conflict between concessionaire companies and existing communities on State land. Human rights groups, however, say that little has happened since then. With poor law enforcement and a weak juridical system, the more powerful interests have continued to gain from the conflicts.

**Land rights issues.** Meanwhile, the continuing challenge faced by many people is how to formalize their property rights under the 2001 Land Law in the face of competing claims. According to the law, land certificates are provided to those who can prove that they have occupied the land for at least five years. But with limited information and lacking the resources to fully complete the formal land titling process, most people rely on mere recognition of their land claims. This has put them at the mercy of the rich and the big companies, since a claim can be contested.

**India**

India often is often described in terms of the country’s immensities, but it can also be seen as 640,000 villages differentiated and united by diversity in its languages, cultures, religions, pursuits, convictions, and customs.

Traditional and customary land tenure systems existed long before the nation-State. Feudal systems, however deepened under colonial rule, as land taxes became a central source of State revenue. The new colonial land system in the form of *zamindari* and *ryotwari*\(^8\) systems created a class of absentee landlords, making way for exploitation of the peasants and the concentration of land and economic power. Also, the large-scale annexation of Indian forests by the colonial State curtailed the customary use and rights of forest dwellers and tribal communities.

**Land reforms.** After independence, land reforms were instituted to address landlessness and social exclusion. Under India’s federal system of government,

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\(^7\) Under the 2001 Land Law, foreigners cannot be issued with land titles, but foreign investors may obtain economic land concessions which give them exclusive rights to control the land for 99 years.

\(^8\) *Ryotwari* refers to a system of land tenure in which land taxes are paid directly to the State, rather than through intermediaries.
land reforms were legislated and implemented by the States with guidance from the central government. Reforms came in three phases: (a) abolition of zamindars and ryotwari systems (giving proprietary rights to 20-25M tenants); (b) tenant protection acts (benefitting some 12.8M tenants, although many tenants were also evicted); and, (c) land ceilings and land redistribution. By the end of 2005, about 2.63 million hectares (6.5 million acres) of surplus lands had been redistributed to 5.6 million households, representing only one percent of India’s agricultural lands and four percent of rural households. State-level land reforms were deemed most successful in West Bengal and Kerala, but reforms were poorly implemented in other States.

Social legislation. India today has some of the region’s most progressive legislations, as many anti-discrimination and social protection acts were passed. In relation to land, these include among many others, the Forest Rights Act of 2006 and the Land Acquisition Act of 2013. But with earlier structural adjustment programs in the 1990s, and later State-led interventions to support the growth of private investments under market liberalization, the gap between rich and poor has been growing. This exacerbates existing land inequalities and divides, including discrimination against women and Dalits.

Land conflicts. Current drivers of land conflict include: State-led development projects (for infrastructure, Special Economic Zones, etc.) which has led to the displacement of an estimated 60 million people between 1947-2004, of which 40 percent are tribals; continuing land conversion of forests to other uses; and, privatization of community lands that are under common property use and tenure.

Indonesia

Colonial land policies. After 347 years, the Dutch left three main colonial land policies in Indonesia: First, all lands were divided into two categories of ownership through the domein verklaring (declaration of domain) principle. In one category land was recognized as being individually owned, known as eigendom (ownership), and in the other category all land was owned by the State. Second, land was allocated for the development of big plantations, particularly on State-owned land. Third was a policy on the formation of “state-forests” (Bachriadi, 2009). This created a dichotomy and division between small rice peasants and large plantations for export based on hired labor.

State lands. After independence in 1949, most of the Dutch colonial land and agrarian policies continued under the Indonesian State in a new form. The State
inherited forestry lands that covered nearly 70 percent of the total land area of Indonesia, as the highly-centralized system of the Dutch colonial government was carried over to the new republic. In addition, the Indonesian government became the largest landowner after 1958, when Dutch and Japanese colonial plantations were nationalized and placed under State ownership, while many foreign private companies retained their land-lease rights. Sometime later, the government also resumed the Dutch policy of “colonization,” which involved the planned resettlement of farmers from Java to the less populated islands (under the new name of Transmigrasi Program) (Quizon, 2013b). This led to conflicts between migrants and indigenous peoples over adat lands.9

**Agrarian reforms.** The nationalist government instituted two agrarian reform policies – the 1960 Basic Agrarian Law and the 1962 Land Reform Program. The 1962 law established land ceilings based on the availability of irrigation and on regional population densities, and land in excess of these limits would be acquired and redistributed by the government. Over a million hectares were redistributed. Yet the Land Reform Program was implemented for only five years, and then reversed when the military took power in 1966. All rural organizing activities were stopped, freedoms curtailed, thousands killed, and much of the State lands that had already been distributed to peasants through the Programme were taken back by local elites (Quizon, 2013b).

**Private concessions in State forest lands.** Meanwhile, there has been no restitution of indigenous peoples’ lands since Independence, and no land reforms in the forest sector. Government policymakers have viewed Indonesia’s vast forest resources as the exclusive responsibility of central government. The approach of government in managing the forest estate has been to award large concessions to private sector firms for agribusiness and industrial development. As of 2017, the Ministry of Environment and Forestry had issued land concessions to 499 enterprises covering a total of 68.7 million hectares, or 38 percent of the country’s total land area. (KPA, 2018a) Meanwhile, a 2004 study estimated that as much as one quarter of the country’s population live in classified forest lands without security of tenure (Bachriadi and Sardjono, 2005).

**Nepal**

**Customary land systems.** Nepal is a country where the land systems have been governed by statutory laws, as well as historically by customary and non-

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9 Adat means under native traditional law in Indonesia.
formal practices. In a country where indigenous ethnic groups comprise 36 percent of the population, custom and tradition continue to play an important role in the management of land, and in the exercise of tenure rights. Land is seen not just as an economic asset but also as a fundamental source of culture, social relations, political power, identity and belongingness among people.

