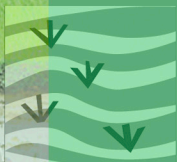


Securing the Right to Land

A CSO Overview on Access to Land in Asia



ANGOC

Asian NGO Coalition
for Agrarian Reform and Rural Development



INTERNATIONAL
LAND
COALITION

MISEREOR
OUR HELP WORK

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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 of Asia - providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives.



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Foreword

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

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

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

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

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

Land Watch Asia (LWA) is a campaign undertaken by a loose coalition of organizations with a view to supporting and advancing

the advocacy for access to land in Asia, particularly in the six participating countries, namely: Bangladesh, Cambodia, India, Indonesia, Nepal, and the Philippines. LWA campaign ensures that the issues of access to land, agrarian reform, and equitable and sustainable development in rural areas are addressed in national and regional development agendas. It seeks to serve as a monitoring mechanism to assess the status of agrarian reform in the region.

Furthermore, it aims to provide a comprehensive reference to land access by Asia's poor through a review of existing political and legal frameworks governing land access as well as initiatives and mechanisms for participation by various stakeholders in governance processes. It also strives to contribute to existing campaigns by identifying, through consensus building processes the context, challenges and opportunities of access to land and agrarian reform campaigns at regional and national levels.

To initiate the campaign, country strategy papers were prepared by LWA with the view of: i) assessing the policy and legal environment on access to land and tenurial security; ii) reviewing past contributions and existing efforts of different sectors (government, private sector, donors, social movements and civil society) in addressing land issues; and iii) identifying opportunities and strategies in effectively addressing existing issues and gaps and in advancing access to land and tenurial security.

Hence, this publication contains the regional summary and the abridged versions of the six (6) country papers. The following organizations spearheaded the drafting of the country papers: ALRD and SEHD (Bangladesh), STAR Kampuchea and NGO Forum on Cambodia (Cambodia); AVARD, Ekta Parishad and SARRA (India); KPA, Bina Desa, and AGRA (Indonesia); CSRC, FECOFUN and NFN (Nepal); and ANGOC, PhilDHRRRA, AR Now!, PAFID, SALIGAN (Philippines). Other groups involved in the various processes at the national and regional levels are listed in the Acknowledgments Page.

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We would highly appreciate your feedback and comments on this publication. Please write to us at angoc@angoc.ngo.ph.

This publication, fittingly issued on ANGOC's 30th founding year, is the network's contribution to development efforts in line with the Millennium Development Goals (MDGs) and serves as among our efforts in realizing the goals of the International Conference on Agrarian Reform and Rural Development (ICARRD).

Finally, the ANGOC Network and Land Watch Asia will continue to make the issue of land access a priority agenda of governments and to rekindle the commitment of development organizations to pursue the unfinished work of giving the poor their just entitlements.

FRANCIS B. LUCAS
ANGOC CHAIRPERSON

NATHANIEL DON E. MARQUEZ
ANGOC EXECUTIVE DIRECTOR





Message



Land is the main source of rural livelihood and employment throughout Asia, where a large percentage of the population is involved in agriculture and many livelihoods are dependent on subsistence farming or access to forest and aquatic resources. Initiatives to improve land access by poor households and communities have been developed in many Asian countries, but corruption, changing political leadership and priorities, and a lack of political will have historically challenged their implementation.

Forums for dialogue on land policy that directly involve rural peoples' associations and allow for debate across social groups and among national institutions can play a constructive role in advancing progressive land reforms. In order for such debates to play this role, however, there must be accurate information regarding the state of land access and tenure systems, as well as

current trends affecting land rights. There must also be an assurance that the perspectives of rural communities that rely on land and natural resources for their basic needs are given equal consideration to information that comes from government or international sources.

The Land Watch Asia initiative has taken on the critical work of fostering policy discussion on land access, with the twin goals of ensuring that land is on the agenda of national and regional institutions and strengthening the ability of land rights movements to influence these agenda. By taking stock of the legal and institutional frameworks, broader land policy environment and the perspectives of key policy actors—including government bodies, NGOs and people's organizations, and international agencies—this study represents a significant step toward accomplishing these goals.

BRUCE H. MOORE*

DIRECTOR

INTERNATIONAL LAND COALITION (ILC) SECRETARIAT

** Mr. Moore has retired since September 2008. He has been succeeded by Dr. Niasse Madiodio as ILC Director.*

Message



We consider the question of access to resources, and particularly access to land, as one of the key questions of our time. Access to land is an issue of food security: the majority of the hungry live in rural areas; and in Asia it is above all the landless that are affected by hunger. Moreover, access to land is a human rights issue: all signatory states of the Covenant on Economic, Social and Cultural Rights have agreed to guarantee access to food production resources or to the labor market, highlighting the importance of access to land for a life in dignity.

However, for the majority of the poor access to land is not freely available, and the distribution seems to be at the mercy of power interests. The aspects of the land problem vary according to the diverse socio-cultural, political and religious situations in Asian countries.

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

High food prices lead to an increase of poverty and hunger in the world and at the same time increase the powerful's interest in agriculture. Speculating on increasing prices of food commodities directly causes hunger. The investment of powerful corporations in agriculture directly reduces the access to land of the poor and is a main challenge for agricultural reforms.

More and more land is earmarked for animal feed and agrofuel production, to feed and fuel the meat and mobility hunger of wealthy people in industrialized countries—and even in India and China. As a consequence, the pressure on small scale farmers increases. The land legislation and political framework in Asian countries do not protect small farmers' access rights to land. The situation of indigenous peoples, whose land rights are rarely recognized, is even worse.

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

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

ANJA MERTINEIT
 PROGRAMME OFFICER FOR RURAL DEVELOPMENT
 ASIA DEPARTMENT
 MISEREOR



Message

act:onaid

ActionAid International (AAI) considers poor and excluded people's rights to land as one of its principal agenda which is intimately linked with their food security and sovereignty. However, in most countries in Asia (and elsewhere) a few rich people have monopoly over vast areas of land thereby depriving the poor of their fair share. Equitable land distribution through proper land reform has not happened in most countries except a few. Increasingly, rich businesses are buying productive land, either for industry or for commercial agriculture, further marginalizing the poor and excluded people. Several governments in the region are changing their policies in favor of the business sector in a bid to attract more investment into their countries. All these neo-liberal policies and practices are alienating farmers from their land and prompting mass exodus from the rural areas to the cities and abroad in search of work, thereby jeopardizing their fragile lives and livelihood.

In this context, we must commend the campaign spearheaded by Land Watch Asia to embolden people's groups to fight for

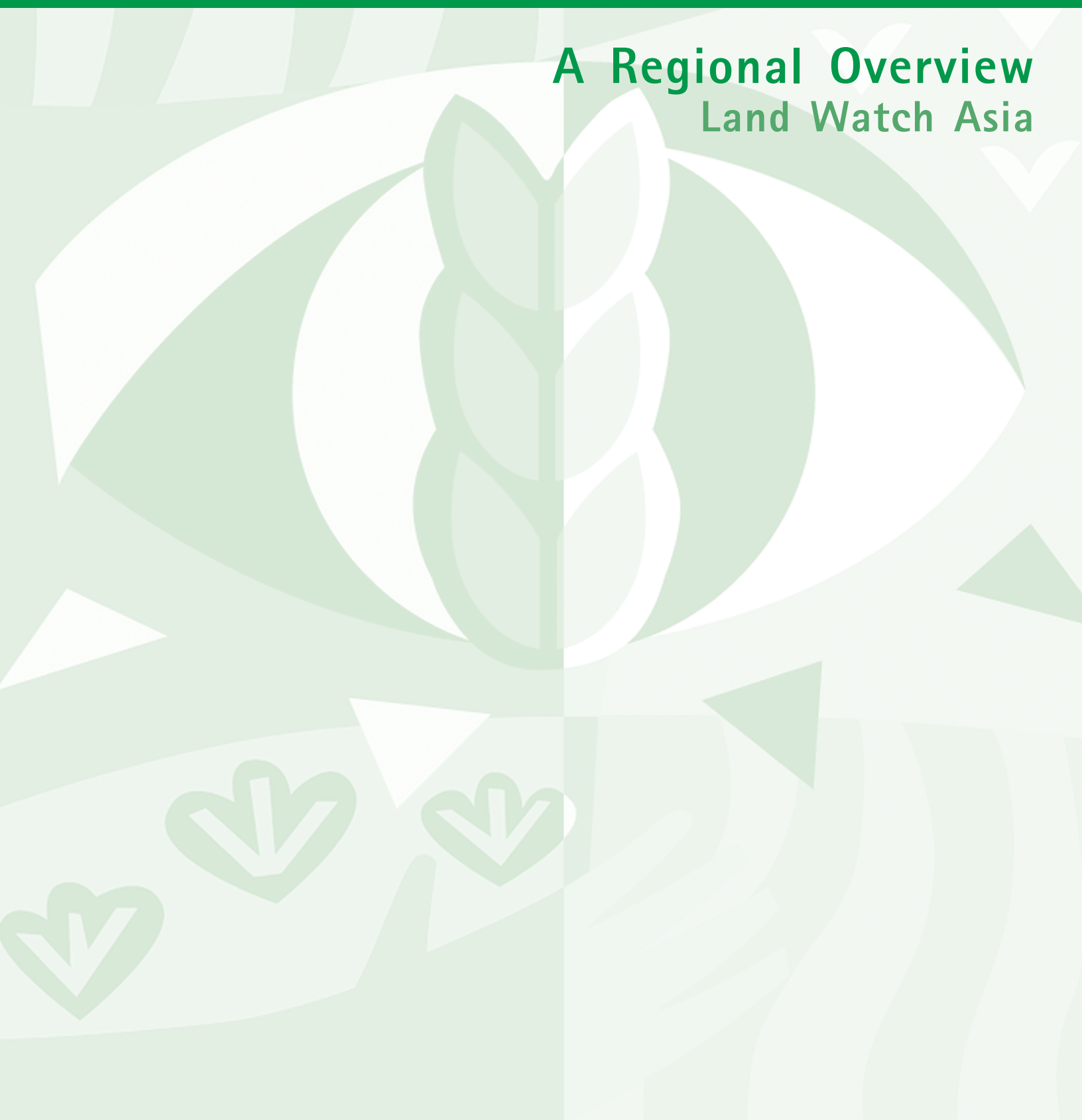
their rights and lobby governments to promulgate and implement policies that safeguard poor people's rights to land. The event which brought together rights activists from Asia and several other stakeholders from elsewhere in Bangkok to discuss the findings of their research and campaign work shows violations that poor people face at different levels and their ongoing struggles to claim their rights. The report also draws from the successful experiences from various Asian countries and the need for continued struggle at the national, regional and global arena to ensure that agrarian reforms would guarantee land to poor people. ActionAid would definitely like to continue being a partner of Land Watch Asia and take part in struggles together with members of regional and international networks fighting for land rights.

We would like to appreciate the work undertaken by coalition partners in countries and in the region. We also acknowledge ANGOC for ably coordinating the Land Watch Asia campaign work.

RAMESH KHADKA
ASIA OPERATIONS MANAGER
ACTIONAID INTERNATIONAL

The Prolonged Struggle for Land Rights in Asia

A Regional Overview
Land Watch Asia





Acronyms

ADB	Asian Development Bank	NLRCG	National Land Rights Concern Group
ADHOC	Cambodian Human Rights and Development Association	NLRF	National Land Rights Forum
ALRD	Association for Land Reform and Development	NPC	National Planning Commission
AR	Agrarian Reform	ODA	Overseas Development Assistance
ARB	Agrarian Reform Beneficiary	PO	People's Organization
AVARD	Association of Voluntary Agencies for Rural Development	PP	Government Regulation or Peraturan Pemerintah
BFAR—DA	Bureau of Fisheries and Aquatic Resources—Department of Agriculture	RA	Republic Act
CADC	Certificate of Ancestral Domain Claim	RPPK	Revitalization of Agriculture, Fisheries and Forestry
CADT	Certificate of Ancestral Domain Title	SEZ	Special Economic Zone
CARL	Comprehensive Agrarian Reform Law	SLC	Social Land Concession
CARP	Comprehensive Agrarian Reform Program	TAP MPR	People's Consultative Assembly Decree
CSO	Civil Society Organization	TWG	Technical Working Group
CSRC	Community Self-Reliance Centre	UDHA	Urban Development Housing Act
DDC	District Development Committee	UUPA	Basic Agrarian Law of 1960 (BAL) or Undang-Undang Pokok Agraria
DENR	Department of Environment and National Resources	UUPBH	Law No. 2 of 1960 on Sharecrop Agreement
DLRO	District Land Reform Office	VANI	Voluntary Association Network of India
EBSATA	East Bengal State Acquisition and Tenancy Act of 1950	VDC	Village Development Committees
ELC	Economic Land Concession	VPA	Vested Property Act
EPA	Enemy Property Act (now the Vested Property Act)		
DAR	Department of Agrarian Reform		
ICC	Indigenous Cultural Communities		
IFI	International Financial Institution		
IGO	Intergovernmental Organization		
IP	Indigenous Peoples		
IPRA	Indigenous Peoples Rights Act of 1997		
ISF	Integrated Social Forestry		
LAND	Land and Agrarian Network for Development		
LAP	Land Administration Project		
LDT	Land Development Taxes		
LGU	Local Government Unit		
LICADHO	Cambodian League for the Promotion and Defense of Human Rights		
LWA	Land Watch Asia		
MPR	People's Consultative Assembly		
NALDR	National Authority of Land Dispute Resolution		
NAP	National Agriculture Policy		
NCIP	National Commission on Indigenous Peoples		
NCLL	National Campaign for Land and Livelihood		
NGO	Non-Government Organization		



Regional Overview of Access to Land¹

A Sketch of Landlessness in Six Countries

The Asian region is home to 75 percent of the world's farming households, and about 80 percent of these are small-scale farmers and producers. Even with figures that vary from country to country, the general trend indicates that most of these rural poor do not have their own land or have too little of it to be able to eke out a decent living. The poorest of the poor have practically no land, while those who have more are only slightly better off. In terms of sub-groups, those who bear the brunt of poverty the most are the landless, marginal farmers and tenants, *adivasis* or indigenous peoples, minority castes and inter-

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

Generally, the patterns of inequality across countries include a small fraction of landowners owning vast amounts of land. The overall land ownership patterns remain "small and highly skewed", with high levels of inequality found in the Philippines, Indonesia and Cambodia. Large landholdings have decreased in Bangladesh and India, but this has been offset by growth in the number of marginal holdings. In Nepal, more than two-thirds of peasants own less than a hectare of land, while in India a little less than half of the population owns less than 0.2 hectares of land. The number of landless or near landless persons is growing in all six countries.

Table 1. Landlessness in Six Asian Countries

	Features of Landlessness
Bangladesh	<ul style="list-style-type: none"> • In 1960, 10% of households owned 37% of the country's largest parcels of land (3 hectares and above). In 1996, 36 years later, the percentage of owners of large landholdings had dwindled to 2.1%. However, the percentage of landless households (or those owning 0–0.19 hectare) rose from 19% in 1960 to 56% in 1996. • Households own an average of 0.3 hectare of land. • Scarce land resource is subjected to increasing pressures by a growing population. • Around 57.1% and 70.6% of households living below the lower and higher poverty lines respectively are absolutely landless. In contrast, 4.1% and 8.1% of households living below the lower and higher poverty lines respectively owned more than 3 hectares. • Indigenous Peoples' customary rights to land are not recognized by government, hence they are continually evicted. • The law of inheritance is guided by personal law based on the religion of the concerned individual. As per Muslim law, women have limited rights, while as per Hindu law, they generally receive nothing. Distribution of <i>khas</i> land allows joint ownership of land between husband and wife.
Cambodia	<ul style="list-style-type: none"> • Poverty is primarily a rural phenomenon. In 2004, 91% of the poor lived in rural areas. • Landlessness is increasing. Over 20% of rural people are landless. • Some 40% of households whose heads are engaged in agriculture are poor. • The rate of landlessness among female-headed households is 21.2%. • In 1999, 5% of landowners held close to 60% of all privately held land. By 2003, their share had risen to 70%. This means that the top 5% of landowners are increasing their control of private lands by 2% per year. • Farming households own an average of 1.5 hectares of land. However, 40% of households own less than 0.5 hectare.