**Evolution of land systems and reforms.** The system of land tenure in Nepal has evolved over the years. Historically, State ownership was the traditional form of land tenure in Nepal, as the land belonged to the State and its rulers (monarchs), who awarded land grants to relatives and favored individuals. This feudal land tenure system concentrated land ownership among the wealthy few and those who were close to the authorities.

Reforms started with the Land Reform Act of 1964, yet such reforms were able to redistribute only 28,124 hectares or 1.5 percent of all agricultural lands. Ceilings were set too high, and implementation was thwarted by resistance of landowners, and slow enforcement by government (Adhikari, 2008). The Jana Andolan Movement of 1990 and the instatement of constitutional democracy brought new hope for land reform, but this soon faded.

The inequalities in land ownership were among the underlying drivers of a decade-long armed conflict between the Government of Nepal and the Communist Party of Nepal-Maoist (CPN-Maoist) that broke out in 1996, and which led to the eventual abolition of the monarchy in 2008, and the passage of a new Federal Constitution in 2015. Land reform remains high on the agenda, but the highly-politicized nature of the debate has thus far impeded any real change (CSRC, 2015).

**Land conflicts.** Land conflicts today have different dimensions. Some of the more common land-related conflicts in the country are inheritance conflicts among family members, boundary conflicts between neighbors, conflict between landless people and authorities, and conflict between landowners and tenants. These are often addressed through formal institutional structures.

However, there are recent trends that contribute to growing land conflict especially in the terai (plain) regions. Migration between rural and urban areas, as well as from the hills to the plains has put further pressure on an already strained land and housing situation. The growth of informal settlements has bred conflict between migrants, private property owners and the State. In recent years, new conflicts have emerged from State-supported infrastructure
projects (roads, airports, and park expansion) and increasing army camps under a federal system.

There are deeper sources of conflict as well. There are those who utilize their power and position to engage in land grabbing, use public and private land illegally, manipulate the land market to their advantage, and engage in nepotism and corruption. Moreover, land conflicts often reflect the deep-rooted societal conflicts born out of inequality or unfair distribution of wealth, and discrimination against women, ethnic minorities and Dalits. Land conflicts can undermine social stability as they can increase fear and suspicion among neighbors and communities.

In much of the country, informal and customary tenure systems continue to be practiced. Such tenure systems may or may not have legal basis and social recognition. But since many lands have no formal registration, local people’s tenure is not fully recognized.

However, customary tenure in Nepal is fast-dying. Especially in the hill regions, customary social institutions regulate land use practices, and determine land allocations. Under Kipat, shifting cultivators used enjoy their land rights generated through customary tenure. Also, land allocations used to be based on the lineage or clan, to control the influx of outsiders. But as customary practices are eroded by statutory laws, these have given rise to land conflicts. Kipat was officially abolished in 1964, and limited to certain hill communities, in favor of individual property rights. However, there is ongoing debate between State and ethnic minorities regarding the recognition of customary land practices like Kipat, which had been legally abolished.

Land has become one of the most contested resources, and many conflicts, even within families, are land-related. With escalating land prices, population growth, and the inheritance law, there has been increasing fragmentation of landholdings.

Philippines

**Colonial land history.** The roots of landlessness in the Philippines can be traced to its 400-year history colonization. Much of traditional land systems were destroyed when the Spaniards claimed all lands under the *Regalian*

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10 Kipat refers to land collectively owned by the community (not by the State) and traditionally managed under usufructory rights.
Doctrine and introduced feudal systems. Large tracts of land or haciendas were parceled out to colonialists (military and clergy), while systems of tribute (taxes) and forced labor were introduced. Later, American occupation facilitated the entry of foreign companies into mining, logging, and the establishment of modern capitalist plantations, especially in Mindanao. The American colonialists introduced the Torrens title system where all unregistered land and without title were declared as “public lands,” without regard for prior occupancy.

**Agrarian reforms.** Following independence in 1945, a series of land reform programs were legislated in direct response to escalating agrarian and social unrest; however, implementation was stifled by landowning interests entrenched in power, and the lack of government funding and support. In 1972, the martial law regime instituted a land-to-the tiller act, but this was limited to tenanted farms planted to rice and corn staples, which were hotbeds of agrarian unrest, while large plantations with cash crops (e.g., sugarcane, pineapple) remained untouched.

Following the 1986 People Power revolution that ousted the dictatorship, a new Constitution was enacted that laid the basis for land and social reforms. Primary among these was the Comprehensive Agrarian Reform Program of 1988, aimed at tenancy reforms and the redistribution of land covering 9.1 million hectares of private farms and public lands deemed suitable for agriculture. However, the implementation of CARP proved slow and cumbersome, due to the complexity of the program, corruption, weak implementation, the poor state of land records and land administration. Since 2009, there has been a resurgence of violent land conflicts, especially in the redistribution of private lands.

Meanwhile, there has been increasing private investments in agriculture that impact on tenure security of rural communities. Due to the lack of government support, many farmer cooperatives have entered into various long-term contracts (long term lease, joint venture, marketing contracts) with large agribusiness companies under problematic contractual arrangements unfavorable to smallholders.

**Indigenous peoples’ lands.** Another major social reform was the Indigenous Peoples Rights Act (IPRA) of 1997 which recognizes the rights of Indigenous Peoples (IPs) to their ancestral domain and lands, self-governance and cultural

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11 Regalian means belonging or relating to a monarch/ king.
integrity. In the past 20 years, 221 Certificates of Ancestral Domain Titles (CADTs) have been issued over 5.4 million hectares. However, the integrity of native titles is continually challenged by conflicting claims, with the entry of mining and investments, the continued influx of migrants and commercial interests, and the entry of State-sponsored projects, such as dams and power projects, infrastructure, and special economic zones into IP domains.

Other sources of land conflict. A major source of land conflict are contradictory development policies that impact on land tenure and land use. Moreover, multiple government agencies issue land titles, licenses and permits – which lead to overlapping claims and land conflicts. With growing populations and urbanization, there has been conversion of prime agricultural lands and destruction of forests. And while land and social reforms have been instituted, an estimated 17-22 million people continue to live on public forestlands with no legal tenure rights.

Summary

The roots of many land conflicts in Asian countries may be traced to enduring historical injustices, inequitable access to land and resources, faulty and weak implementation of past land and resource reforms, emergent clashes between statutory and customary tenure systems, misappropriation of State domains, and the lack of regard for human rights of the disadvantaged and vulnerable sectors.

ANALYSIS OF LAND AND RESOURCE CONFLICTS

Prevalence and Impacts

There is no comprehensive data or estimation of land conflicts that occur annually in each country. Only a portion of the incidents are reported in media, litigated in court or filed with authorities. Nevertheless, the country studies here show the prevalence and immediate impacts of land conflicts.

In Indonesia, KPA recorded 937 cases of agrarian conflicts during a 20-month period (January 2017 to August 2018). These occurred in every province in Indonesia. The conflicts affected some 711,243 families, and a total land area of 1.14 million hectares. In the Philippines, ANGOC collected 352 documented cases of land conflict over an 18-month period (January 2017 to June 2018). The land area under dispute was 1.28 million hectares, equivalent to four percent of the total territory of the Philippines.
In Bangladesh, land in general is the source of almost 60 percent of all legal disputes (TIB, 2015). In the Chittagong Hill Tracts which is the principal home of the country’s indigenous people with a separate legal regime, some 30,000 applications are still pending with the CHT Land Dispute Resolution Commission. In Nepal, nearly 25,000 land-related cases are filed in court each year, based on data for 2012 to 2016, although the numbers are gradually decreasing. In Cambodia, an estimated 400,000 to a million people are said to have been affected by land disputes. ADHOC, a Cambodian human rights group, estimates that some 60,000 people have been forcibly evicted from their homes.

Many land conflict cases lead to violence. Physical violence is most visible. In Bangladesh, a BRAC study estimates that 7.5 percent of households with past or present land conflict have experienced a physical assault (as cited in CDA, 2018). In the Philippines, 80 cases (23 percent of the total cases) had resulted in the killing of a stakeholder, of which 70 cases had the involvement of armed groups such as the military, paramilitary, and private armed groups. In Indonesia, agrarian conflicts are frequently followed by violent acts by the State security apparatus or by company guards against people who refuse to be evicted. Over a 20-month period, 22 people were killed and 318 people were injured, including 67 women. In all countries, it has been observed that women tend to be particularly active in land disputes, as they involve potential threats to homes, families and livelihoods.

Other forms of physical violence include forcible eviction, destruction and burning of homes, looting of property, and human disappearances. The Kapaeeng Foundation’s annual Human Rights Report on Indigenous Peoples in Bangladesh showed that 1,484 houses of indigenous people were burned down, 206 houses were looted and ransacked, 146 people were assaulted/injured, 9 killed and 40 women were raped or were victims of attempted rape – as a consequence of land disputes from 2015 to June 2018.

Over the same period, some 1,544 indigenous families in Bangladesh were forcibly evicted from their ancestral lands, with an equal number under threat of land grabbing. Some 771 indigenous people were facing false cases, while 39 others were arrested.

Similarly, there have also been cases of people imprisoned by the police and military in other countries. In Indonesia, protesting communities have been criminalized – imprisoned and charged for civil and criminal acts. Some 369 people were arrested in 2017, and 152 people in the first eight months of
2018. In the Philippines, there were 147 documented incidents of cases filed against community leaders and members in 2017 to mid-2018. Cases filed by businesses and landed families included trespassing and theft, for “illegally harvesting crops” from farmlands that they had planted.

Further, systematic efforts are often made to destroy the reputation of land rights activists and community leaders. In Cambodia, trade union leaders have been subjected to arrest, physical violence, and judicial harassment. Community activists protesting against land grabs and forced evictions have been jailed and charged with offenses such as incitement and damage to property, as well as with fabricated common crimes that include robbery, assault and drug smuggling. In extreme cases, rights defenders have been silenced through killing.

Other forms of violence in land conflict cases are equally concerning. There is psychological violence that comes in the form of grave threats, verbal abuse, harassment, and discrimination – which may have deeper and longer-lasting impacts within the family and community. When land conflicts occur, there is fear, a loss of sense of security, and erosion of community trust.

Land and resource conflicts also affect the livelihoods of communities, either by (a) displacing them from lands they use for farming, (b) denying them access to forests and waters, or (c) compromising the quality of their environment, such as when mining pollutes water systems and makes the land unsuitable for use or vulnerable to erosion and landslides. In Northern Mindanao, Philippines over 10,000 livelihoods were displaced when indigenous people were denied access to their traditional forests with the entry of plantations for oil palm and pineapple, and pasture for cattle-raising.

Meanwhile, the lack of access to justice and peaceful resolution of disputes bring about the escalation of land conflicts, often leading to violence.

Land conflicts breed other crimes. In Bangladesh, an estimated 80 percent of criminal offenses today are said to stem from land disputes. Moreover, some 18.3 percent of families pay BDT 22,270 (USD 266.27) to police and BDT 5,483 (USD 65.56) to local arbitrators for pending cases or to resolve land disputes.