Table 1. *con't.*

	Features of Landlessness
Cambodia	<ul style="list-style-type: none"> • Only 20% of landowners hold secure title to their land. • Certain groups are especially vulnerable to landlessness and poverty: female-headed households, rural families, people living in or next to concession areas, residents of informal settlements in urban areas, and indigenous peoples. • Between 1991 and 2004, there have been 1,551 land disputes covering over 380,000 hectares and more than 160,000 farming families. As of 2006, two-thirds of these cases remain unsolved.
India	<ul style="list-style-type: none"> • In 1971–72, large and medium-size holdings belonged to the top 10% of landowners and covered 54% of the total land area. By 2003, the proportion of owners of large and medium-size holdings had declined to 4%, and their combined area had been reduced to 35% of all land. • The proportion of marginal holdings has increased from 63% in 1971–72 to 80% in 2003. Over the last 10 years, the proportion of marginal holdings has increased in all the states. • About 43% of the population is still absolutely or nearly landless, owning less than 0.2 hectare. • An estimated 87% of landholders among Scheduled Castes and 65% of landholders among Scheduled Tribes in the country are classified as small and marginal farmers. Around 54% of the Scheduled Castes and 36% of the Scheduled Tribes are primarily agricultural workers. • According to the Ninth Plan, 77% of Scheduled Castes and 90% of Scheduled Tribes are absolutely landless, though this is inconsistent with data from the 1992 National Sample Survey that states that 13.34% and 11.5% of SCs and STs respectively are absolutely landless.
Indonesia	<ul style="list-style-type: none"> • In 1993, about 30% of all farming households were landless. Another 34% of 10.8 million farming households owned less than a hectare of land. By 2003, this number had increased to 13.7 million, or an increase of 2.6% a year. In 1993, over half (52.7%) of the country's farming households were considered poor. By 2003, the proportion was 56.5%. • The number of families that make their living from agricultural activities increased from 20.8 million in 1993 to 25.4 million in 2003, or an increase of 2.2% a year. • Of the 25.4 million farming families recorded in 2003, 54.4% lived in Java, and the rest (45.6%) in outer Java. Poverty among Javanese farming families rose from 69.8% to 74.9% during the period 1993–2003. In outer Java, the number of poor farming families increased from 30.6% to 33.9% during the same period, representing an increase of 3.3% a year.
Nepal	<ul style="list-style-type: none"> • Out of a total of 4.2 million households, 1.3 million households or 25% of the population are landless. • In rural areas, almost 29% of households, or over 5.5 million rural-based Nepalese do not own any farmland. • Marginalized groups include freed bonded laborers (about 26,000 families), landless peasants, squatter settlers, indigenous peoples, <i>Haliya</i> (300,000 persons), <i>Haruwa/Charuwa</i>, <i>Dalit</i>, <i>Badi/Badini</i> (4,442 persons), indigenous and minority groups, <i>Mushakar</i>, and internally displaced people. • Over 70% of peasants own less than a hectare of arable land. • Only 8.1% of landholders are female, though this proportion is gradually increasing. • Some 217,000 families do not have enough land on which to build a house. These are considered the agricultural landless. • Landlessness is higher in the Terai districts compared to the hilly areas.

Table 1. *con't.*

Philippines	Features of Landlessness
	<ul style="list-style-type: none"> • The Philippine agrarian structure is made up of small peasant farms and large plantations. • Over 31 million poor Filipinos are found in the rural areas. Poverty incidence remains highest among farming and fishing families. Within agriculture, it is farm workers in sugarcane, small farmers in coconut, rice and corn, fishermen and forester households who are among the poorest of the poor and who account for 70% of the country's subsistence households. • Between 1.3 and 1.5 million hectares of farmlands remain undistributed to farmers. Potentially 1 million farmers are deprived of the chance to benefit from agrarian reform. • It is estimated that 5–7 million hectares will be covered by the Indigenous Peoples Rights Act (IPRA) under ancestral domain claims or titles. Slightly more than half a million hectares have been awarded to indigenous peoples as ancestral domains. • Community-managed forests only cover 22% of total forest cover. • Barely half of coastal towns have effectively delineated municipal waters for small fisherfolk. • Almost 85% of fisherfolk are threatened by eviction.

Legislative and Policy Initiatives for the Promotion of Land Rights

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

"First Generation" Reforms

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

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

But perhaps the most important type of reforms in this group had to do with changes in the relationship between landlord and tenant, and in some cases, the abolition of tenancy. Nepal's six types of tenurial arrangements, which date back to 1946 and persisted well into the 1970s, are infamous for their exploitative nature, as exemplified by such practices as bonded labor—usually exacted to pay off debts, arbitrary eviction of tenants, and collection of unreasonably high land taxes and rents. The Nepalese government sought to improve the lot of tenants, through the Land Reform Act of 1964, by abolishing dual ownership of land, or rented tenure arrangements, and by fixing the rent on agricultural land. Indonesia passed a law in 1960 to protect sharecroppers from exploitation by landowners, particularly by requiring that sharecropping agreements be put in writing and signed by the parties before the village head, and have a fixed duration, thus precluding arbitrary changes imposed by the landowner. Bangladesh made provisions to restore the rights



of tenants to lands that are rendered temporarily non-existent by submergence in water during seasonal floods. The Philippine Constitution unequivocally promotes the redistribution of lands to their actual tillers, based on the principle that property ownership and use should further the state's program of redistributing wealth.

"Second Generation" Reforms

Cambodia is a late reformer. It instituted a private property rights regime only in 1989, pursuant to an amendment to its Constitution. Its Land Law of 2001 provides for the grant of private property rights, specifically through the awarding of Social Land Concessions (SLCs) and Economic Land Concessions (ELCs). The government has also formulated laws promoting community management of forest resources, laws against unlawful eviction and expropriation of land by the state, and laws providing for just compensation of displaced persons, but these have yet to come into effect.

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

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

India's Constitution originally provided for the right to acquire, hold and dispose of property. However, under the 44th (1978) amendment of the constitution, this right was deleted from the list of fundamental rights. A new article was added to the constitution which provided that no person shall be deprived of one's property except by legal action. Thus, if legislature makes a law depriving a person of his property, there would be no obligation on the part of the State to pay anything as compensation.

The Indian government turned its attention to land administration programs, (e.g., computerization of land records) abandoning the agrarian reform effort. This resulted in a slew of land related conflicts and renewed advocacy for agrarian reform.

One example is the Janadesh campaign in 2007, which forced government's hand and led to the establishment of a National Land Reform Commission mandated to recommend measures to address the grievances of landless groups, such as tribal peoples and *dalits* (untouchables).

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

At the same time, India instituted reforms seeking to strengthen the land rights of forest-dwelling communities, IPs, and women. India's Forest Rights Act of 2006 recognizes and gives forest rights, as well as rights to occupy forestland, to scheduled tribes and traditional forest dwellers, and provides the framework for recording forest rights. There are, however, several aspects of the law that leave room for doubt as to how effective it would be in rectifying what the Government of India has conceded to be "historical injustices" to the forest dwelling scheduled tribes and other traditional forest dwellers. In regard to indigenous peoples (IPs), in particular, India's Constitution requires the states to ensure the total prohibition of immovable property to any person other than a tribal group.

The Eighth Five-Year Plan (1992–1997) stipulates that one of the basic requirements for improving the status of women is to change inheritance laws so that women get an equal share of parental property, whether inherited or self-acquired. Unfortunately, there are no government directives to ensure that this is enforced. Moreover, while the subject of women and land is cited in the Eighth (1992–1997), Ninth (1997–2002), and Tenth (2002–2007) Five-Year Plans, women's rights to land still receive little attention.

Nepal's Interim Constitution of 2007 is committed to the pursuit of "scientific land reform programs," which entail the abolition of "capitalistic land ownership practices."

The Philippines has produced some of the most progressive reform legislation in recent years. Republic Act (R.A.) 6657, or the Comprehensive Agrarian Reform Law, is comprehensive in its coverage, while remaining mindful of the interests of IPs, and guaranteeing equal landownership rights to men and women. R.A. 8371, or the Indigenous People's Rights Act of 1997 (IPRA), recognizes, promotes, and protects the rights of IPs, including their right to ancestral domain and lands, self-governance, and the right to cultural integrity. The Philippines has also enacted a law governing its fishery resources, which emphasizes stewardship and protection, rather than production and exploitation. Its

forestry management strategy is based on the principle that as long as the people's needs are prioritized, forestry resources would be sustainably utilized.

The following is a selection of those laws and programs that have been introduced to improve the poor's access to land and tenurial security. They are by no means comprehensive; but they provide an overview of the legal and policy framework defining ownership, control and access to land in the respective countries. It must also be said that their implementation is another matter.

Table 2. Legal and Policy Environment of Access to Land in Six Asian Countries

Bangladesh	
East Bengal State Acquisition and Tenancy Act (EBSATA) of 1950	<ul style="list-style-type: none"> • Aimed to make peasants direct tenants of the government, with rights to transfer, inherit and cultivate their land as they see fit • Prohibited the subletting of land with the aim of eliminating rent-seeking behavior and absentee landownership • The 1994 Amendment mandated that in the case of landholdings lost to erosion, the right, title and interest of the tenant or his/her successor in interest are retained during the period of loss through erosion, but not exceeding 30 years.
Land Reform Policy of 1972	<ul style="list-style-type: none"> • Gave government the mandate to acquire surplus land and to distribute it to landless peasants • Authorized the government to acquire flooded and accreted land and to treat these as <i>khas</i> land • Exempted landowners holding less than 3.33 hectares from paying land tax
Land Reform Ordinance of 1984	<ul style="list-style-type: none"> • Reduced the ceiling for landholdings from 13.3 hectares to 8 hectares • Prohibited the purchase or transfer of land in the name of another person in order to conceal identity of the true landowner • Fixed the minimum wage of agricultural laborers at the equivalent value of 3 kilograms of rice • Prohibited the eviction of peasants from their <i>paternal</i> homestead • Instituted a three-way sharing of farm produce: $\frac{1}{3}$ to the landowner; $\frac{1}{3}$ to the sharecropper; and the remaining third to be divided proportionately between the landowner and the sharecropper on the basis of expenses incurred by each one
Khas Land Management and Distribution Policy	<ul style="list-style-type: none"> • Granted joint ownership of <i>khas</i> land to husband and wife
Vested Property Restoration Act of 2001	<ul style="list-style-type: none"> • Abolished the Vested Property Act (VPA)—formerly the Enemy Property Act (EPA)—that dispossessed the Hindi population of their ancestral land during the war between Pakistan (of which Bangladesh used to be part) and India in 1965. After Bangladesh became independent from Pakistan in 1971, the EPA was retained and renamed as VPA, and resulted in the confiscation of some 800,000 hectares of Hindu property. Around 0.75 million Hindu households were reportedly victimized by this law.

Table 2. *con't.*

Cambodia	
Cambodian Constitution (1993)	<ul style="list-style-type: none"> • Provided that "all persons, individually or collectively, shall have the right to ownership. Legal private ownership shall be protected by Law. The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law, and shall require fair and just compensation in advance."
Land Law of 2001	<ul style="list-style-type: none"> • Outlined concepts of land classification, including state public land, state private land, private land and collectively owned land • Guaranteed the inalienability of land, as recognized by the Constitution • Created a status of registerable ownership of land, which specifically puts women on an equal footing with men • Established the legal framework for a collective ownership arrangement, which is specifically designed for the protection of indigenous land and traditional ways of life • Provided for a land distribution policy to benefit the rural poor, specifically through the grant of Social Land Concessions (SLCs) • Provided for the establishment of land dispute resolution mechanisms
Forest Law of 2002	<ul style="list-style-type: none"> • Provided the framework for forest classification • Provided for the creation and management of community forests, such that communities are granted an area within the Permanent Forest Reserve to manage and derive benefit from • Guaranteed the entry rights of local communities into forest concessions • Prohibited logging of certain trees valuable to local communities as well as trees and areas of cultural or religious significance, such as spirit forests • Mandated the sustainable logging of natural and plantation forests
India	
Indian Constitution	<ul style="list-style-type: none"> • Basic tenets of the Constitution are equity and social justice • Provided that ownership and control of the material resources of the community should be distributed in such way that the common good is best served and that the economic system does not result in the concentration of wealth and the means of production to the common detriment • Stipulated that "states [must] direct policies to ensure that all citizens have the right to adequate means of livelihood and that all community resources be distributed so as to serve the common good." • Constitutional framers gave each state, rather than the Central Government, exclusive power to make laws with respect to land, including land reform laws
State Land Reform Laws	<ul style="list-style-type: none"> • Every state has enacted its own land reform laws on subjects and issues as follows: <ul style="list-style-type: none"> > Abolition of <i>Zamindari</i> system to eliminate intermediaries; > Ceiling on land holdings to do away with uneven distribution of land and for redistribution of ceiling-surplus land among the landless; > Tenancy reforms to ensure security of tenure for peasants, regularization of rent/revenue, and ownership; > Regulation of share-cropping to safeguard the interest of the share-croppers;

Table 2. *con't.*

India	
State Land Reform Laws	<ul style="list-style-type: none"> > Protection against alienation of land belonging to weaker sections, such as Scheduled Castes (SC) and Scheduled Tribes (ST); > Consolidation of fragmented land holdings; > Provision of homesteads to the landless households; > Providing government land to the landless on long-term lease, including tree-lease; > Statutory minimum wages to agricultural labor. <ul style="list-style-type: none"> • The Ninth Schedule of the Constitution was introduced in the first amendment in 1951 as a means of immunizing certain laws—including the acquisition of private property and compensation payable for such acquisition—against judicial review. Such laws cannot be challenged in a court of law on the ground that they violated fundamental rights of citizens. This protective umbrella covers more than 250 laws passed by state legislatures with the aim of regulating the size of land holdings and abolishing various tenancy systems.
Forest Rights Act of 2006	<ul style="list-style-type: none"> • Recognized and gave forest rights, including rights to occupy forestland, to STs and traditional forest dwellers • Provided the framework for recording forest rights
Policy on Women's Land Rights	<ul style="list-style-type: none"> • Land reform laws have not adequately addressed the issue of unequal ownership of land between men and women. The Land Ceiling Act classified the family unit as comprising husband, wife and three minor children. While adult sons are considered separate units, unmarried adult daughters are left out. Even the Tenancy Act gave priority to males (from the father's side) in inheritance and to widows only in the absence of male heirs. However, now the Hindu Succession (Amendment) Act of 2005 has been enacted to remove gender discriminatory provisions in the Hindu Succession Act of 1956, and make the daughter a partner in her own right by birth in the same manner as the son.
Indonesia	
Decree of the People's Consultative Assembly (MPR) No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management, or TAP MPR No. IX/2001	<ul style="list-style-type: none"> • Sought to correct errors of agrarian reform implementation (under the Basic Agrarian Law) • Mandates the Ministry of Agrarian Reform to: <ul style="list-style-type: none"> > Conduct a study of various laws and regulations related to agrarian matters in order to harmonize the policies of sectors > Implement a land reform program based on the "land to the tiller" principle > Conduct a land registration program through a comprehensive and systematic survey of the control, use, ownership and exploitation of the land > Resolve all agrarian disputes, and forestall future conflicts by strictly implementing the law > Strengthen the institution responsible for implementing agrarian reform > Seek out funding for agrarian reform implementation
Basic Agrarian Law of 1960 (UUPA) or Law No. 5 of 1960	<ul style="list-style-type: none"> • Devolved power to exercise State rights to control land to the province, regency, district and village levels. The same rights could be exercised by communities practicing customary law • Provided that the exercise of rights conferred by this law must serve the public interest

Table 2. *con't.*

Indonesia	
Basic Agrarian Law of 1960 (UUPA) or Law No. 5 of 1960	<ul style="list-style-type: none"> • Authorized the State to grant ownership/property rights to Indonesian citizens; prohibits/limits foreign ownership of the country's land and provides safeguards against foreign expropriation of the country's natural resources • Prohibited absentee land ownership in agricultural land, because of its tendency to promote exploitative practices, such as bonded labor, unpaid labor, usury and inequitable sharecropping • Set the minimum size for landholdings to ensure that the land owner has enough land to provide for his/her family
Law No. 56 Prp/1960	<ul style="list-style-type: none"> • Created different kinds of rights that may be awarded to persons, groups, or legal entities: Property Rights, Lease Rights, Right to Build, User Rights, Right to Rent, Right to Open the Land and to Collect Forest Products, and Water Use Rights • Set the ceiling for landholdings of families and legal entities to prevent monopoly ownership of land. Land in excess of the ceiling must be turned over to the State upon compensation.
Government Regulation (PP) No. 224 of 1961	<ul style="list-style-type: none"> • Set the criteria for land to be subject to land reform • Identified land reform beneficiaries
Presidential Decision No. 30 of 1990	<ul style="list-style-type: none"> • Prohibited the conversion of irrigated agricultural lands to non-agricultural use
Law No. 2 of 1960 on Share-crop Agreement (UUPBH)	<ul style="list-style-type: none"> • Sought to protect sharecroppers from exploitation by landowners • Provided that the share of the tiller and the landowner would be decided by the regent, according to type of crop and land density. • Specified a ceiling of 3 hectares for landholdings • Required that sharecrop agreements between landowner and tiller be put in writing before the head of the village, and witnessed by one representative from each of the contracting parties.
Nepal	
Land Reform Act of 1964	<ul style="list-style-type: none"> • Fixed a ceiling on the size of landholdings • Sought to protect the rights of tenants by including their names in the owner's land title • Fixed the rent on agricultural land and reduced interest on rural loans • Allowed tenants to apply for tenancy rights at the District Land Reform Office (DLRO) provided that they had tilled the land the previous year and could present proof of this fact, such as a grain payment receipt • Has been amended 6 times <ul style="list-style-type: none"> > The Fourth Amendment (1996) provided that the land being cultivated by the tenant be divided equally between landlord and tenant to ensure that tenants would become landowners themselves, and that a credit facility would be made available to the tenant who wished to buy the landlord's half. It sought to abolish dual ownership of land. > The Fifth Amendment (2001) attempted to reduce the ceiling on the size of the landholdings