Finally, land conflicts breed conditions that may have long-term impacts within households and communities. They can bring about poverty, the loss of livelihoods, food insecurity, environmental degradation, social tensions,
fear, psychological disorders, social inequalities, and an increased sense of insecurity and vulnerability.

**Causes of Land Conflict**

Inequalities in land distribution, landlessness, discrimination and social exclusion lie at the core of land conflicts. In Bangladesh, for instance, almost 60 percent of all households own only 4.2 percent of the land, whereas 6.2 percent of the top landowners own 40-45 percent of lands (Barkat and Suhrawardy, 2018).

Moreover, many of the lands under private possession and cultivation are unregistered. This makes them highly vulnerable to land grabs and eviction, especially when private investors and government officials are involved. In Cambodia, 85 percent of the population is rural, many of them cultivating lands without proper recognition of ownership. And while their traditional use of nearby forests is locally recognized, the central State has its own laws that govern forests as part of the State public domain.

Another root cause of land conflict is the historical disenfranchisement against indigenous peoples and certain sectors whose lands were never restituted and have been under long-standing claims. Nevertheless, many indigenous peoples today live in the remaining frontiers where biodiversity and forest ecosystems have been kept intact over many decades through customary practice, traditional management, and sustainable use. However, where their customary rights to land and territories are not legally recognized by States, indigenous peoples face increasing external pressures and further marginalization by continued in-migration of settlers, expansion of commercial agriculture and forestry, extractive industries such as logging and mining, and the expropriation of lands for development and tourism. Once considered as the “peripheries” of the State, the traditional territories of indigenous peoples have been increasingly targeted especially in the last two decades for large-scale projects and private investments (Quizon, 2013a).

There is an increasing clash between different tenure systems – legal, informal and customary. In Nepal, customary/communal land tenure systems such as Kipat were abolished in 1964, although it continues to be practiced in the hilly regions.

To provide for a more egalitarian distribution of land, and to address social exclusion, agrarian/land reform programs were instituted in all six countries
since the 1950s. However, the implementation of reforms fell short of their objectives, due to the lack of political will. In Bangladesh, India and Nepal, the abolition of rent-collecting intermediaries (zamindars) proved successful, in contrast to their poor implementation of land ceilings and tenancy reforms. In other countries (i.e., Indonesia, Cambodia) land reforms had little or no impact, as these reforms were stopped in their tracks or left un-implemented by military-backed regimes, and their gains later reversed by anti-reform policies (Quizon, 2013b). In the Philippines, agrarian reform has had limited success, but land conflicts have been increasing since 2009, due to the ongoing resistance to reforms by large landowners.

Another major root cause of land conflict is the misappropriation of State domains. In the history of many Asian countries, the colonial State took over all lands outside of permanent settlements and brought these lands under the “public domain.” These included those lands that local people had previously regarded as “communal lands” or those under shifting cultivation. These included lands outside of land registries that were considered as belonging to the public domain regardless of their possession, occupation, or use. After independence, national governments continued to manage these lands as an important source of State revenue. But large valuable lands under State control have also made them conducive to mismanagement, poor resource utilization, and corruption (Quizon, 2013b). Especially in Cambodia and Indonesia, State capture by big business interests has led to the awarding of large-scale concessions to private corporations for plantations, mining, and logging operations.

In Indonesia, land conflicts between small farming communities and corporations have become widespread. This escalated during the reformasi era (after the fall of Suharto in May 1998), which marked the start of open and liberal politics where extensive autonomy was transferred to the regions, away from the center (decentralization). Yet along with power, corruption was decentralized to the regional level where land concessions and permits for mining and logging were granted on a large scale by local officials, usually without proper monitoring or administration. KPA notes that during the 11 years between 2004 to 2015, there have been 1,770 agrarian conflicts with a contested land area of nearly seven million hectares affecting over one million households in Indonesia (KPA, 2018).

Moreover, in all countries, the multiplicity of laws, overlapping agency jurisdictions and sectoral arrangements on land administration often undermine people’s interests on land. In Indonesia, sectoral arrangements
are regulated by the State through sectoral law, such as on spatial planning, forestry, plantations, water resources, management of coastal areas and small islands, and land acquisition by the State. However, these sectoral laws contain problems such as unclear mechanisms for land acquisition by private companies, overlapping allocation of areas for different purposes, and failure to recognize customary law (KPA, 2018).

In recent years, a major cause of land conflict has been the increasing commodification of land. This has led to increasing cases of land grabbing, sometimes with the State taking on the role of a “broker” for private investments. Land grabbing is defined as: “the control (whether through ownership, lease, concession, contracts, quotas, or general power) of larger than locally typical amounts of land by any persons or entities (public or private, foreign or domestic) via any means (‘legal’ or ‘illegal’) for purposes of speculation, extraction, resource control, or commodification at the expense of agroecology, land stewardship, food sovereignty and human rights” (Baker-Smith and Attila, 2016).

Yet to many people, land remains as more than just an economic asset or commodity. Rather, land is seen as the foundation of one’s home and community, personal security, faith, culture, livelihood, and even identity.

Current Drivers of Land and Resource Conflicts

Based on the six country studies, the current drivers of land and resource conflicts are summarized in Table 3 below.

<table>
<thead>
<tr>
<th>Country</th>
<th>Drivers of land conflict</th>
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| Bangladesh  | • Disputes over private property (intra-family, boundary disputes, sales, rents, and leases)  
               • Conflicts over property rights arising from non-registration of land parcels, missing or inaccurate records, falsification of deeds  
               • Agrarian conflicts, including landowner-tenant disputes, evictions by landowners  
               • Commercialization of agricultural land, contract farming, agribusiness investments with political interests  
               • Indigenous peoples’ rights vs. statutory laws (Bengali settlers vs. indigenous peoples in the plains and the CHT)  
               • Unsettled “Vested Property” and “Abandoned Property”  
               • Undistributed khas lands; grabbing of khas lands  
               • Favored State concessions and grabbing of water bodies |
### Bangladesh (cont.)
- Urbanization, rising land prices and property markets
- Land grabs, often involving political corruption
- State land acquisitions/expropriations for infrastructure (e.g., power projects, eco-parks,) and investment areas (i.e., special economic zones)

### Cambodia
- State-led land grabbing of unregistered lands of citizens
- Private land grabbing of unregistered lands by powerful people/public officials
- Economic land concessions (plantations, mining, hydropower dams, etc.)
- Evictions from city development (property markets) and establishment of Special Economic Zones
- Government infrastructure projects (roads, railways)
- Encroachments on community land (forest lands, communal forests and lands of indigenous people)

### India
- State-led land acquisitions and expropriations for infrastructure (roads, railways, dams and power projects, ports, tourism, etc.) and Special Economic Zones (SEZs)
- State-led expropriations for direct investments by private entities
- Privatization of community lands that are under common property use and tenure
- Land conversion of forests to other uses
- State-led takeover of forest lands in the name of afforestation and conservation areas
- Mining and plantation concessions
- Land encroachment, dispossession (land grabs) against Dalits and Tribals by elites and upper castes
- Ethnic conflicts, social and religious tensions that escalate and involve land disputes
- Environmental issues (pollution, erosion) and resource conflicts (water) arising from misuse of land and poor management of resources

### Indonesia
- Private and State-owned plantations (oil palm, rubber) through State land concessions and facilitation
- Government infrastructure projects (roads and toll highways, airports, railways, seaports)
- Property development (housing, hotels, commercial areas, offices and multi-use complexes) and urbanization (including land reclamation, seizure of water resources) – usually involving land grabs and evictions
- Forestry (concessions for logging, industrial forests; boundary conflicts between State forests/Perhutani and local communities)
- Mining and logging concessions/leases
- Coastal and marine conflicts
- Agrarian conflicts in the agriculture and food sector

### Nepal
- Local disputes within families or among community members (i.e., inheritance, property transfers, boundary disputes, production sharing)
- Land and resource conflicts (informal settlers in forestlands, indigenous peoples and dwellers in protected areas, overlapping land use
- Non-recognition of customary tenure, abolition of kipat system
Nepal (cont.)
- Urban expansion, growth of property markets and squatting/informal settlers especially in the terai (lowland region)
- Government land acquisitions (eviction, compensation issues), infrastructure projects (army camps, roads, airports), and government federal restructuring (new infrastructure, new boundaries and delineations, taxation and local revenue generation)
- Agrarian conflicts, landowner-tenant issues (land rents, tenancy land separation, evictions)
- Post-conflict issues (1996-2006 insurgency) and post-disaster issues (2015 earthquake)

Philippines
- Government infrastructure (Economic Zones, water systems, power, buildings) and private investments (power, real estate, tourism, industry)
- Agribusiness investments (unfair business/lease contracts, land grabbing for plantations)
- Mining and extractive industries (for metals, coal, natural gas and sand/gravel quarrying)
- Forestry (logging, reforestation, industrial tree plantations)
- Conflicts over resource use (informal settlers in forestlands, indigenous people and dwellers in protected areas, conflicts over land classification and use)
- Overlapping claims among communities, due to overlapping land laws and multi-agency jurisdictions, and the multiplicity of titles, leases and permits issued over the same land, often in ancestral domains
- Agrarian conflicts, including landowner resistance to agrarian reform

MECHANISMS FOR CONFLICT RESOLUTION

Formal Mechanisms

- Judicial court systems. Land-related cases continue to clog court systems in many countries. In Bangladesh, land in general is the cited source of almost 60 percent of all legal disputes in the country, according to Transparency International. In Nepal, about one-fourth of all court cases filed from 2012-2016 has been land-related. Moreover, there is a backlog of land-related cases in court. The Supreme Court Annual Report of 2015 stated that a total of 41,591 land-related cases (or 24 percent of all cases) were registered in the Supreme, Appellate, and District Courts in Nepal.

Courts are frequently criticized by the public for the slow-paced hearings and decision-making processes. Costs are high especially to the poor in terms of time, money, and resources spent. In Nepal, court systems frequently take up to five years, and require huge amount of resources. In Bangladesh, lawyers’ fees account for about 60 percent of total costs of land disputes, and households spend about 45 percent of their annual
incomes to resolve a dispute. Overall, people spend a total of BDT 2.5B (nearly USD 300M) a year, to resolve the estimated 2 million pending land cases in courts. Disposal of cases take an average of 9.5 years. This represents not only a huge loss of income for the household, but also a massive loss of national wealth. In Bangladesh, land related cases in courts cost an estimated 10 percent of the country's GDP (as cited in CDA, 2018).

**Administrative mechanisms.** Table 4 below shows the different administrative bodies that address land and resource disputes in four countries.