Table 2. *con't.*

Nepal	
Interim Constitution of 2007	<ul style="list-style-type: none"> Committed to “pursue [a] policy of scientific land reform programs by gradually ending capitalistic land ownership practices.” Mandated the State to pursue a policy of providing adequate land and livelihood to freed bonded laborers
Three-Year Interim Plan 2007–2009	<ul style="list-style-type: none"> Aimed to improve farmers' standard of living and contribute to the national economy through the implementation of scientific land reform Set the specific goal of ascertaining the land rights of landless slum dwellers, freed bonded laborers, and tenants, to ensure food security, address poverty, and make land more productive Outlined an implementation strategy that includes the formulation of appropriate laws and the setting up of mechanisms to distribute land to landless groups Sought to form a high-level Commission to resolve problems concerning landless groups
Agriculture Perspective Plan (1996–2010)	<ul style="list-style-type: none"> Main thrusts are enhancement of land productivity, commercialization of agriculture, diversification of products, and focusing on products in which Nepal has a comparative advantage Identified dual ownership of land and land fragmentation as major constraints to agricultural development and recommends taking actions toward terminating dual land ownership and initiating land consolidation.
Philippines	
1987 Constitution	<ul style="list-style-type: none"> Laid down the principles that serve as the overall framework for the issue of access to land: protection of property (but property can be taken away for public use with due process and just compensation); promotion of social justice and human rights; promotion of rural development and agrarian reform; and promotion of the rights of indigenous communities to their ancestral lands.
Comprehensive Agrarian Reform Law (CARL) of 1988 or Republic Act (RA) 6657	<ul style="list-style-type: none"> Expanded agrarian reform to all agricultural lands regardless of crop planted under the Comprehensive Agrarian Reform Program (CARP). It targeted the redistribution of 8.1 million hectares of agricultural land and integrated social forestry areas (ISF) to 3.9 million landless tenant farmers and farm workers over an initial 10-year period. Provided for different tenurial instruments based on land classification: tenurial security for forestry areas, and tenancy reforms and land redistribution for private and alienable lands. Land redistribution is to be complemented by the delivery of support services like extension, credit, infrastructure facilities and livelihood assistance. Imposed a five-hectare retention limit for the landowner and provides three hectares for each heir actually tilling the land.
Indigenous Peoples' Rights Act (IPRA) or RA 8371	<ul style="list-style-type: none"> Recognized, promoted and protected the rights of indigenous cultural communities/ indigenous peoples (ICCs/IPs); served as the basis for IP's land rights, which are recognized through the issuance of a Certificate of Ancestral Domain Claim (CADC) or a Certificate of Ancestral Domain Title (CADT).

Table 2. *con't.*

Philippines	
Fisheries Code of 1998 or RA 8550	<ul style="list-style-type: none"> • Sought to protect the rights of small fisherfolk over municipal waters and provides for the establishment of fisherfolk settlement areas • Emphasized stewardship and protection
Urban Development and Housing Act (UDHA) of 1992 or RA 7279	<ul style="list-style-type: none"> • Laid down the groundwork for a comprehensive and continuing urban development and housing program by prioritizing the provision of decent shelter to the poorest of the poor • Provided the framework for the development and use of urban lands

Minding the Gaps

Notwithstanding two generations of reform initiatives, agrarian relations in the six countries have changed very little. Bangladesh tried, and repeatedly failed, to impose a ceiling on land ownership and to redistribute *khas* (state-owned) lands and water bodies. Cambodia sought to end decades of monopoly ownership of land by the state by enacting the Land Law of 2002, but ended up creating a thriving land market that was quickly taken over by local elite groups. Nepal had tried, as early as the 1960s, to abolish unjust tenurial arrangements in the country, yet to this day, Nepal's tenant farmers continue to work under unconscionably exploitative conditions. India implemented various land ceiling laws starting in 1955, but made little headway: much of the "surplus" land reverted to the states, while the proportion that was redistributed did not go to their intended beneficiaries, the landless poor. Indonesia has abandoned its early attempts at agrarian reform (in 1962–1967) and even its land administration program is rendered inutile by corruption in the land registration system and by political leaders that are not only indifferent but outrightly hostile to anything that smacks of agrarian reform. The Philippines' Comprehensive Agrarian Reform Law (CARL) held out the promise of genuine agrarian reform, when it was enacted in 1986, but has progressively lost steam and, since its funding ended in June this year, is threatened to be replaced by a law espousing the corporate farming scheme.

Governments have lost interest in enforcing redistributive land and resource policies. Land and forests are valued for bringing in profit rather than for ensuring the country's food security or as integral to a healthy environment. This mindset is reflected in the bias of national land policies toward promoting agri-business or extractive ventures and urbanization.

The following issues have emerged as a result of such national land policies:

- **National economic policies/programs that work against reforms.**

The economic development agendas set by national governments favor the grant of land concessions, the expansion of plantations, joint-venture agreements, mining operations, and the establishment of special economic zones (SEZs), all of which require land that should be distributed to the landless poor. Indonesia and the Philippines are putting more and more of their land under plantation crops; aggressively promoting large-scale mining operations; and stiffening their investment laws to entice foreign capital into the country and head off local opposition to investment projects. Cambodia, the Philippines, Thailand, and India are entering into a growing number of bilateral agreements with China, which give the latter access to their natural resources. SEZs are mushrooming all over India, while the Cambodian government has been regularly giving awayland concessions to business interests. Contract farming/corporate farming, especially of agrofuel crops, has become all the rage in India, Indonesia, Thailand, and the Philippines because of growing worldwide demand for agrofuels. Poor and landless farmers lose out in the competition for land brought about by such schemes.

- **Land markets, land administration and registration over land redistribution.**

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

land administration, such as the computerization of land records, etc., while steering clear of programs for land acquisition and distribution.

- **Overlaps in laws and policies, and in the jurisdiction of government entities that regulate land and resource use.**

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

- **Poor implementation of existing laws.**

Although the legal and institutional frameworks exist for land reform, the reality across countries is that laws meant to enhance access to land are poorly implemented. This is in large part due to the lack of political will, but also because of various competing pressures.

- **Discriminatory laws and practices.**

Governments have tended to look the other way in cases of landgrabbing by moneyed and politically powerful groups. In other instances, the government itself forcibly takes land from their owners "in pursuit of the public good." More often than not, such incidents of landgrabbing, or state expropriation of land, are not motivated by the public interest but rather are the inevitable result of government's

indiscriminate awarding of land concessions to logging companies, mining operators, and plantation companies, among others. Just as frequently, forest-dwelling communities, particularly indigenous peoples, are divested of their landholdings or denied access to forest resources. Sometimes, programs that are, on their face, well-intentioned, such as the setting up of conservation parks and reserves, have the identical effect of keeping forest/upland communities out of their traditional source of livelihood.

Women's right to possess and inherit land is guaranteed by law in a number of Asian countries, but such laws offer no protection to women against sexual discrimination that is rooted in tradition and religion. For example, Sharia Law grants Muslim women limited rights to inherit property. In practice, however, the patriarchal nature of Muslim society prevents women from claiming this limited entitlement. A woman, being "a good sister," is expected to surrender her claim to paternal property to her brother/s.

- **Information gaps.**

To date, national data on land distribution, land tenure, and landlessness is missing in several countries or is unreliable. This becomes a challenge to monitoring and evaluating the impact of advocacy on land reform as well as the agrarian programs themselves.

Table 3. Selected Access to Land Issues in Six Asian Countries

	Highlighted Issues
Bangladesh	<ul style="list-style-type: none"> • Access to and distribution of <i>khas</i> land. Agricultural "<i>khas</i>" (government owned) land covers some 321,323 hectares, of which 139,691 or 43.47% has reportedly been distributed to landless households. Government policy states that <i>khas</i> lands are to be distributed to landless peasants dependent on agriculture for their livelihood, but leakage of <i>khas</i> land has been as much as 17.2%, as indicated by a 2001 report. <i>Khas</i> recipients are supposed to pay government a minimal fee of 1 Taka (US \$0.01 in 2008 prices) per acre of land received. However, in practice, they have to fork out bribes almost a thousand times more (US \$105–150) to various officials even at the lowest tiers of government. • Access to and distribution of non-agricultural land. Previously, no guidelines existed for the management of non-agricultural land. Influential and well-connected persons were thus able to claim ownership of non-agricultural land, usually with forged documents. When the government in 1995 issued detailed guidelines for the management and settlement of state land in urban areas, most of such lands had already been awarded to the rich and powerful. • Absentee landownership. Around 13% of households own more than half (58%) of the country's land. Many of these households do not engage in agriculture, but reside and make their living in urban areas, either by running their own business or by being employed in the government or the private sector. This encourages rent-seeking behavior.

Table 3. *con't.*

	Highlighted Issues
Bangladesh	<ul style="list-style-type: none"> Commercialization of agriculture and forestry. Shrimp culture used to be practiced in the household and on fallow or marginal land to augment farm incomes. Because shrimp culture is more profitable than crop farming, various coastal lands including rice farms, mangrove areas and marshes, were brought under shrimp cultivation, resulting in several serious environmental problems like water quality decline and loss of biodiversity. Also, rubber and fuel wood plantations have destroyed forests, displaced forest-dwelling communities and have caused conflict between forest-dependent groups and the government's forestry department. Land conversion. Agricultural land has been considerably reduced due to forcible land acquisition to make way for export processing zones, residential development, infrastructure development and other government projects. Much of the land that has been converted thus is <i>khas</i> land which the government had committed itself to distributing to landless peasants.
Cambodia	<ul style="list-style-type: none"> Rising demand for land as an economic asset. Economic growth has spurred the privatization of public lands, mega-development projects, and the establishment of special economic zones (SEZs), in turn resulting in land grabbing in areas attractive for tourism, allocation of land to the military, land speculation and unregulated granting of land concessions. Demand for land has been thus increasing, and land values are skyrocketing. Poor land governance. The Cadastral Commission set up in 2002 as a dispute resolution mechanism is plagued with bureaucracy and corruption, and has only been able to address small conflicts. Land registration has proceeded too slowly, and has tended to concentrate on non-disputed areas. Also, parallel and overlapping operations in the Cadastral Commission, the court, and the National Authority of Land Dispute Resolution (NALDR) have resulted in many legal ambiguities. Insufficient implementation of the Land Law of 2001. According to NGOs in Cambodia, only 10-20% of the Land Law has actually been enforced. In several cases, government itself has violated Land Law decrees, particularly regarding protection against eviction, fair compensation for eviction, and ceilings for economic concessions. Also, a sub-decree of the Land Law yet to be adopted by the government is that which recognizes and provides for the registration of land rights of indigenous peoples.
India	<ul style="list-style-type: none"> Forest Act and Wildlife Protection Act. These Acts emphasize conservation of forestlands and the establishment of "human free" wilderness sanctuaries and national parks. However, no survey was conducted prior to delineating these as protected areas; current occupants (numbering about four million) and their land rights were not considered. Thousands of communities have been displaced. Special Economic Zones (SEZs). Land expropriation for establishing these SEZs is covered by the "public purpose" clause of the 1854 Land Acquisition Act. Seen as the necessity of the moment, SEZs are being actively promoted by the Indian Government. However, much of the land set aside for SEZs is either tribal or prime agricultural land. Corporate/contract farming. Several Indian states are promoting contract/corporate farming, as emphasized by the National Agriculture Policy (NAP). However, corporate farming threatens the food security of India's farmers, most of

Table 3. *con't.*

	Highlighted Issues
India	<p>whom are landless or own very small landholdings, because it pushes farmers and peasants from the land. The increasing cultivation of biofuels on scarce agricultural land is another threat to food security.</p>
Indonesia	<ul style="list-style-type: none"> • Expansion of plantations. <p>Since Indonesian independence, the control of plantation areas has passed back and forth from the Dutch colonizers to peasants. In 2003, President Wahid declared that some plantation companies were guilty of grabbing land from peasants and demanded the return of lands to their former owners as well as restructuring of companies. Unfortunately, his reforms never materialized due to formidable opposition from plantation owners. The "partnership model" promoted by the government is contract farming, intended to defuse tension between plantation companies and peasants. However, the model has benefitted only plantation owners and foreign investors; the conditions of the poor have barely improved.</p> • Indiscriminate awarding of forest and timber concessions. <p>The rapid rate of deforestation in Indonesia is largely attributed to exploitative practices of forest and timber concessionaires. By virtue of the Basic Forestry Law (Law No. 5) of 1967 and Government Regulation No. 21 of 1970, large-scale investments in the forestry sector have been facilitated and all commercial forestry has become the preserve of private investors holding forest concessions. Communities living in or around forest areas are prohibited from logging within concession areas, and can do so only if they have a permit from the concessionaire. Conflicts have erupted between communities and forest concession holders.</p> • Mining on indigenous people's lands. <p>Article 33 of the 1945 Indonesian Constitution grants the State exclusive rights to the country's mineral resources. Law No. 11 of 1968 or the Law on Mining provides that all mineral deposits are State-controlled assets. These two laws have given the State blanket authority to conduct its own mining operations or grant mining concessions. Such mining operations encroach on IP lands and have had injurious effects on IP communities.</p>
Nepal	<ul style="list-style-type: none"> • Centralized land governance. <p>Decisions related to land management are made at Ministry level. In effect, people in remote areas either have to bring their case all the way to Kathmandu, or wait for the Ministry's decision to be handed down to district offices. However, local government agencies usually do not have authority to settle issues and are frequently biased against the poor. Land administration is procedurally complex and poor people cannot deal with the formalities it requires.</p> • Abolition of collective rights. <p>Indigenous and ethnic groups are rapidly being displaced from their land, as a result of state-supported lucrative activities such as oil exploitation, mining, construction of dams, logging, cash crop cultivation, cattle ranches, and development of tourism infrastructure.</p>
Philippines	<ul style="list-style-type: none"> • Expiration of CARP funding. <p>Funding for CARP expired in June 2008. Land acquisition and distribution remain unfinished. By next year 1.1 million hectares of private agricultural lands still need to be covered. Support service delivery has been insufficient, due to limited funding. Quality support services have only reached a quarter of the two million agrarian reform (AR) beneficiaries.</p>

Table 3. *con't.*

Highlighted Issues	
<p>Philippines</p>	<ul style="list-style-type: none"> <p>• Snail-paced ancestral domain titling.</p> <p>Ten years after the passage of the IPRA, only 20% of the targeted area has been awarded to IP communities and limited support has given thereafter. The IPRA lacks support from government. Meanwhile, the NCIP has been inefficient in fighting for the rights of the IPs.</p> <p>• Overlapping land claims.</p> <p>IP claims over their ancestral lands are being contested by the agrarian reform claims of lowland farmers (with the support of DAR). In a growing number of areas, this has resulted in conflicts between indigenous communities and farmers. LGUs represent another group of competitors to IP community land claims.</p> <p>• Extractive industries.</p> <p>The current administration has anchored the country's economic development on extraction – timber production from forests and mining exploration. This is a sharp departure from the social reform and asset reform agenda of previous administrations and has increased pressure on the remaining natural resources of the country.</p> <p>• Market-oriented tenurial schemes.</p> <p>Various arrangements designed to circumvent actual land transfer to farmers are being promoted, like the "leaseback" arrangement whereby AR beneficiaries (ARBs) turn over control of the awarded land (via a lease contract) to agribusiness corporations or former landowners, as a precondition for the release of their Certificate of Land Ownership Award. Another dubious arrangement is the "corporative" scheme wherein ARBs are given shares of stock in the agricultural corporation of the landowner in lieu of actual land transfer. Conversion of agricultural land to commercial, residential and industrial uses is also prevalent, further reducing the scope of land reform.</p>

Actors Facilitating or Impeding Access to Land and Tenurial Security

Government

In the six countries covered by the study, government support for agrarian and resource reform has waxed and waned according to political expediency. However, the one thing that has remained true in the various country contexts and under changing circumstances, is that governments have consistently failed the test of will to undertake the task of agrarian reform. Cambodia's Prime Minister Hun Sen Prime Minister has owned up to his government's failure to put an end to landgrabbing, land speculation, and illegal logging and fishing, and acknowledged that these problems could spark a revolt against his government. The Indian government has long been riven by agrarian unrest—instigated by the Naxalites in earlier years, and highlighted recently, though

less violently, by the Janadesh Campaign—and survives each time by promising reform, which it conveniently sets aside once the protesters have gone home. Though it passed comprehensive reform laws on land access, the landlord-dominated Philippine government has always been half-hearted in implementing these reforms to the detriment of the landless and poor majority. Indonesia's present government—which is determined to make the country a model for infrastructure development—is unapologetic about its indifference to agrarian reform, and will no doubt confirm an Indonesian economist's declaration that "in Indonesia's history, no government has succeeded in undertaking land reform." The Indonesian government abandoned the agrarian reform effort when Sukarno took over its reins, and its leaders (with the exception of Wahid) have not since taken it up again. Nepal, which has only recently shed its monarchic shackles, is still getting used to the idea of reforming its infamous tenancy arrangements.

Civil Society and NGOs

Civil society organizations (CSOs) and NGOs that are engaged in the advocacy for agrarian reform have employed various strategies and adapted these through the years in response to the needs of their clients, their readiness to make demands on government, and the prevailing policy and legal environment. The Community Self-Reliance Centre (CSRC) in Nepal is focused on building awareness of the link between landlessness and poverty. In Bangladesh, the Association for Land Reform and Development (ALRD), along with Nijera Kori and Samata, is seeking to maximize the opportunities offered by the government's program to redistribute *khas* agricultural land by informing the landless poor of their entitlements, and assisting them in the process of acquiring such rights. Local CSOs in Cambodia have a well-developed advocacy agenda, yet they continue to look to international NGOs working in the country, including donor organizations, to put pressure on the government to address land issues. Indian and Philippine NGOs have followed parallel tracks in advancing the agrarian reform agenda, including networking at multiple levels, mobilizing farmers to launch nationwide campaigns, participation in policy-making bodies, and lobbying for the enactment of enabling laws.

Donors, Funding Agencies, and Other Intergovernmental Development Organizations

Donor and funding agencies have generally steered governments on the path to market-assisted land reform. They accomplish this by supporting government programs that would facilitate the development of land markets, such as funding programs that would improve land registration procedures/processes. Donors and intergovernmental development agencies have made a point of not supporting the redistributive aspects of agrarian reform, and have shied away from intervening in the political affairs of host countries, including the latter's failure to institute or implement reform efforts.

The Private Sector

"Private sector" is usually equated with commercial or business interests. In this framework, the private sector in many of the countries studied has been an integral part of national development programs that undermine reform efforts, such as the awarding of land concessions to companies engaged in logging, mining, and plantations; the establishment of SEZs on otherwise productive agricultural land; and state expropriation of other lands and resources, which results in the dislocation of the poor from their source of livelihood.

Table 4. Actors in Access to Land in Six Asian Countries

<p>Bangladesh</p>	<ul style="list-style-type: none"> • Government. <p>The Ministry of Land is responsible for land management and administration, collection of Land Development Taxes (LDTs), land records maintenance, policy formulation on land management, land use planning, and land reform implementation. Under it are several offices dealing with land access concerns: the Land Reform Board, the Land Appeal Board, and the Directorate of Land Records and Surveys. In addition, the Office of the Inspector General of Registration under the Ministry of Law, Justice and Parliamentary Affairs, registers ownership arising from the sale and other forms of land transfer, reports changes to the Ministry of Land, and collects the Immovable Property Transfer Tax.</p> • NGOs. <p>Around 200 NGOs are working to promote the land rights of landless people in the country. The Association for Land Reform and Development (ALRD) has 260 local and national NGO partners which mobilize policy makers, public representatives, politicians and media, to initiate positive pro-poor policy formulation and effective implementation initiatives. Nijera Kori works on issues related to land tenure, agricultural wages, <i>khas</i> land distribution, lobbying with government, grassroots mobilization, capacity-building and awareness building. Samata works to assist landless people in gaining access to <i>khas</i> land and water bodies. Its Land and Agrarian Network for Development (LAND) engages in social mobilization around land rights and related local administrative reform.</p>
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Table 4. *con't.*

<p>Cambodia</p>	<ul style="list-style-type: none"> • Government. <p>The Ministry of Land Management, Urban Planning and Construction is responsible for land management, including the development of the policy and regulatory framework, and coordination of land use planning and land registration and administration. The Ministry of Agriculture, Forestry and Fisheries is tasked to organize and operate development policies in the agriculture sector. The Ministry of Rural Development integrates all rural development work at household, village and commune levels, with a focus on poverty alleviation. Although the government has progressed significantly toward developing legal frameworks required for land reform, the majority of rural farmers have yet to benefit from the country's economic growth. The Government has acknowledged that building tenurial security is the first step toward improving the poor's conditions.</p> • Civil society organizations. <p>National NGOs include Adhoc, Licadho, and Legal Aid of Cambodia; network organizations are the NGO Forum on Cambodia, STAR Kampuchea, and the Cambodian Human Rights Action Committee. The Pagoda (a group of monks) is also involved in political affairs. These groups are concerned with: forced resettlement to make way for commercial interests; the allocation of economic land concessions without regard for regulatory standards intended to protect local communities and indigenous peoples; the insecurity of land tenure of rural dwellers, their loss of access to natural resources and their lack of alternative income sources.</p> • International donors. <p>The international donor community issued guidelines for the government to comply with, in order to receive funding support, but these have yet to be implemented. Donors have resisted calls by national CSOs to use their influence to keep government in check. They work in technical working groups (TWGs) with relevant government ministries, but in general pay little attention to local CSOs.</p> • Private sector. <p>Groups from the private sector are concerned with resolving land disputes only to protect their own investments. Public and private sector interests are frequently at odds with each other. Private sector groups are also disinclined to negotiate directly with affected communities and leave the task of conflict resolution to public authorities.</p>
<p>India</p>	<ul style="list-style-type: none"> • Government. <p>Land reform is under the jurisdiction of the states, but the Central Government has directed state governments to enact agricultural land ceiling laws and redistribute excess land among landless and marginal farmers. The Ministry of Rural Development, as the nodal agency in the Central Government, has since been active in promoting land reform in various ways. The Central Government has also amended the Constitution thirteen times to remove legal obstacles to land reforms and formulated Five-Year Plans (through the National Planning Commission) that have consistently emphasized land reforms and incorporated policy guidelines in this regard. The current Eleventh Five-Year Plan (2007–2012) has also incorporated the component of land reforms in all its dimensions.</p> • Political parties. <p>The Indian National Congress (informally referred to as the Congress Party) and the Bharatiya Janata Party (BJP) are the two main parties in Indian politics. The BJP in its 2004 electoral manifesto worked out specific steps to implement land reforms and decried that fertile land was being lost to development; but it remains a conservative party with a conservative position on land. On the other hand, the</p>

Table 4. *con't.*

India	<p>Congress Party has formulated laws on land reform and has directed state governments to enact laws that would enhance land access for the landless, including tribals. Its Economic Agenda stipulates that land reforms must receive high priority alongside the consolidation of fragmented landholdings.</p> <ul style="list-style-type: none"> • Donor agencies and international donors. Donor agencies have played an important part in supporting India's land reform movement. These include the Ford Foundation, ActionAid and Christian Aid. International financial institutions (IFIs) and other donor agencies under the neo-liberal framework have pushed for market-assisted land reform models. • Private sector. The private sector is increasingly involved in corporate farming, prompting a land buying spree. It has already acquired vast tracts of land and has entered into agreements with farmers with major investments to tap the potential of Indian agriculture. • Civil society. NGO networks in India operate at the national and regional level: the Association of Voluntary Agencies for Rural Development (AVARD) and the Voluntary Action Network of India (VANI) work nationwide. People's Organizations (POs) working on land issues generally have a non-formal structure. A few of the many POs working on land issues and supporting the land rights movements in India include Wada No Todo Abhiyan, Ekta Parishad the Campaign for Survival and Dignity, and the National Campaign for Land and Livelihood (NCLL).
Indonesia	<ul style="list-style-type: none"> • Government. President Susilo Bambang Yudhoyono's paramount concern is infrastructure development. The sectors identified as key to Indonesia's future development were power, water and sanitation, oil and gas facilities, information technology, transport, and logistics. Pres. Yudhoyono passed Presidential Regulation No. 36 of 2005 to relax regulations concerning land leases and concessions. The government's agrarian and agricultural policies are also enshrined in the Revitalization of Agriculture, Fisheries and Forestry (RPPK). • CSOs and NGOs. NGOs and CSOs attribute the current agrarian crisis to three factors: the concentration of ownership of land and other natural resources among a small group of owners; inefficiency of production as a result of feudalistic practices; and state violence and the government's anti-democratic and anti-peasant policies. • Multilateral development agencies and IFIs. These groups are increasingly involved in integrating free trade and the allocation of agrarian resources in the country, as exemplified by the Land Administration Project (LAP), which seeks to establish land markets. Big infrastructure projects funded by the World Bank and the ADB have also resulted in violations of people's rights.
Nepal	<ul style="list-style-type: none"> • Rights-holders/Tenants and landless groups. Successive farmers' movements have been undertaken by peasants and tenants since the 1950s. They have been triggered by mainly landlords' abuses, widespread famine, and the demand for land rights. • Civil society organizations. The Community Self-Reliance Centre (CSRC) is one of the NGOs at the forefront of advocacy for the land rights of the poor. The National Land Rights Concern Group (NLRCG) was also established as a broader civil society alliance, which includes media groups, human rights advocates and social activists. The National Land Rights Forum (NLRF) is a membership based national people's organization of land deprived people including marginalized groups.

Table 4. *con't.*

Nepal	<ul style="list-style-type: none"> • Government. Two main government agencies are instrumental in directing and guiding land access and tenure issues in Nepal. First, the National Planning Commission (NPC) has overall responsibility for setting up development policy and strategies. The Land Reform and Management Ministry implements the agreed policies on the ground. • Political Parties. All eight major political parties have the following common points in their electoral manifestos: that land reform is a priority concern; that land reform is a vital aspect of overall agricultural development, and not only in regard to the management of land ownership; and that dual ownership of land should be abolished. • International Institutions/Agencies. These are key actors in setting up the policy framework for development in Nepal. A number of agencies have shown interest in a certain type of land reform and have been trying to steer government in that direction, but Nepali land rights advocates are debating the pros and cons of such approaches. There are only a few international agencies supporting the land rights movement undertaken by the tillers, peasants and CSOs.
Philippines	<ul style="list-style-type: none"> • Government. The Department of Agrarian Reform (DAR) has the responsibility to implement the agrarian reform program with regulatory powers in the ownership of agricultural lands and the conversion of agricultural lands to non-agricultural uses. The National Commission on Indigenous Peoples (NCIP) implements the IPRA. NCIP, which has the mandate to process and approve IP claims over their ancestral domains, coordinates with the Department of Environment and Natural Resources (DENR) in surveying the subject lands. Local government units (LGUs) implement the Urban Development Housing Act (UDHA), regulate the use of their municipal waters, prepare their Comprehensive Land Use Plan, and impose land taxes. • Donor agencies and international institutions. Japan, ADB and the World Bank are the Philippines' major donors, which have provided significant funding to land access programs. Overseas development assistance (ODA) for CARP has been limited to support services delivery; donors have shied away from land acquisition. Oxfam GB and Hong Kong have supported advocacy work on land access to fisheries. • Private sector. In general, private commercial interests have served as major obstacle in the struggle of basic sectors to gain access to land or tenurial security. Private investments in the form of mining, timber production, pasture lease agreements, plantations and orchards, and other large-scale commercial enterprises are being implemented, affecting forest dwellers and indigenous communities. As an effect of tourism and countryside industrialization, fisherfolk are also being stripped of tenure rights over the lands they have lived in for many years. Although not primarily driven by commercial interests, landlord resistance is one of the greatest bottlenecks to agrarian reform implementation. • Civil society. Civil society and social movements are actively involved in basic sectors' struggle for land and tenurial security. Agrarian reform has received strong civil society and even Catholic Church support. Civil society is split regarding what is to be done since CARL funding expired in June 2008: a group who wants to junk CARL and enact a new genuine AR law; and others who want CARL with reforms. Furthermore, civil society groups provide support for indigenous people's Certificate of Ancestral Domain Claims (CADCs), as well as legal assistance and awareness raising on resource rights as support for the fisherfolk sector.

Recommendations

Advancing the agenda of access to land for the poor in Asia is fraught with formidable challenges; it requires a set of specific and concrete measures at the national level. The Land Watch Asia campaign made the following recommendations for the six countries covered by the study, which encompass policy formulation, implementation and monitoring; an enabling legal environment for land reforms; strategic networking; and improved knowledge management.

Policy recommendations include a National Land Use Policy to maximize and rationalize land use, the creation of legal frameworks and support systems such as high-level land authorities, and provision of legal aid for the poor. Formulation and implementation of policies in support of land reforms, as well as the

corresponding monitoring and accountability mechanisms, stand out as topmost priorities. There is emphasis on increased civil society participation in governance to push forward such reforms.

A recurring theme was recognizing the value of coming together was a recurring theme. At the national level, this means coalition building to support land reform and the land rights struggle, as well as organizing strong social movements among peasants, indigenous peoples, fisherfolk, forest dwellers, minority castes, and other landless groups. In relation to this, partnerships with government and other stakeholders should be established, through various mechanisms like technical working groups and platforms for inter-sectoral dialogue. Finally, the Land Watch Asia Campaign provides the venue for strategic networking and serves to elevate national land issues to the regional level.

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

	Actions Needed
Bangladesh	<ul style="list-style-type: none"> • Institutionalize Policy Reforms for land rights of rural poor sectors <ul style="list-style-type: none"> > Comprehensively implement the Peace Accord, with special attention to critical yet neglected provisions, such as the activation of the Land Commission; > Formulate a National Land Use Policy to maximize and rationalize the equitable use of natural resources; > Institutionalize a legal support system to ensure the speedy resolution of problems on landownership rights of the poor; and strengthen existing legal aid support from NGOs and other institutions; > Enforce the Vested Property Repeal Act of 2002 to protect the land rights of religious minorities and to release vested property under the government's custody to the real owners or their legal heirs who are permanent residents of Bangladesh, pending the final settlement of individual cases; > Amend the law on inheritance to make provisions for women's equal right to own land; > Enact separate laws to promote and protect the customary land rights of indigenous peoples; > Improve the land rights and living conditions of tea plantation workers. • Enhance capacity of CSOs to advance land rights <ul style="list-style-type: none"> > Encourage greater/more effective representation of peasants and landless groups in the national Khas Land Management Committee; > Create a social land watch platform to campaign against land related corruption and the non-implementation of pro-poor and pro-women laws and policies regarding land rights and agrarian reform; > Scale-up research and customization of knowledge on access to land interventions, cases and strategies.
Cambodia	<ul style="list-style-type: none"> • Form equal and effective land reform partnerships. <p>NGOs acknowledge the importance of land partnerships with government and other stakeholders to improve people's access to land. The Land Action Network for Development, though cited as a successful example of partnership among Cambodian NGOs, should have more regular meetings so as to gain support from international NGOs and government representatives. The TWG on Land should include the private sector, given its increasingly influential role in land concerns. Civil society participation should be increased as well. There are calls for the formation of regional or local partnerships that prioritize</p>

Table 5. *con't.*

	Actions Needed
Cambodia	<p>project implementation and specific cases. Government should be more open and willing to work with NGOs. Partnerships should also have clear goals.</p> <ul style="list-style-type: none"> • Launch a national campaign on Land Law implementation. NGO networks need to be strengthened to analyze and strategize for critical land issues, including land titling and land management, applications on land concessions, encroachment on forest communities, land conflicts, etc.. International and donor organizations and relevant public institutions that could encourage implementation of existing land laws and conflict resolution need to be engaged to enhance the voice of civil society. • Build/strengthen alliances on land reform. Strong networks and linkages among NGOs need to be established. NGOs need to cooperate rather than compete, understand the benefits of networking, and recognize which among them is best able to represent their sector in dealing with the government.
India	<ul style="list-style-type: none"> • Pursue reforms in land laws and implementation across India <ul style="list-style-type: none"> > Create a "People's Land Policy" that overhauls land laws and the administrative system to accord equal rights to women, castes and indigenous groups and uphold sustainable use and management of common natural resources like land and water; > Draw up a long-term national land use policy which involves all stakeholders and considers national food and water security, food and livelihood needs of the poor, protection and expansion of the country's forest cover. > Formulate policies on land ceilings, prevention of absentee landlordism, confiscation of fallow land, joint issuance of entitlements, land registration and tenancy (i.e., to establish fair terms between land-owners and tenants), and prevention of agricultural land conversion; > Restore all alienated tribal land and regularize all agricultural land held by tribals in forest areas; > Provide support services (i.e., infrastructure, credit, inputs, marketing and agro-processing facilities, etc.) • Create Participatory Spaces for Land Advocacy <ul style="list-style-type: none"> > Maximize policy level spaces such as the Committee on State of Agrarian Relations and the Unfinished Task of Land Reforms; > Set up Land Tribunals in all States to facilitate land-related cases; > Enhance CSO awareness of events happening at the national and international levels that could provide impetus for the resurgence of the land agenda; > Pursue non-violent, multi-level and multi-pronged mass actions and increase public awareness activities through mass media and electronic media; > Develop a systematic information system on land with relevant details of all holdings
Indonesia	<ul style="list-style-type: none"> • Revoke anti-peasant land laws. The resolution of land and agrarian conflicts depends on the enactment of TAP MPR No. IX/2001, which gives government the mandate to implement land reform. However, the government has passed several laws that contravene the intent of TAP MPR No. IX/2001, such as the Law on plantations and on Capital Investments, which have worsened the conditions of the Indonesian peasantry. • Develop a strong and democratic peasant-based organization. Advocacy to promote the agrarian reform agenda must be undertaken, especially among the peasantry. Peasant protests and struggles have significantly influenced the dynamics of Indonesian social movements.