<table>
<thead>
<tr>
<th>Country</th>
<th>Administrative agencies</th>
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<tbody>
<tr>
<td><strong>Bangladesh</strong></td>
<td>The Ministry of Land is responsible for land administration and management. Under the ministry, the (a) Land Appeals Board and (b) Land Reforms Board serve as arbiters in cases involving khas lands, changes in records, plot demarcation, and taxation.</td>
</tr>
</tbody>
</table>
| **Cambodia** | There are several administrative mechanisms that provide arbitration over land disputes.  
(a) National Authority for the Resolution of Land Disputes (NARLD) was established in 2006 primarily to assist the Council of Ministers (and Prime Minister) to resolve disputes and by allowing greater central government control of other institutions involved in land management.  
(b) National Cadastral Commission is an agency under the Ministry of Land Management, Urban Planning and Construction (MLMUPC). It identifies properties, establishes cadastral maps, issues ownership titles and registers land. It works with the ministry to resolve conflicts on land ownership and registration claims.  
(c) Administrative Commissions at provincial level are under the supervision of the MLMUPC. They receive objections, investigate and settle disagreements in the process of establishing cadastral maps and land registers. They resolve issues regarding “possession claims.” |
| **Indonesia** | Under the 1960 Basic Agrarian Law, all land is classified as either private or public. The two main Ministries that handle land administration are:  
(a) Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) for non-public lands; and (b) Ministry of Environment and Forestry for lands under the public domain. These ministries have provincial and district offices. There is also a Department on Land Dispute Settlement under the ATR/BPN. Also, the Ministry of Agriculture deals with policies and investments in the agriculture sector.  
Others seek remedies through the following:  
(a) Alternative dispute resolution (Law No. 30 of 1999)  
(b) Environmental compliance (Law No. 32 of 2009)  
(c) Indonesian Sustainable Palm Oil (ISPO, a policy on certification adopted by the Ministry of Agriculture)  
(d) Komnas HAM (national human rights institution) – investigative and recommendatory; however, lacks enforcement authority |
Philippines

| Several government line agencies deal with certain types of land disputes over public and private lands at national and regional levels. These agencies have quasi-judicial powers for resolving cases within their jurisdictions. (a) Department of Agrarian Reform (DAR) has jurisdiction over agrarian disputes involving private and government lands (b) Department of Environment and Natural Resources (DENR) covers lands of the public domain (c) National Commission on Indigenous Peoples (NCIP) covers ancestral domains and claims |

Overall, quasi-judicial bodies and administrative mechanisms for dispute resolution are able to deliver quicker resolution of conflicts compared to courts. However, administrative mechanisms can only address specific types of issues within their own limited sectoral jurisdictions. Moreover, different agencies often have overlapping mandates and conflicting policies; and a common problem is the lack of coordination and cooperation among agencies. Administrative mechanisms are reactive; they deal with incoming issues on a case-by-case basis, and the process can be time-consuming. Changes in officials can cause major delays. Moreover, administrative dispute resolution mechanisms do not address broader land issues, such as providing land to landless families, resolving squatter issues, or strengthening land administration.

Problems arise especially when public officials or the government itself is an involved party in the conflict, such as in cases that involve State-run enterprises, the granting of public land concessions, or where violence has occurred in which the police have been involved. In such cases, the impartiality of administrative mechanisms becomes questionable. An issue often raised is the transparency of relevant data and information. There is also a perceived lack of affirmative action when violators are business and State entities.

In formal justice systems, the poor and small farmers are constrained by several other factors from obtaining justice – i.e., limited procedural knowledge regarding resolution of land conflicts, no access to or understanding of the court and land administration systems.

- **Local governments.** In Nepal, the Village Panchayat Act gives authority to local governments for resolving disputes related to public land, boundaries, wages, trespassing, sources of water, pasture land and collection of grass and firewood. In the Philippines, the Barangay Justice System also provides an alternative, community-based mechanism for
dispute resolution of conflicts between members of the same community.
In Cambodia, Commune Councils have the role of “reconciling differences” among community members, but do not have the power to make decisions (arbitration). Although not a requirement, in practice most local disputes are heard by Commune Councils before they are brought to higher levels. In Nepal, resolving land disputes through local authorities has not proven effective, because the elected local officials tend to fuel conflict, perpetuate feudalism, and fail to work for the poor (as cited in CSRC, 2018). Also, when adjudication processes are managed through local political leaders, this can exacerbate existing social discrimination vs. certain sectors (women, IPs) and minority groups.

Non-Formal Mechanisms

- **Community mediation.** In Nepal, there is a community mediation program which is an alternative dispute resolution mechanism for people who have weak access to the formal justice system, and have inadequate means of resolving local disputes. Under this system, disputants select a panel of mediators available in the village community who provide a neutral and confidential venue for dialogue between the parties, and assist them to find solutions to their disputes. In some cases, for instance, poor people and small farmers may be unable to initiate dialogue with landowners, for fear of being evicted from the lands they have been cultivating.

  The mediation approach has proven to reduce the frequency of disputes, and has helped improve understanding, coordination and cooperation among community members. Women and members of marginalized communities are able to participate both as beneficiaries and as providers of mediation services.

  The community mediation program was introduced in 2002, which the Nepali government later recognized through the 2010 Mediation Act, which recognizes the validity and importance of community mediation within the Nepali context. However, the community mediation approach requires building people’s capacities to solve problems, to analyze situations and other perspectives, and to make effective decisions independently.

- **Customary justice systems.** These have proven to be accessible and effective in settling internal land disputes within and among indigenous communities and tribes. However, these mechanisms are gradually coming out of practice. Customary justice systems have limited scope and are
dominated by leaders of the community. They become inoperative where disputants involve non-members of the community.

In Cambodia, traditional systems facilitated by village chiefs have proven effective for settling early disputes in the process of land registration. These include border demarcation between property claims, conflicts among relatives, and occupation of land – which are often not recognized by higher authorities.

- **Political negotiations.** This is a key tool for addressing broader land-related conflicts that are political in nature – i.e., caused by national laws, policies, and government-supported projects. These include discussions on broader issues of land governance, such as assisting informal settlers, instituting agrarian reform policies, recognizing customary rights, providing preferential access to marginalized sectors in the granting of access to public lands and resources, equal land rights and support services for women, and preventing arbitrary evictions and displacement.