Table 5. *con't.*

	Actions Needed
Indonesia	<ul style="list-style-type: none"> • Build a coalition to support the land rights struggle. Progressive NGOs and committed international organizations can play important roles as catalysts in helping grassroots peasant and landless movements organize and press their demands for land. They can advance land reforms advocacy at all levels. • Maximize opportunities created by RPPK policy. The RPPK, which promises to address challenges affecting farmers, farm workers, fishers, forest dwellers and other poor communities, can move forward more fundamental reforms in the agrarian sector, but it needs various government departments to work in tandem.
Nepal	<ul style="list-style-type: none"> • Formulate and implement inclusive policies. Current land related acts and policies need to be repealed and new ones formulated on behalf of landless and poor tenant farmers. Most importantly, the Constitution should guarantee the implementation of land reform. • Restructure land administration. There is an urgent need to simplify and decentralize land administration. The authority over land reform should be delegated to District Development Committees (DDCs) and Village Development Committees (VDCs), with the District Land Reform Office (DLRO) serving as secretariat to these units. A separate land court at the DDC and VDC levels should be established to expedite settlement of land issues concerning poor people. • Establish a high-level land authority. This is needed to look into the claims of the state, land-related problems of people, and ways to address the problems. Such an authority should have representatives from the poor and marginalized groups. • Educate and organize the poor and landless. These groups need to be made aware of their situation and mobilized in peaceful resistance against their deprivation and oppression. Organization makes the fight constructive and logical. • Allocate a budget for comprehensive land reform and the agriculture sector. Efforts to enhance agricultural productivity should follow a progressive land reform program. Hardly 10% of revenues from land taxes is invested in land management issues. The additional budget allocation for agriculture would be meaningful, however, only after the issue of inequitable land ownership has been properly addressed.
Philippines	<ul style="list-style-type: none"> • Create a platform for inter-sectoral dialogue and a campaign to address critical issues on access to land <ul style="list-style-type: none"> > Pass of a National Land Use Act (NLUA) to regulate the interests of different stakeholders on land and other resources; > Mediate land conflicts arising from overlapping claims (e.g. between farmers and indigenous peoples); > Create monitoring and accountability mechanisms to produce alternative reports, and conduct budget monitoring of government agencies implementing land and water tenure programs (i.e., DAR, NCIP, DENR, and BFAR—DA). • On Agrarian Reform <ul style="list-style-type: none"> > Pass the law that would extend CARP funding with substantial reforms > Organize and strengthen CSO advocates for legislative lobbying and pressuring CIAs for more effective CARP implementation

Table 5. *con't.*

	Actions Needed
Philippines	<ul style="list-style-type: none"> • On Forestry <ul style="list-style-type: none"> > Clarify the dual role of DENR (i.e., to protect and conserve the environment vs. to promote use of natural resources); > Promote collaborative management to enable LGUs and other sectors to participate in forest management; > Conduct definitive mapping of Philippine forest cover to determine extent and location of forest areas, and document overlapping land claims; > Adopt an environment and natural resources accounting system in preparing national income accounts. • On Indigenous Peoples <ul style="list-style-type: none"> > Call for the strict implementation of Indigenous Peoples Rights Act (IPRA) and hold accountable the NCIP; > Assure funding for implementation of Ancestral Domain Management Plans; > Ensure that revised procedures for determining the Free Prior Informed Consent (FPIC) conforms to traditional decision-making processes of tribes (especially on mining and extractive activities); > Resolve competing claims to land of IPs and other basic sectors need to be resolved. • On Fisherfolk <ul style="list-style-type: none"> > Hasten the implementation of the Fisheries Code, which will allocate funds from the General Appropriations Act; completely delineate municipal waters using DENR DAO 17, and issue IRR for Section 108 establishing fisherfolk settlements); > Lobby for a law to provide for land ownership by municipal fishers; > Revise guidelines on Foreshore Lease Agreements (FLAs) to make small fishers priority applicants for FLAs and make FLAs more accessible to fisherfolk

Conclusion

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

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

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

The following Land Watch Asia Campaign Declaration expresses the solidarity among the involved organizations, and outlines the campaign's commitments and target outputs given a three-year timeframe.

Land Watch Asia Campaign Declaration



Our Alliance

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

Our Urgent Concerns

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

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

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

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

Many governments still need to deliver on their past land reform programs and targets. Meanwhile, market-assisted land reform (MALR), under the principle of "willing buyer, willing seller" has not been effective in redistributing land in favor of the poor, who cannot afford high land prices. Also, in a number of Asian

countries, "land administration" projects are conducted to ensure a more efficient titling system. While important, such projects run the risk of "legitimizing" historical injustices, including land grabbing and eviction of tenants and occupants.

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

Our Common Conviction

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

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

Land is more than an economic asset or commodity. Access to land not only brings a source of survival but also increases one's sense of human dignity and security and the opportunity to break out of poverty. More equitable access to land reduces resource conflicts and rural outmigration, and improves overall peace for greater economic and political stability.

Our Common Action

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

- Protecting and promoting the gains of progressive legislation and initiatives on access to land;



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

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

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

Outputs

By 2011, the Land Watch Asia Campaign aims to achieve the following at the regional and national levels:

• Regional

A. Policy Dialogue

1. Dialogues with national governments, regional and international institutions (i.e., WB, ADB, ASEAN, SAARC, IFAD, FAO) on but not limited to the following thematic areas:
 - > Current status of small food producers' access to land in each country and in Asia, and how these institutions view programs related to access to land (e.g., land administration and titling types of projects and the impact of various access to land programs and projects on the land-poor, etc.).
 - > Urgent and emerging issues affecting access to land, especially but not limited to: i) current global food crisis and landlessness; ii) sustainable land use; iii) protected areas for food (agriculture, forests and waters); and iv) impact of economic policies on access to land laws and programs for the poor, etc.
 - > Land conflicts and access to justice, which should include a deeper analysis of laws that overlap or are

not yet in place, or which are poorly implemented, and which invariably affect the land poor. Dialogues with national governments and international institutions should also include monitoring peace agreements that are inevitably linked to land access.

2. Enhanced or established mechanisms for continued dialogue on access to land
 - > While some regional and international institutions would already have policies regarding the recognition of CSOs, mechanisms should be pursued that would institutionalize and ensure continued dialogue with CSOs, especially on access to land or other themes affecting land rights.
 3. Monitoring systems (e.g., Shadow Reports) on landlessness, land use and food security
 - > CSOs need to develop their own monitoring systems using field indicators developed over their years of experience working with small food producers. These monitoring systems could then be compared with those used in government and other regional and international institutions' reports pertaining to landlessness, land use and food security.
 4. Participation in global/regional events which can be made a venue for CSO land advocates to lobby for better access to land policies, or where economic and development policies affecting land reforms are tackled (e.g., FAO Regional Conference, MDG-10, ILC Global Assembly, ADB Board of Governors Meeting).
 5. Production of policy briefs from the Land Watch regional paper, country reports, and scoping studies on the access to land policies and perspectives of IGOs and bilateral aid from Australia, China, and Japan.
- #### B. Alliance-Building and People to People Solidarity
1. Building of cross-sectoral partnerships through:
 - > Cross-sectoral exchanges and country-to-country exposure of successful land rights programs and projects for the land-poor.
 - > Solidarity action (e.g., statement of support, information exchange, sharing of view and experiences, community mobilizations) to broaden alliances with other networks involved in access to land issues.
 2. Directory of Land Advocates across the various rural sectors with claims or interests over land from the six Land Watch Asia countries

C. Capacity Building on Access to Land Field Implementation and Advocacy Approaches

1. Building of in-country social movements and coalitions
2. Strengthening and building moral leadership in movements and being sensitive in addressing cultural issues
3. Enhancing the capacities of NGOs and peasant organizations on the following:
 - > Policy research and analysis on land rights and issues;
 - > Involvement in electoral politics;
 - > Land conflict management and resolution;
 - > Land-use planning;
 - > Land and sustainable agriculture/livelihoods;
 - > Post-production services;
 - > Production of manuals and tool kits, process documentation of best practices on land rights advocacy.
4. Developing successor-generation advocates
5. Sharing of good practices and lessons learned through publications, new media

D. Public Awareness and Media Advocacy

1. Land Watch Asia exchanges or dialogues on issues and experiences
 - > Setting up an electronic group for discussions;
 - > Maintaining a website/e-newsletter for regular sharing, online petitions, solidarity messages sent to appropriate agencies and diplomatic intermediaries (i.e., embassies, consulates, etc.).
2. Media advocacy campaign to popularize land issues at the regional level
 - > Doing a media plan for print, broadcast and social net media (e.g., e-mail, website, blogs);
 - > Training on writing for Media, how to “package” our issues for media and how to interact with local and international media institutions;
 - > Compile international and national media directories working on the beats concerned with land, agriculture, forestry, fisheries, rural women and indigenous peoples.
3. Publication, Video production and Dissemination of Reports (print and web)

• National

A. Policy Dialogue

In general policy dialogues shall deal with the following land-related issues: implementation of land laws, land

use, land conflict resolution and access to justice, food sovereignty and the current food crisis, economic policies that impact on land, ODA affecting access to land of the poor; practical indicators to monitor provision of access to land; and mechanisms for continued dialogue on access to land.

Specifically, policy dialogues with national governments and/or country offices of donor governments shall deal with the following:

- > **Bangladesh:** pursuing implementation of land reform, especially the distribution of *Khas* land; upholding forest conservation over land concessions; reviewing ODA policies and projects on access to land and the Poverty Reduction Strategy Program (PRSP);
- > **Cambodia:** reviewing implementation of the Land Law vis-à-vis programs on land administration; land concessions; promoting multi-stakeholder land conflict resolution efforts; governance issues; ODA policies and projects on access to land and the Poverty Reduction Strategy Program (PRSP);
- > **India:** reviewing the implementation of current programs such as land administration and management, Special Economic Zones and the Eleventh Five Year Plan (2007–2012); pushing for land policies favorable to women, *dalits* and *adivasis*; monitoring the progress of the National Land Reform Commission; creating a land constituency for the 2009 national elections;
- > **Indonesia:** reviewing the implementation of the agrarian law and economic policies in conflict with needed social reforms, such as land concessions; promoting multi-stakeholder land conflict resolution; governance issues; ODA policies and projects on access to land;
- > **Nepal:** inclusion of social reforms and access to land as a basic right of the poor in the New Constitution; formulation of a comprehensive land reform law that accounts for the land rights of different sectors; upholding the joint manifesto of seven political parties on land; reviewing ODA policies and projects on access to land and the Poverty Reduction Strategy Paper (PRSP);
- > **Philippines:** legislative lobbying for extension of CARP funding for Land Acquisition and Distribution

(with substantive CARP reforms); looking for local and national solutions for conflicting social justice reform legislations; multistakeholder dialogues on competing issues on access to land; building a land constituency for the 2010 national elections

- B. Alliance-Building and People to People Solidarity
 - 1. Cross-sectoral and multi-stakeholder meetings and discussions regarding land rights and access to land, including holding a Regional and National Land Rights Forum
 - 2. Solidarity action with other land-related campaigns within or outside the region
 - 3. Directory of Access to Land Advocates
- C. Enhancing Capacities for Land Rights Advocacy
 - 1. Training on land policies, land conflict resolution, land use planning, mapping, post-distribution services, coalition building, multi-media documentation, media advocacy and training
 - 2. Documentation of good practices, lessons learned, flashpoint cases and scaling up such good practices
- D. Public Awareness and Dissemination
 - 1. Media advocacy campaign using various forms
 - 2. Electronic discussions and website/e-newsletter for regular sharing on issues and experiences; online petitions; memorandum for solidarity sent to proper agencies and diplomatic intermediaries (i.e., embassies, consulates, etc.)
 - 3. Publication, video production and dissemination of reports (print and web)

Signed:

Signatories to the Land Watch Asia Declaration, June 12, 2008, Pasig City, Philippines

Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC); Association for Land Reform and Development (ALRD); The People's Campaign for Agrarian Reform Network (AR Now!); Association of Voluntary Agencies for Rural Development (AVARD); Bina Desa; Center for Agrarian Reform and Rural Development (CARRD); Community Self-Reliance Centre (CSRC); Ekta Parishad; Federation of Community Forestry Users in Nepal (FECOFUN); HARIBON Foundation for the Conservation of Natural Resources; Koalisyon ng mga Katutubong Samahan sa Pilipinas (KASAPI); Konsorsium Pembaruan Agraria (KPA); NGO Forum on Cambodia; Philippine Association for Intercultural Dialogue (PAFID); Philippine Partnership for the Development of Human Resources in Rural Areas (PhilDHRA) (concurred post-conference); Sentro ng Alternatibong Lingap Panligal (SALIGAN); South Asia Rural Reconstruction Association (SARRA); Society for Environment and Human Development (SEHD); STAR Kampuchea

Endnote

¹ Consolidated by Teresa L. Debuque and Catherine C. Liamzon

Done on this 12th day of June, 2008 in Pasig City, Philippines.

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The Backpedalling Stops

BANGLADESH Country Paper
Land Watch Asia





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

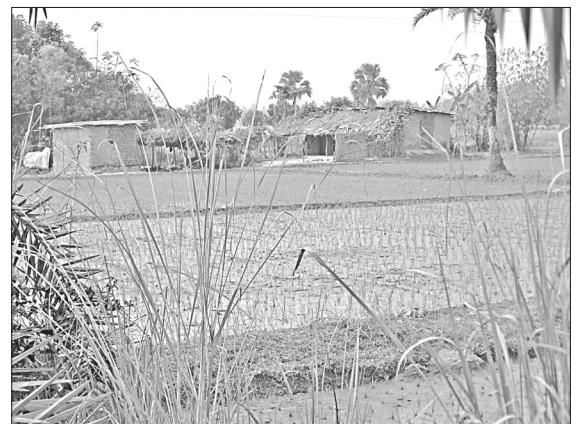
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Acronyms

ADB	Asian Development Bank
ALRD	Association for Land Reform and Development
ASEAN	Association of Southeast Asian Nations
CS	Cadastral Survey
CHT	Chittagong Hill Tracts
DF	District Forest
EBSATA	East Bengal State Acquisition and Tenancy Act
EPA	Enemy Property Act
G.E. Manual	Government Estate Manual.
K. cal.	Kilo calorie
LAND	Land and Agrarian Network for Development
LDTs	Land Development Taxes
NCCLRP	NGO Coordination Council for Land Reform Program
RS	Revised Survey
RF	Reserved Forest
ROR	Record of rights
SAARC	South Asian Association for Regional Cooperation
Tk	Taka
VPA	Vested Property Act

Glossary

Abwab	Illegal extraction by the Zamindars.
Adalat	Court.
Amin	Land surveyor of the Revenue Department.
Bangla Saal (B.S.)	Bengali calendar.
Barga	Sharecropping. Produce sharing system of tenancy where the share of the harvest is paid as rent for the land.
Batta	Commission.
Bhadralok	Gentleman.
Bigha	Indigenous unit of land area. One acre is equal to three standard bighas.
Char	Alluvial land or land thrown up from the river. Land silt on the river bed created by flood or sedimentation.
Chowkidar	Village guard.
Chula	Literally means the oven, usually means kitchen.

Collector	District level officer responsible for collection of revenue from government land, the Deputy Commissioner.
D.C.R.	Duplicate Carbon Receipt; the receipt (Form No. 1077) given to the operator of land after collection of all government dues except land tax.
Daag	Field plot.
Dadan	A form of security usually given in future products, usurious money lending practice.
Dafadar	Peon, messenger.
Dalal	Broker.
Dar patnidar	Intermediary between Zamindar and raiyat.
Diara (Deara)	Alluvial accretions.
District (Dist.)	Geo-administrative unit. Presently there are 64 districts in the country.
Diwani	Civil.
Eksona	One-yearly.
Faujdar	Criminal (jurisprudence).
Heba	Will for disposing property.
Ijaradar	Lease holder.
Jotedar	A real landlord who had the title to the land he owned, whereas the Zamindar was usually a rent collector. Jotedars developed under the Zamindari system of Permanent Settlement Act of 1793.
Kabuliyat	Registration deed between the Government and the tenant.
Kahaikhalashi	A form of land collateral for loans.
Kanungo	An official in the office of the Deputy Commissioner involved in the work of land management.
Kathha	One-twentieth of a bigha, equal to about 0.017 acres.
Khajna	Tax.
Khal	Canal/creek.
Khas land	Government land.
Khasmahal	Block of khas land under the management of the government.
Khatian	The form in which the record of rights is prepared showing all the details relating to any particular "interest".
Khudkasht	Resident raiyati.
Kist	Installment.



Kot kabla	A form of land security for loans.	Tebhaga	A system of three shares, corresponding to a tenancy system where the landowner gets one-third of the produce as rent, one-third goes to the tenant for his labor, and another one-third (to the tenant) for other inputs.
Krishi	Agriculture.	Tehsil	Lowest revenue unit, comprised of several mauzas.
Lakh	One hundred thousand, 10 lakhs=1 million.	Tehsildar	Revenue official in charge of tehsil.
Mahajan	Usurious money lender.	Thana	The lowest local administration office of the government, established during the British Period. Renamed as Upazila during 1982–1990. Thana is divided into a number of units.
Mahalladar	Caretaker of a Mahalla (neighborhood).	Union Parishad (U.P.)	Elected council for administration and development activities at the union level.
Malik	Proprietor, landowner.	Union	Lowest self-government unit comprising of several villages.
Matabar	Village headman leader.	Upazila	Literally means Sub-district, the new administrative unit that contains the same territory of the Thana but acts as a local administrative center as the District.
Mauza	Village as per revenue unit (and not a village as per social unit).	Viti	The homestead area, usually elevated higher than the cultivation fields.
Motwalli	Trustee.	Wakf	Property vested with Muslim religious institution.
Nirbahi	Executive.	Ward	Electoral constituency within a union.
Paiwast	Alluvion.	Zamindar	Large landed proprietors in Bengal with ultimate revenue collection and tax extraction rights, instituted during the Mughal Period and modified during the British Rule. Landlord, a class of rent-receiver created through the Permanent Settlement Act of 1793 by the British East India Company.
Para	Cluster of houses in close proximity, usually closely related kin, within a village.		
Patit	Fallow.		
Pattan	Lease principle and the reason for the entries.		
Raiyat	A person who has required a right to hold land directly under the Government for the purpose of cultivating it by himself or by members of his family or by, or with the aid of, servants or laborers or with the aid of partners or bargadars, and includes also the successors-in-interest of persons who have acquired such a right.		
Saf kobla	A type of land security.		
Salami	Earnest money; also a pseudo name for bribe.		
Se patnidar	Intermediate between Zamindar and raiyat.		
Shikast	Diluvion.		
Talukdar	Large landed proprietor/landlord; one type of rent-receiver between the state and the raiyat before 1950.		
Tauzi	Division of land for collection of revenue under private proprietors or the Government.		

BANGLADESH

QUICK FACTS

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



Overview of Access to Land

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

Sixty (60) percent of the country's land, about 9 million hectares, is devoted to agricultural use, and 56% of this land, some 5 million hectares, is privately owned (See Table 1). It is estimated that households own an average of 0.3 hectares of land.

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

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

Table 2. Landownership Structure, 1960–1996

	1960		1983–84		1996	
	% of HHs	% of land	% of HHs	% of land	% of HHs	% of land
Landless (0–0.19 hectare)	19	1	46.3	3.1	56.0	4.9
Marginal and small (0.2–0.9 hectares)	38	15	33.6	26.2	30.7	36.5
Medium (1–2.9 hectares)	33	47	16.3	44.9	11.2	41.3
Large (3 hectares and over)	10	37	3.8	25.8	2.1	17.3
All	100	100	100	100	100	100

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

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

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

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

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

Meanwhile, the absolute number of landless people in the country has doubled in the last 30 years, with a large section forced to migrate to the slums of big cities, where they live in subhuman conditions. Studies have indicated that free and fair distribution of *khas* land could resolve this rural push-migration (Barkat &

Akhter, 2001). Therefore, the equitable distribution of *khas* land and/or enhanced access of the poor to the same should be a major component of Bangladesh's poverty eradication agenda.

Landownership and Distribution

Landownership Structure

In 1960, 10% of households owned 37% of the country's largest parcels of land (3 hectares and above). Thirty-six years later, in 1996, the percentage of owners of large landholdings had dwindled to 2.1%. Meanwhile, the percentage of landless households (or those owning 0–0.19 hectare) rose from 19% in 1960 to 56% in 1996.

Landownership as Determinant of Rural Poverty

According to a recent report of the Center for Policy Dialogue, over 48.5% of the rural population of Bangladesh lives below the lower poverty line, and 53.1% below the higher poverty line. The report also indicated a strong association between landownership and poverty, i.e., poverty is reduced with increased landownership.

The amount of food consumed by a household, for instance, is directly related to its landownership status: the bigger the land owned by a household, the greater its daily food intake (mea-

Table 3. Landownership and Poverty Trends (in %)

Landownership group	Households living below the lower poverty line as % of all households within the landownership group	Households living below the higher poverty line as % of all households within the landownership group
No land (absolutely landless)	57.1	70.6
0.004–0.016 hectare (near landless)	48.1	64.2
0.02–0.19 hectare (functionally landless)	39.8	59.1
0.2–0.59 hectare (marginal)	30.6	47.6
0.6–0.90 hectare (small)	22.2	35.7
1–2.90 hectares (medium)	12.5	24.4
3 hectares and over (large)	4.1	8.1
All	37.4	53.1

Source: Ministry of Finance, 2003



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

	Annual average income	Annual average health care expenditure	Annual average education expenditure	Annual average expenditure on food	Valuation of capital assets—2002(Tk.)	Per capita daily food intake (K.cal.)
Landless (0–0.19 hectare)	697	48	19	572	1,76,510	2,194
Marginal (0.2–0.59 hectares)	826	56	28	590	4,78,769	2,278
Small (0.6–0.90 hectare)	1,367	53.8	32	684	7,59,712	2,281
Medium (1–2.90 hectares)	1,512	54	68	859	1,09,503	2,666
Large (3 hectares and over)	3,490	111	85	1,278	2,791,959	2,880

Source: Government of Bangladesh, 2003

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

Table 5. Overall Literacy and Adult Literacy Rate by Landownership Groups

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

sured in terms of kilo calories [K.cal.]). Among the landless, the daily per capita intake is 2,194 K.cal., which is only slightly higher than the 2,122 per capita food intake of persons living on the "absolute poverty line."

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

Issues Affecting Access to Land

Access to and Distribution of *Khas* Land

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

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

parishad (the lowest tier of government), and even by minor officials at the land offices.

Access to and Distribution of Non-agricultural Land

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

Access to Government Owned Fisheries

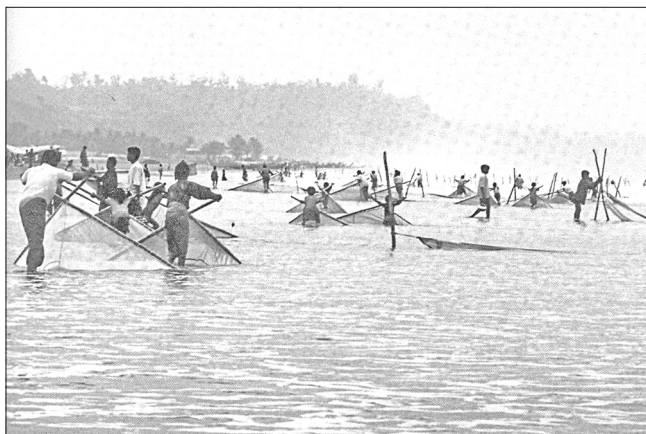
Government-owned fisheries covering 1.2 to 8 hectares, called *jalmahals*, are auctioned off by the Districts to fisherfolk cooperative societies. The lease, which is effective for one year, is awarded to the highest bidder. However, not all the bidders are fisherfolk coops; many of them are fronts for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

Absentee Landownership

Thirteen (13) percent of households own more than half (58%) of the country's land. Many of these households do not engage in agriculture, but live and make their living in urban areas, either by running their own business or by being employed in the government or the private sector. This encourages rent-seeking behavior.

Commercialization of Agriculture and Forestry

Shrimp Cultivation. 1.5 million persons are engaged in shrimp cultivation. In the early stages of this industry, shrimp culture was practiced in the household and on fallow and/or marginal land, to augment incomes from the farm. When shrimp culture became more profitable than crop farming, various coastal lands, including rice farms, mangrove areas and marshes were brought under shrimp cultivation. This has created serious environmental problems, such as deterioration of water quality, loss of vegetation, loss of biodiversity, land degradation due to increase in soil salinity, declining numbers of livestock and poultry, etc.



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

Land Conversion

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

Legal Framework for Access to Land

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

Laws

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

- Aimed to make peasants direct tenants of the Government, with rights to transfer, inherit, and cultivate their land as they saw fit;
- Sought to eliminate rent-seeking interests and absentee landownership, by prohibiting the subletting of land;
- Fixed a ceiling of 13.3 hectares of cultivable land per family. (This ceiling was raised to 50 hectares per family in 1961); and
- Guaranteed the rights of tenants and of their successors to land lost to erosion during the period when the land is flooded or under water, but not exceeding 20 years (Sec.86).

Land Reform Policy of 1972

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

Land Reform Ordinance of 1984

- Reduced the ceiling for landholdings from 13.3 hectares to 8 hectares;
- Prohibited the purchase or transfer of land in the name of another person to conceal the identity of the true landowner;
- Fixed the minimum wage of agricultural laborers at equal the value of 3 kilograms of rice;
- Prohibited the eviction of peasants from their *paternal* homestead;
- Instituted a three-way sharing of farm produce: $\frac{1}{3}$ to the landowner; $\frac{1}{3}$ to the sharecropper; and the remaining third to be divided proportionately between the landowner and the sharecropper on the basis of expenses incurred by each one;
- Weaknesses/problems in implementation:
 - > Despite lowering the ceiling for landholdings, the government failed to recover surplus land, estimated at 1 million hectares, because of the lack of political will.
 - > The sharing of the produce proved to be inequitable. Sharecroppers bore all the costs, including input, while the produce was divided 50/50 between the landowner and the sharecropper, with the former taking most of the by-products.
 - > The minimum wage (equivalent to the price of 3 kilograms of rice) could not support the needs of an average family of five members.

Khas Land Management and Distribution Policy

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

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

1. EBSATA, Sec. 86

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

2. Presidential Order No. 135 (1972)

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

3. 1994 Amendment to the EBSATA

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

Vested Property Restoration Act of 2001

- Abolished the Vested Property Act (VPA)—formerly the Enemy Property Act (EPA)—which dispossessed the Hindu population of their ancestral land during the war between Pakistan (of which Bangladesh used to be part) and India in 1965. Even after Bangladesh had declared its independence from Pakistan in 1971, the EPA was retained—renamed as VPA—and resulted in the confiscation of some 800,000 hectares of Hindu property. Around 0.75 million Hindu households were reportedly victimized by this law.
- Weakness/problems in implementation:
 - > Even after the abolition of the VPA in 2001, the situation of Bangladesh's Hindu population remains unchanged. Studies show that over a third of Hindu households have become landless and/or marginal landowners. Statistics also show a marked decline in the size of the Hindu population in Bangladesh: from 18.4% in 1961 to just 9.2% in 2001.

Land Rights and Land Management Projects Cluster Village Program (1988)

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

Char Development and Settlement Project (1987)

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

Computerization of Land Records Project

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

Modernization of Land Administration Project (1995–2003)

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

Access to Land of Marginalized Groups

Ethnic Groups

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

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

Access of Minority Groups to Land in the CHT

Laws passed in 1865, 1875, and 1878 gave the state monopoly rights to different types of land and resources. In particular, a law passed in 1875 created two types of forest in the CHT, namely, Reserved forest (RF) and District Forest (DF). As a result of this law, 24% of the CHT was designated as RFs and off-limits to the hill people. However, at the start of the 20th century, hill people



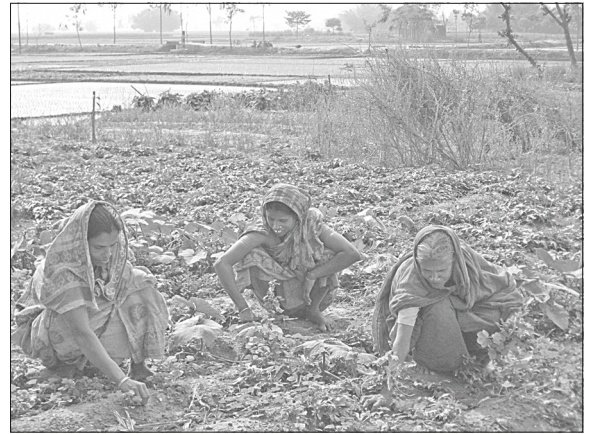
began to acquire private rights to land, especially after they had abandoned their practice of slash-and-burn farming. Later, private freehold rights (rights in perpetuity) and leasehold rights (rights for a specified period) were awarded to hill people operating timber plantations. The Regulation of 1900 defined the terms and conditions for these private and usufruct rights. The CHT Manual issued by the government conferred user rights to CHT land to hill and non-hill people. Rule 50-1 of this Manual specifically reserved the hill people the right to occupy CHT land. Amendments to this 1900 regulation allow—at certain times—the allocation of large-size lands to the non-residents for the cultivation of rubber and for other business purposes.

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

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

Access of Minority Groups to Land in the Plain Districts

Plains land ethnic minority groups have been losing their access to land at an even faster rate than the hill people. This is due to widespread land grabbing in the plain districts. Three out of four households belonging to plain-land minority groups are landless. Twenty-eight (28) percent of them have no (agricultural) land and 48% have less than 0.2 hectare. A 2004 study showed that the



Santals, an indigenous group living in northeastern Bangladesh, are rapidly losing their lands; 70% of rural based Santals are landless.

The tea plantation workers most of whom are lower caste Hindus (considered untouchables or *Dalits* in India) literally have no access to land. They live in labor line and all the land in the tea zone belongs to the companies.

Women

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

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

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

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

Char Dwellers

Five (5) percent of the country's population lives in *char lands*, or lands accreted from rivers and the sea. Government owned

char lands cover about 170,000 hectares. Ideally, char households should get an average of 1.88 hectares each. However, as much as 60% of char households are absolutely landless.

Fisherfolk

Over 13.2 million people in Bangladesh (10% of the population numbering 130 million) are employed in the fisheries sector—1.2 million are employed directly, full-time; and 12 million work only part-time or on a seasonal basis.

Counting family members, an estimated 38 million people (about 30% of the population) are involved in fishery activities.

Many fisherfolk communities have limited access to water bodies. The Ministry of Land in each district auctions off lease rights (lasting 1 to 3 years) to water bodies. But while fishermen's cooperatives are supposed to be prioritized in such auctions, elite groups generally win the bidding, through a cooperative fronting for them. The fisherfolk therefore end up paying rent to the leaseholder, while the latter racks up profits of up to 1000% of the auction price.