A large number of land conflicts within countries are highly political in nature, and thus demand political solutions. The challenge is how to arrive at political consensus and inclusive solutions, with the active participation of affected sectors and communities.

**Safeguards for conflict prevention**

In Bangladesh, there are no direct measures to prevent land conflicts. There are no procedural safeguards, effective land policies or legal and institutional frameworks related to public and private investments to prevent land grabbing and land disputes. Moreover, there are no policies in place to protect affected communities or to protect land rights defenders (halfway house, legal assistance, witness protection, relocation or medical and psychological assistance).

In most countries, there are procedural safeguards in the case of land-related large-scale projects and investments. These include the need for social and environmental impact assessments (ESIAs), as well as the need public disclosure and consultations. In the case of indigenous peoples in the Philippines, there is also a legal requirement for free, prior and informed consent (FPIC) prior to the extraction of resources from indigenous ancestral domains and lands. FPIC in this context requires that indigenous communities be provided with adequate and accessible information, and that consensus is determined in
accordance with indigenous peoples’ customary laws and practices and free from any external manipulation or coercion.

However, it was found that the FPIC process suffers from inadequate systems and implementation failures (Oxfam, 2013). In the Philippines, it was also found that procedural safeguards such as permits, licenses and other mandatory compliances to government agencies embedded in land governance processes are marginally effective and at times serve as rubber stamps for land investments.

SUMMARY OF RECOMMENDATIONS

To Governments:

- **Address discrimination.** Repeal discriminatory laws against marginalized sectors – such as laws against women’s equal rights to land and inheritance. For Nepal, implement the 2015 Constitutional provisions that guarantee equal rights to land for women, peasants, landless, and Dalits.

- **Recognize and respect diverse tenure systems** upon which people’s livelihoods depend, including communal, customary, and informal tenure systems. Establish national land policies that does not treat land as a mere economic asset or commodity, but recognizes the value of land in its socio-cultural aspects, and protects land tenure accordingly.

- **Revive land reforms through responsive legislations.** Proposals include: **Indonesia:** Promulgate and implement a responsive agrarian reform program founded on the principles of, among others: (a) reducing inequalities in agrarian land tenure and ownership, and (b) addressing land conflicts through justice. Implement Presidential Regulation 86/2018 on agrarian reform, while giving priority to agrarian conflict areas – in relation to State assets (lands of State-owned businesses), PERHUTANI12, extracted forest areas, abandoned lands and lands with problematic business user rights. Government should undertake a bottom-up approach, by implementing reforms in priority areas (called “LPRA”) that have been identified by local communities and CSOs.13 **Nepal:** Amend the Land Related Act of 1964 to include provisions aimed at ending the remaining cases on dual ownership in Nepal. Include provisions for the recognition of unregistered tenants and protect them against

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12 PERHUTANI stands for Perusahaan Hutan Negara Indonesia (the Indonesian State forestry company).
13 KPA-Indonesia has mapped out and proposed “Priority Locations for Agrarian Reform (LPRA).” These areas were identified through members of the KPA in various regions and in the areas affected by land conflict.
forced eviction from their landlords. Review the reports developed by past High-Level Land Reform Commissions, and conduct public consultations to solicit views and concerns on needed land reform measures.

**Philippines:** Complete the implementation of all existing land and resource reform programs, including the Comprehensive Agrarian Reform Program. Install all farmer-beneficiaries on their awarded lands. Implement land-to-the tiller in public agricultural and forest lands and give local communities preferential rights in the issuance of Integrated Forest Management Agreements (IFMAs).

- **Enact a specific law to prevent land grabbing and for quick resolution of land disputes.** In Cambodia, apply an immediate moratorium on the issuance of Economic Land Concessions (ELCs), and undertake a full contractual compliance review of all land concessions.

- **Protect the poor and marginalized communities from arbitrary eviction and forced displacement.**

- **Establish an independent monitoring mechanism on large-scale land investments and concessions** so as to guarantee respect for human rights and responsible investment standards. Explore alternatives to large-scale land investments that forcibly displace communities from their homes and sources of livelihood.

- **Protect land rights defenders.** In line with the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopt effective measures to combat the culture of violence and impunity, and to protect human rights defenders, including indigenous leaders and peasant activists.

- **Legislate and implement land use policies** in order to protect agricultural areas against fragmentation and land use conversion, to strengthen local food security, and to prevent conflicts between different groups and communities. In the Philippines, legislate the National Land Use Act (NLUA) to protect agricultural and forest lands from land use conversion, and to protect the rights of smallholders and indigenous communities.

- **Adopt and implement the UN Guiding Principles on Business and Human Rights (UNGP BHR)** in land and resource governance. As an initial effort, governments should implement the UN Guiding Principles in the management and operations of State-owned enterprises.

- **Address violations of land/human rights** where they occur. Cancel land leases, permits, and licenses of companies and groups that violate land/human rights.

- **Conduct outreach programs** to inform local communities, especially vulnerable groups, of their land rights and entitlements.

- **Train government staff** (including those working at the district land offices, as well as the police and military) on alternative dispute resolution,
gender and culturally sensitive approaches, and respect for human rights.

- **Check corruption, irregularities, and bribes** at land administration, courts, and police stations.

- **Fast-track the resolution of land-related cases pending in courts.** In countries such as Bangladesh and Nepal, establish land tribunals or special courts to deal with the backlog of cases.

- **Establish independent land dispute commissions to speed up the response to, and resolution of, land-related cases.** For Bangladesh, establish an independent land commission for indigenous peoples in the plains, and strengthen the CHT Land Dispute Resolution Commission.

- **Strengthen local mediation mechanisms for addressing local land conflicts**, especially those involving civil cases at community level. Conduct capacity building programs for local mediators, as well as public awareness campaigns for local people to consider mediation over adjudication mechanisms.

- **Ensure integrity, transparency and public access in land administration and in the management of land records.** In the case of Nepal, generate accurate data on lands and property that were seized during the conflict period (1996-2006) so that these cases can be addressed, as they have the potential to create further tension and unrest.

- **Strictly implement social and environmental impact assessments, and adherence to free, prior and informed consent (FPIC) of affected communities** – as preconditions for all large-scale private and public land-related investments and transactions.

- **Harmonize various overlapping land laws and agencies** that create confusion and conflict over land rights and entitlements. Institute effective mechanisms to resolve overlapping claims on land. Cease and desist from issuing tenure and resource use instruments that encroach on lands of indigenous peoples.

To **NHRIs:**

- **Include land conflict monitoring reports in the annual reports of the National Human Rights Institutions.** This will serve to highlight the importance of the issue; it will also help to validate the collected data and information by CSOs.

- **Conduct independent field investigations** of land conflicts where human rights are violated.

- **Promote the UN Guiding Principles on Business and Human Rights (UNGP BHR).**
To Business and the Private Sector:

- **Adhere to the highest standards of environmental and social safeguards**: strictly apply the UNGP BHR standards and implement government regulations at all stages of investments. Ensure that subcontractors act with due diligence in order to avoid any adverse impacts on communities and the environment.

- **Publicly share and disclose master plans, environmental and social impact assessments (EIAs, SIAs)** and other relevant documents relating to concessions.

- **Ensure regular communication with affected communities** on the progress of the project. If and when any harm is caused by company operations, implement compensation and redress measures. Review compensation provided to all affected families to ensure proper compliance with national and international standards on adequate and fair compensation.

To Civil Society Organizations:

- **Organize and empower local communities**, particularly landless and small producers, and assist them in strengthening their organizations. Provide community organizations with basic legal education. Train local paralegals and conflict mediators.

- **Improve reporting and response mechanisms to land conflicts**. Monitor business interests that affect land rights. Share information and evidence-based analysis with the public through media.

- **Promote non-violent action**. Mobilize and provide humanitarian assistance to victims of land conflict, especially for those who are poor and marginalized. Provide support for land rights defenders. Build public solidarity and support especially in cases of large-scale land grabbing and evictions due to land acquisitions. Strengthen and sustain non-violent actions by communities to hold rights violators accountable for their actions.

- **Establish independent people’s commissions** to investigate land conflicts, including the conduct of businesses and the role of the State, to seek the truth, protect local community rights and to find lasting solutions that engage local communities and the government.

- **Support the establishment of an independent National Human Rights Institution in Cambodia**.

- **Lobby governments to protect political space for CSOs and communities**. Strengthen efforts to protect freedom of expression and
the rights of human rights defenders, including those working on land rights, to conduct their work without hindrance or intimidation including safeguarding the freedom of assembly and association.

**LIST OF ACRONYMS**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADHOC</td>
<td>Cambodian Human Rights and Development Association</td>
</tr>
<tr>
<td>ANGOC</td>
<td>Asian NGO Coalition for Agrarian Reform and Rural Development</td>
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<tr>
<td>ATR/BPN</td>
<td><em>Kementerian Agraria dan Tata Ruang Republik Indonesia/Badan Pertanahan Nasional</em> – Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Indonesia)</td>
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<tr>
<td>BRAC</td>
<td>Bangladesh Rural Advancement Committee</td>
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<tr>
<td>CDA</td>
<td>Community Development Association (Bangladesh)</td>
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<tr>
<td>CHT</td>
<td>Chittagong Hill Tracts (Bangladesh)</td>
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<tr>
<td>CLRA</td>
<td>Centre for Legislative Research and Advocacy (India)</td>
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<tr>
<td>CSO</td>
<td>civil society organization</td>
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<tr>
<td>CSRC</td>
<td>Community Self-Reliance Centre (Nepal)</td>
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<tr>
<td>DAR</td>
<td>Department of Agrarian Reform (Philippines)</td>
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<tr>
<td>DENR</td>
<td>Department of Environment and Natural Resources (Philippines)</td>
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<td>EBSATA</td>
<td>East Bengal State Acquisition and Tenancy Act (Bangladesh)</td>
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<td>ELC</td>
<td>economic land concession</td>
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<td>EP</td>
<td>Ekta Parishad (India)</td>
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<td>FPIC</td>
<td>free, prior, and informed consent</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>IFMA</td>
<td>Integrated Forest Management Agreement (Philippines)</td>
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<td>IPs</td>
<td>indigenous peoples</td>
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<td>ISPO</td>
<td>Indonesian Sustainable Palm Oil</td>
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<td>KPA</td>
<td><em>Konsorsium Pembaruan Agraria</em> – Consortium for Agrarian Reform (Indonesia)</td>
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<td>LICADHO</td>
<td>The Cambodian League for the Promotion and Defense of Human Rights</td>
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<tr>
<td>LPRA</td>
<td><em>Lokasi Prioritas Reforma Agraria</em> – Priority Location for Agrarian Reform (Indonesia)</td>
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MLMUPC Ministry of Land Management, Urban Planning and Construction (Cambodia)
NCIP National Commission on Indigenous Peoples (Philippines)
NHRI National Human Rights Institution
NLUA National Land Use Act (Philippines)
PERHUTANI Perusahaan Hutan Negara Indonesia – Indonesian State forestry company
SEZ Special Economic Zone
UNGP BHR United Nations Guiding Principles on Business and Human Rights

SELECTED REFERENCES