Poor fisherfolk are likewise unable to obtain lease rights to *khas* water bodies. Of the total 332,142 hectares of *khas* water bodies in the country, only 5% has been leased out to the poor under the Khas Land Distribution Program. A program for single-year leasing of open water bodies has also failed to benefit the poor. The annual lease amount is Tk.100,000 (or US\$1497, in 2008 prices), and this increases by 10% every year. Also, by the time the lease expires, the leaseholder usually will have exhausted the resource.

Actors Facilitating or Impeding Access to Land and Tenurial Security

Government

Ministry of Land

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

trict level, the sub-district executive officer, the assistant commissioner (for land) at the sub-district level, and the assistant land officer at the union level.

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

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

The Directorate of Land Records and Surveys carries out cadastral surveys, from which it produces maps showing individual plots of land and *khatian*, which is used to prepare and maintain the record of rights (ROR) concerning every parcel of land in Bangladesh.

Ministry of Law, Justice and Parliamentary Affairs

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

Non-Government Organizations

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



Distribution Policy, the Khas Water Bodies Management Policy, the enactment of the Vested Property Restoration Act 2001, the amendment of the Registration Act, and the development of the Citizen Charter for the Directorate of Land Records and Surveys.

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

Samata works in Northwest Bangladesh, primarily to assist landless people to gain access to *khas* land and *khas* water bodies. With its Land and Agrarian Network for Development (LAND), *Samata* engages in social mobilization around land rights and related local administrative reform, focusing on *khas* land and *khas* water bodies. *Samata* and its LAND network NGO members come from the extreme poor, comprising 40% of the population living below the poverty line, including the rural landless, day laborers, and fisherfolk. *Samata* and its Network NGO partners help the landless poor to form groups and committees, and engage them in awareness building and training. These groups identify land and, with support from *Samata* and partner NGOs, put together the documentation necessary to apply to various local officials responsible for verifying and distributing *khas* land. *Samata* and its partners have been able to mobilize 500,000 landless men and women, and to recover and redistribute around 40,000 hectares of *khas* land and *khas* water bodies to 200,000 rural landless families.

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

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

Opportunities, Challenges and Strategies to Advance Access to Land and Tenurial Security

Lessons from Past Interventions and Initiatives on Land and Tenurial Security

- **Importance of Patience and Commitment**

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

- **Strong Participation of Landless Communities**

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

- **Mobilization and Coalition-building**

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

- **Little Attention to Generation of Knowledge**
Research for generating original and relevant information base is very limited. The knowledge that already exists is not sufficiently customized.

Risks and Challenges

- **Lack of Political Will**
Successive governments in Bangladesh have not prioritized land reform policies, primarily because government and political party leaders come from rich, landed families, which may or may not have had a hand in grabbing state-owned land and water bodies. But even if the leaders may not themselves have been involved in such activities, they are reluctant to prosecute the land-grabbers, who are usually loyal and generous supporters.
- **Shrinking Space for Land Rights Advocacy**
Due to political instability and the "state of emergency" currently imposed on the country, the activities of land rights activists and other social movements have been seriously restricted. Changes in government and the attendant changes in policies and programs have also made it difficult to sustain a dialogue with government.
- **Insufficient Capacity of Land Rights Organizations and NGOs**
Organizations working on land rights and other NGOs are still ill-equipped to clearly articulate their objectives and strategies, mobilize resources, engage in participatory planning, and communicate effectively with government. This lack of capacity has hindered the progress of the land rights movement in the country. These groups also have limited ability to analyze the issues related to land rights, and have therefore failed to communicate with other stakeholders. Pro-poor land reform advocates must have the ability to think strategically and to form strong alliances among other groups.
- **Lack of Livelihood Support for the Landless**
One of the challenges facing the land rights movement is the need to provide for and sustain the families involved in the movement. The land rights struggle is protracted; at the same time, the needs of the affected families are immediate. The challenge therefore is how to strike a balance between meeting the immediate needs of the people and their strategic (i.e., long-term) goals.

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

Strategies for Advancing Access to Land and Tenurial Security

- **Confirmation of Tenurial Security**
There is a need to confirm the tenurial security of land users. A variety of methods may be used, such as formal titling programs; formal recognition and registration of customary and other informal rights to land and occupancy; and tenure registration, which involves updating land records and clarifying the tenurial status of land users and claimants. Government has tended to ignore the need to confirm the tenurial status of land users, or has approached the task by attempting to implement comprehensive land registration and titling programs. The process of tenure formalization requires careful planning, customization and integration into local contexts.
- **Redistributive Land Reform**
Redistributive land reform is relevant in highly unequal societies and in countries undergoing political and economic transition, such as Bangladesh. But it tends to take time, linked as it is to the processes of economic development and de-colonization. Bangladesh has almost 2 million hectares of state owned land which it could recover from their illegal occupants and redistribute to the landless poor in the country. The government could also strictly enforce the agricultural land ceiling, expropriate the surplus, and distribute this to the landless. The government, in partnership with other stakeholders, must also provide for basic infrastructure and social and agricultural support services, if land reform efforts are to succeed.
- **Improving the Capacity of Public Sector Land Institutions**
Capacity-building of public sector land institutions and the use of information technology are essential to the success of land registration and titling programs.



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

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

- **Improving the Governance of Land Resources**

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

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

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

- **Transparent Monitoring and Evaluation Systems and Process for Land and Agrarian Reform Programs**

The key topics for evaluation and learning are: (1) the impact of different approaches and ongoing programs for land distribution and agrarian reform; (2) formalization or regulation of land rights; design of land institutions and linkages of land policy and land reform; (3) land administration programs; and (4) wider development strategies and poverty reduction, including questions of prioritization, cross-sectoral coordination, sequencing, and phasing.

Recommendations for Country, Regional, and International Level Advocacy and Campaign

At Country Level:

1. Representatives of peasants and landless groups should have a strong presence in the national *Khas* Land Management Committee, and the Distribution Committee at the district level;
2. A legal support system needs to be institutionalized to ensure the speedy resolution of problems concerning the landownership rights of the poor, and their choice of crops to cultivate. Existing legal aid support from NGOs and other institutions needs to be strengthened;
3. The Vested Property Repeal Act of 2002 should be implemented immediately in order to protect the land rights of religious minorities;
4. All vested property under the government's custody should be leased out to the real owners or to their legal heirs who are permanent residents of Bangladesh, pending the final settlement of individual cases;
5. The law of inheritance should be amended to make provisions for women's equal right to own land;
6. Efforts should be made to implement the Peace Accord (signed between the Government and the indigenous peoples of the CHT in December 1997) in a comprehensive manner, paying special attention to critical provisions that have been left unimplemented, such as the activation of the Land Commission;
7. In order to resolve the deep-rooted problem of forcible occupation of Hills lands, these issues must be addressed by an effective and empowered Land Commission, as stipulated in the Peace Accord of 1997;
8. Separate laws must be enacted and implemented to promote and protect the customary land rights of indigenous peoples;
9. The tea plantation worker should be given special attention;
10. To maximize and rationalize the utilization of land, a National Land Use Policy needs to be developed;
11. Social movements and a social land watch platform needs to be created to campaign against land related corruption and the non-implementation of pro-poor and pro-women laws and policies regarding land rights and agrarian reform.
12. Research and customization of knowledge that already exists need to be scaled up.

At the Regional and International Levels:

1. Best practices in different countries in the region must be used for the campaign;

2. The campaign to recognize the customary land rights of indigenous communities has to be stepped up at the country, and regional levels;
3. The campaign against encroachment and violation of the land and human rights of indigenous peoples has to be developed and conducted both at the country and the regional/international levels;
4. Networking among civil society actors and NGOs on issues concerning land, water, and forest rights needs to be strengthened at the national and regional levels;
5. Capacity-building of civil society organizations, community based organizations, and relevant government agencies has to be addressed;
6. Interactions among inter-governmental organizations on land and agrarian reform issues need to be enhanced, and the implementation of their programs monitored at the country and regional/international levels; and
7. Advocacy and lobbying on land and agrarian reform issues should be done with governments at country level, and collectively, through forums, such as South Asian Association for Regional Cooperation (SAARC), Association of Southeast Asian Nations (ASEAN), etc., at the regional/international levels.

Endnote

- ¹ Access to land in the narrow sense of the term can be defined as ownership and/or access to khas land; in the broader sense it includes ownership and/or use (usufructory right) and/or proportionate to population size right of entry, use or accrual of benefits.

References

- Abdullah, A. (1976). Land reform and agrarian change in Bangladesh. *Journal of Bangladesh Development Studies*, Vol. N, No. 1.
- Ahmed, S., & Rahman, S. (Eds.). (1992). *Poverty alleviation through access to land*. Centre on Integrated Rural Development for Asia and the Pacific and Economic Development Institute of the World Bank, CIRDP Study Series No. 137
- Ahmed, K.U., & Baroi, A.A. (1994). *Bhumi zorip paddhati teknikal rules (in Bangla): Land survey methods and technical rules*. Dhaka: Paika Prokashani.
- Ahmed, M. (1991). *Land to the landless. A reference book on khas land allocation in Bangladesh*. Bangkok: Asian Cultural Forum on Development.
- Alamgir, M.K. (Ed.). (1981). *Land reform in Bangladesh*. Dhaka: Centre for Social Studies.
- Ali, A.M.M.S. (1986). *Politics and land system in Bangladesh*. Dhaka: National Institute of Local Government.
- Alim, A. (1979). *Land reform in Bangladesh*. Dhaka: Associated Printers Ltd.
- Bangladesh agricultural research council. (1998). *Task force report on agricultural research and development plan for the coastal region of Bangladesh*.
- Barkat, A. (1997). Population distribution, urbanization and internal migration in Bangladesh. A. Barkat, & S.R. Howlader, (Eds.). *Population and development issues in Bangladesh*. Dhaka: Ministry of Health and Family Welfare.
- _____. (1998). Governance of public health in Bangladesh. R. Sobhan (Ed.). *Crisis in Governance: A Review of Bangladesh's Development 1997*. Dhaka: Centre for Policy Dialogue and University Press Limited.
- _____. (1999). Poverty among youth population in Bangladesh: Nature, extent and alleviation possibilities. *Dhaka Viswavidyalaya Patrika (Dhaka University Studies)*, Dhaka.
- _____. (2001a, February). *How much foreign aid does Bangladesh really need: Political economy of last three decades*. Keynote paper presented at the national seminar "How much Foreign Aid Does Bangladesh Really Need?" of the Bangladesh Economic Association, Dhaka.
- _____. (2001b, February). *Role of an International NGO in Human Development and Poverty Alleviation*. PANEL paper presented at development of new five year strategic plan of CARE Bangladesh, Dhaka.
- _____. (2003, January). *"Politico-economic scenario of Bangladesh: Where to go, where are we going?"*. Paper presented at the national seminar Economic, Social and Political Situation in Bangladesh of the Bangladesh Engineers Association and Federation of Bangladesh Chambers of Commerce and Industries, Dhaka.
- _____. (2003, March). *Rural electrification and poverty reduction: Case of Bangladesh*. Paper presented at the international forum Sustainable Rural Electrification in Developing Countries: Is It Possible, National Rural Electric Cooperative Association, Arlington, Virginia.
- _____. (2003, July). *Salient Findings of the Study*. Paper presented at conference on economic and social impact evaluation of the Bangladesh rural electrification program, Rural Electrification Board, Bangladesh, USAID thru RPPR-II, Dhaka.
- _____. (2003). Rights to development and human development: Concepts and status in Bangladesh. In H. Hossain (Ed.). *Human rights in Bangladesh 2002*. Dhaka: Ain O Salish Kendra.
- _____. (2007a). *Agrarian-land-aquarian reform in Bangladesh: No better alternative in development*. Paper presented at the sixteenth biennial conference of the Bangladesh Economic Association.



- _____. (2007b). *Political economy of corruption in Bangladesh*. Keynote presentation at annual summer session of Empowerment through Law of the Common People, Dhaka.
- Barkat, A., & Ahmed, N. (2001, September). *Human poverty and deprivation in Bangladesh: Lack of substantive freedom and eradication possibilities*. Keynote paper presented at the workshop Venture Humanity: Overcoming the Gap-Ways out of Poverty of Die Lichtbruck (The Bridge of Light), Engelskirchen, Germany.
- _____. (2000, January-February). *Transforming human deprivation into human development in Bangladesh: Nature, extent and doables*. Paper presented at Millennium Vision 2000 Workshop of Die Lichtbrucke, e.V, Germany.
- Barkat, A., & Akhter, S. (2001). A mushrooming population: The threat of slumization instead of urbanization in Bangladesh. *The Harvard Asia Pacific Review*, Winter Issue 2001, Harvard, Cambridge, MA.
- _____. (2000). Urbanization and internal migration in Bangladesh: The onset of massive slumization. *Refugee and Migratory Movements Research Unit (RMMMRU) Journal*, Dhaka.
- Barkat, A., & Islam, K. (1999). *Government-NGO collaboration in health and population sector programme*. Dhaka: Health and Population Sector Programme (HNPSP) Consortium Working Group.
- Barkat, A., Khan, S.H., Haque, M., Ara, R., Zaman, S., Poddar, A., & Rahman, B. (2003). *Impact study of rural electrification project: Mechanism of poverty alleviation fostered by rural electrification*. HDRC. Dhaka: Japan Bank for International Cooperation Representative Office Dhaka.
- Barkat, A., & Karim, A. (2001). *Fisheries sector policy and social trends that impact livelihoods and poverty*. Dhaka: Department for International Development.
- Barkat, A., Khan S.H., Rahman, M., Zaman, S., Poddar, A., Halim, S., Ratna, N.N., Majid, M., Maksud, A.K.M., Karim, A., & Islam, S. (2002). *Economic and social impact evaluation study of the rural electrification program in Bangladesh*. Dhaka: Human Development Research Centre.
- Barkat, A., & Majid, M. (2001, May). *Overview of the diseases of poverty in Bangladesh*. Paper prepared for Partners in Population and Development (PPD) and South-South Centre, presented at consultation workshop of advocacy efforts against the disease of poverty, Dhaka.
- Barkat, A., Roy, P.K., & Khan, M.S. (2007). *Charland in Bangladesh: Political economy of ignored resources*. Dhaka: Pathok Samabesh
- Barkat, A. and Roy, P.K. (2003). Bangladesh: Community-based property rights and human rights: An overview of resources, and legal and policy developments. In I. de la Torre, & D. Barnhize. (Eds.), *The blues of a revolution: The damaging impacts of shrimp farming*. City? ISA Net and APEX, USA.
- _____. (2004). *Political economy of land litigation in Bangladesh: A case of colossal national wastage*. Dhaka: Pathok Samabesh.
- Barkat, A. & Zaman, S. (1997). Vested property act: Towards a feasible solution. In *Land: A journal of the practitioners, development and research activists*, Vol. 3, No. 3. Association of Land Reform and Development, Dhaka.
- _____. (2004). *Indigenous people's rights and access to public resources: Santal's struggle for survival*. Dhaka: Association for Land Reform and Development.
- _____. (1998, August). *Impact of vested property act on minorities in Bangladesh: A human rights perspective*. Paper presented at the Regional Consultative Meeting on the Minorities of the South Asian Forum for Human Rights, Kathmandu.
- Barkat, A., Zaman, S., & Hussain, K.A. (1997, November). *Bangladeshe arpito sampotti aain o tar provab: Samassa o samadhan prosange* (in Bengali). Paper presented at the national seminar of the Association for Land Reform and Development.
- Barkat, A., Zaman, S., Rahman, A., & Poddar, A. (1996). *Impact of vested property act on rural Bangladesh: An exploratory study*. Dhaka: Association for Land Reform and Development, University Research Corporation (Bangladesh).
- _____. (1997). *Political economy of vested property act in rural Bangladesh*. Dhaka: Association for Land Reform and Development.
- Barkat, A., Zaman, S., Rahman, A., Podder, A., Ullah, M., Hussain, K.A., & Gupta S.K.S. (2000). *An inquiry into causes and consequences of deprivation of Hindu minorities in Bangladesh through the Vested Property Act*. Dhaka: PRIP Trust.
- Barkat, A., Zaman, S., & Raihan, S. (2000). *Khas land: A study on existing law and practices: Programme for research on poverty alleviation*. Dhaka: Grameen Trust, Grameen Bank.
- _____. (2001). *Political economy of khas land in Bangladesh*. Dhaka: Association for Land Reform and Development.
- Baque, A. (1998). *Peopling in the land of Allah Jane: Power, peopling and environment: The case of Char-lands Bangladesh*. Dhaka: The University Press Limited.
- Bhattacharya, D.C. (1994). *Nature and character of enemy (vested) properties*. Dhaka: Samprodaik Samprity Parishad.
- Bangladesh Institute of Development Studies. (1992). *Urbanization and Urban Poor in Bangladesh*. Dhaka: Bangladesh Institute of Development Studies.
- Bose, S. (1986). *Agrarian Bengal: Economy, social structure and politics 1919-1947*. London: Cambridge University Press.
- Chowdhury, A.M., Hakim, A., & Rashid, S.A. (1997). Historical overview of the land system in Bangladesh. In *Land* Vol. 3, No.3. Dhaka: Association for Land Reform and Development.
- DFID Fisheries Bangladesh, Issue 2. (1997). DFID Magazine, Dhaka.
- Gain, P., & Moral, S. (1995). Land right, land use and ethnic minorities of Bangladesh. In *Land Journal*, Vol. 2. No. 2.
- Gain, P. (Ed.). (1998). *Bangladesh Environment: Facing the 21st Century*. Dhaka : Society for Environment and Human Development

- Gonochinta. (2004). *In 61 districts, 73,800 acres of khas land is illegally occupied*. Monthly Bulletin of Working People, Issue 76. Dhaka.
- Government of Bangladesh (1972). *The Bangladesh State Acquisition and Tenancy* (Fourth (1972), President's Order No. 135 (1972), Amendment) Order, 1972. Dhaka: Law Division, Ministry of Law and Parliamentary Affairs.
- _____. (1976). Memo No. 522(4)-vi-192/76, dtd.26.11.76. Section VI. Dacca: Ministry of Land Administration and Land Reforms.
- _____. (1982). *Land administration and land reforms*, Memo No. 537-V-105/82-L.S., dtd. 27.12.82. Sec. V. Dhaka: Ministry of Law and Land Reforms.
- _____. (1983). *Land administration and land reforms*, Memo No. 115(20)-V-105/82(1)-L.S., dtd. 10.5.83, Sec. V. Dhaka: Ministry of Law and Land Reforms.
- _____. (1984). *The state acquisition and tenancy act, 1980* (as modified up to 1983). Dhaka: Bangladesh Government Printing Press.
- _____. (1986). *Method of settlement of agricultural and non-agricultural government khas land Ref. No. 8-46/84/24(64)*, dtd. 6.1.86. Dhaka: Ministry of Land Administration and Land Reforms.
- _____. (1987a). *Bhumi prashasan manual (in Bangla) Land administration board*. Dhaka: Ministry of Land.
- _____. (1987b). *Land administration manual, land administration board*. Dhaka: Ministry of Land.
- _____. (1987c). *Land reforms action programme*. Circular No. 01/1394 B.S. No. Land Cell/1-1/17, dtd. 1.7.87. Dhaka: Ministry of Land, Land Reforms Cell.
- _____. (1987d). *Method of settlement of khas agricultural land among the landless*, Memo No. 8-46/84/77, dtd. 8.2.87. Dhaka: Ministry of Land Administration and Land Reforms.
- _____. (1989). *Yearbook of agricultural statistics of Bangladesh 1987-88*. Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- _____. (1993a). *Bhumi sansker committeer protibedon (in Bangla). Report of the land reform committee*. Dhaka: Ministry of Land.
- _____. (1993b). *Yearbook of agricultural statistics of Bangladesh 1992*. Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- _____. (1994). *The constitution of the people's republic of Bangladesh*. Dhaka: Ministry of Law, Justice and Parliamentary Affairs.
- _____. (1995). *Memo No. 21(18)-v-213/74-L.S. dtd.10.1.75. Section V*. Dhaka: Ministry of Land Administration and Land Reforms.
- _____. (1996). *Report on labour force survey in Bangladesh: 1995-96*. Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning, Bangladesh.
- _____. (1998a). *Fifth five year plan 1997-2002*. Dhaka: Planning Commission, Ministry of Planning.
- _____. (1998b). *Task force report on agricultural research and development plan for the coastal region of Bangladesh*. Dhaka: Bangladesh Agricultural Research Council.
- _____. (1999a). *Census of agriculture 1996* (Vol. 1). Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- _____. (1999b). *Census of agriculture 1996* (Vol. 2). Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Planning Division, Ministry of Planning.
- _____. (1999c). *Census of slum areas and floating population 1997* (Vol. 1). Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- _____. (1999d). *Statistical year book of Bangladesh 1998*. Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- _____. (1999e). *Yearbook of agricultural statistics of Bangladesh 1999*. Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- _____. (2001a). *Human development report 2002, Fighting Human Poverty: Bangladesh*. Dhaka: Bangladesh Institute of Development Studies.
- _____. (2001b). *Performance of Bangladesh economy 1991-2001*. Dhaka: General Economics Division, Planning Commission, Ministry of Planning.
- _____. (2001c). *Preliminary report of household income and expenditure survey 2000*. Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- _____. (2001d). *Report on Bangladesh census of manufacturing industries*. Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- _____. (2001e). *Sharanika, July 6-12, 2001*. Dhaka: Department of Fisheries, Ministry of Fisheries and Livestocks.
- _____. (2002). *Bangladesh: A National Strategy for Economic Growth and Poverty Reduction*. Economic Relations Division, Ministry of Finance, Dhaka.
- _____. (2003a). *A national strategy for economic growth, poverty reduction and social development*. Dhaka: Economics Relations Division, Ministry of Finance.
- _____. (2003b). *Bangladesh economic review 2003*. Dhaka: Ministry of Finance.
- _____. (2003c). *National environment management action plan*. (1995). Dhaka: Ministry of Environment and Forest.
- _____, various years. *Statistical pocketbook of Bangladesh*. Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- _____, various years. *Bangladesh Population census*. Dhaka: Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.
- Government of Bengal. (1933). *The Bengal government estates manual*. Calcutta: Board of Revenue, Bengal Secretariat Book Depot.
- Government of East Bengal. (1951). *East Bengal Act XXVIII of 1951: East Bengal state acquisition and tenancy act, 1950*. Dacca: Government Printing, East Bengal Government Press: Dacca.

- Government of Pakistan. (1951). *Census of Pakistan population 1951* (Vol. 2). Karachi: Ministry of Home and Kashmir Affairs.
- _____. (1961). *Census of Pakistan population 1961* (Vol. 2). Karachi: Ministry of Home and Kashmir Affairs.
- _____. (1962). *East Pakistan code* (1st ed., Vol. 7). Dacca: Law Department.
- _____. (1967). *East Pakistan code* (1st ed., Vol. 8). Dacca: Law (Legislative) Department.
- Government of East Pakistan (1965). *Statistical digest of East Pakistan 1964* (No.2). Dacca: East Pakistan Bureau of Statistics, Board of Revenue.
- _____. (1970). Circular No. 16-S.O.-20/69, dtd. 25.5.70. Dacca: Board of Revenue.
- _____. (1963). *Report of the land revenue administration enquiry committee (RLRAEC), 1962-63*, (popularly known as *Hussain Report* after the Committee's Chairman Khan Bahadur Muzzamuddin Hussain). Dacca: Revenue Department.
- _____. (1960). *Report of the East Pakistan land reforms committee*. Dhaka: East Pakistan Government Press.
- _____. (1958). *The government estates manual 1958*. Dacca: East Pakistan Government Press.
- _____. (1956). Memo no. 9205 (16)-S.A., IV. 1024/56, dtd. 30.11.56. Dacca: Board of Revenue.
- Hamid-Akhter, M., et al. (1998). *Shrimp-rice farming system in Bangladesh*. (Working paper, 2000). Brisbane: University of Queensland.
- Haque, M.S. (1989). *Bhumi proshahan babystapona* (in Bangla): *The land administration manual*. Chittagong, Bangladesh.
- Hossain, T. (1995). *Land rights in Bangladesh: Problems of management*. Dhaka: University Press Limited.
- Hossain, Z.R. (1994). Land administration reform in Bangladesh. In *Land Journal* Vol. I, No. 1. Dhaka: Association for Land Reform and Development.
- _____. (1995). Reform in land administration. In *Land Journal*, Vol. 1. No. 1. Dhaka: Association for Land Reform and Development.
- Hye, H.A. (1982). *Land reform in Bangladesh*. Dhaka: Bangladesh Administrative Staff College.
- Islam, M., & Barkat, A. (2001, June). *Unproductive and human development expenditures in the revenue budget in Bangladesh: An issue paper*. Issue paper presented at the round-table of the Bangladesh Economic Association, Dhaka.
- Jannuzi, F.T., & Peach, J.T. (1990). Bangladesh: A strategy for agrarian reform. In R.L. Prosterman, M.N. Temple, & T.M. Hanstad (Eds.). *Agrarian reform and grassroots development: Ten case studies*. Lynne Rienner Publishers, Inc.
- Jansen, E. (1983). *Rural Bangladesh: Competition for scarce resources*. (Working Paper 162). Dhaka. Development Research and Action Programme.
- Kabir, L. (1960). *Land laws in East Pakistan* (Vol. 2). Dacca.
- Khan, A.S. (Ed.). (1994). *Wet lands of Bangladesh*. M.S. Khan, et al (Eds.).
- Khan, A.S., & Bhyiya, S. (2003). Land question: Key missing issue in I-PRSP. In *Right Journal* (Vol. 3.) Dhaka: Samata.
- Krishi khas jomi byabosthapona o bondobosto kommiteer shadoshyader obohitokoron karmoshala-shohaiika* (in Bangla): *Information dissemination workshop for the members of agricultural khas land management and settlement committee: Manual 1998*. (1998) Dhaka: Association for Land Reform and Development.
- Mia, M.A.K. (1995). *Bhumi babystopona manual 1990*; (Practice and Procedure Manual 1969); Record Manual 1943 (in Bangla). Dhaka: AK Prakashani.
- Nisat, A., et al. (Eds.). (1993). *Fresh water wetlands in Bangladesh: Issues and approaches for management*.
- Rahman, M.P.K. (2004). *Poverty in rural Bangladesh*. Dhaka: University Publishers Limited.
- Romesh, D. (1906). *Economic history of British India*. London.
- Food and Agriculture Organization, Network of Aquaculture Centres in Asia-Pacific. (1995). *Report on a regional study and workshop on the environmental assessment and management of aquaculture development, FAO/NACA*. Bangkok: Food and Agriculture Organization, Network of Aquaculture Centres in Asia-Pacific.
- Sen, A.K. (1999). *Development as freedom*. New York: Alfred A. Knopf.
- Siddiqui, K. (1981). *Bangladeshe bhumi-sanskarer rajnaitik orthoniti* (in Bangla) *Political economy of land reform in Bangladesh*. Dhaka: Bangladesh Institute of Development Studies.
- Sobhan, R. (1993). *Agrarian reform and social transformation: Preconditions for development*. Dhaka: University Press Limited.
- Sonar cheeya dami Dhakar khas jomi: *Nobboi vhaq bedokhol* (in Bangla) *Khasland in Dhaka is more precious than gold: 90 percent illegally occupied*. In *Sapthahik* (2000), pp. 37-44.
- Taufique, K.A., & Turton, C., (Eds.). (2002). *Hands not land: How livelihoods are changing in rural Bangladesh*. Dhaka: Bangladesh Institute of Development Studies and Department for International Development.
- Ullah, M. (1996). *Livelihood and change in rural Bangladesh*. Dhaka: University Press Limited.
- United Nations Development Programme. (1989). *Land, water and irrigation: Bangladesh agricultural performances and policies (Compendium)* (Vol. 3.). Dhaka: Bangladesh Agricultural Sector Team.
- _____. (2006). *Human development report 2006: Beyond scarcity: Power, poverty and global water crisis*. New York: Oxford University Press.
- World Bank. (1990). *World development report 1990: Poverty*. Washington D.C.: Oxford University Press.
- _____. (1998). *Bangladesh: From counting the poor to making the poor count*. Washington D.C.: Oxford University Press.
- _____. (2002). *Taming leviathan: Reforming governance in Bangladesh*. Washington, D.C.: Oxford University Press.
- _____. (2003) *World development report 2004: Making services work for poor people*. Washington D.C.: World Bank.
- World Health Organization. (2001). *Macroeconomics and health: Investing in health for economic development*. Geneva: Commission of Macroeconomics and Health, World Health Organization.

Overcoming a Failure of Law and Political Will

CAMBODIA Country Paper
Land Watch Asia





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This paper is an abridged version of the original Cambodia Land Watch Country Paper “Country Paper Cambodia on Land Issues” on the status of access to land, water and opportunities and strategies for civil society advocacy. This is a collective effort of many civil society organizations, including STAR Kampuchea members and partners, and also individuals in Cambodia.

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Acronyms

ADHOC	Cambodian Human Rights and Development Association
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
APSARA	Authority for Protection and Management of Angkor and the Region of Siem Reap
CACN	Civil Society Advocacy Coordination Alliance
CC	Commune Council
CDCF	Cambodian Development Cooperation Forum
CDRI	Cambodia Development Resource Institute
CG	Consultative Group
CHRAC	Cambodian Human Rights Action Committee
CMDGs	Cambodia Millennium Development Goals
DCA	Dan Church Aid
ELC	Economic Land Concession
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit/ German Technical Agency
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Land Coalition
ILO	International Labour Organisation
JMIs	Joint Monitoring Indicators
K-NAN	Kampong Cham NGO Advocacy Network
LAND	Land Action Network for Development
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
L-LIN	Land Law Implementation Network
LMAP	Land Management and Administration Project
MAFF	Ministry of Agriculture, Forestry and Fisheries
MLMUPC	Ministry of Land Management, Urban Planning and Construction
NALDR	National Authority of Land Dispute Resolution
NPA	Norwegian People's Aid
NPRS	National Poverty Reduction Strategy
NSDP	National Strategic Development Plan
OHCHR	Office of the High Commissioner for Human Rights
PANs	Provincial Advocacy Networks of STAR Kampuchea
PNDA	Project Nature Determining Agency
RCAF	Royal Cambodian Armed Forces
RCW	Ramsar Convention on Wetlands
RGC	Royal Government of Cambodia
SLC	Social Land Concession
TWG	Technical Working Group
UDHR	The Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
WFP	World Food Programme

CAMBODIA

QUICK FACTS

- Poverty is primarily a rural phenomenon. In 2004, 91% of the poor lived in rural areas.
- Forty (40) percent of households whose heads are engaged in agriculture are poor.
- Incidence of land related conflicts: 1,551 land disputes between 1991 and 2004, covering over 380,000 hectares and more than 160,000 farming families.
- As of 2006, two-thirds of these cases remain unresolved (2006 LICADHO Report).



Overview of Access to Land

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

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

In 1975, the Khmer Rouge Regime put all lands under state ownership, destroying all records, including cadastral maps and

titles. Government employees involved in land management, registration and surveying who did not manage to leave the country were re-deployed to the countryside or executed. In 1979 the State of Cambodia organized the collective as the basis for claiming user rights to agricultural land: while residential use rights were allocated on the basis of occupation, ownership of land still remained in the hands of the State.

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

Later, private property rights were also awarded under the Land Law of 1992. However, this law failed to regulate the granting of land concessions and it wasn't until 1998 that the Ministry of Land Management, Urban Planning and Construction (MLMUPC) was established to oversee the development of the policy and regulate the awarding of land concessions. This ministry also coordinated land-use mapping and cadastral surveys,



implemented land registration, and administered land transactions. The Land Law of 1992 was also amended in 2001 to address more directly the same regulatory concerns. Yet the NGO sector in Cambodia is one in the opinion that the law has not been properly implemented.¹

According to the NGO Forum of Cambodia, "The inadequate enforcement of laws and executive regulations in relation to the management of land and natural resources results in the spoliation of the natural and cultural heritage of Cambodian citizens, especially vulnerable groups living in remote areas, through the use of different practices, such as misinformation, intimidation, threats, land grabbing, illegal logging and illegal land sales."²

NGO and donor representatives view this as part of bigger problems related to poor governance, such as shrinking democratic space, lack of rule of law and legal impunity, lack of transparency and competence, and corruption³. The institutions responsible for equitable land administration and conflict resolution also face these problems, in addition to being overly bureaucratic. As a result, even if cases of land disputes proceed to the courts, the complainants frequently lose⁴. In other words, the increasing problem of landlessness is not given sufficient recognition by responsible government agencies.

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

"Patron-client relationships" have their origins in the Cambodian tradition of absolute rule. In the absence of public law, relationships are based on the patron's role of offering physical protection and financial assistance and, conversely, on the client's obligation to show loyalty and occasionally, render service, to his patron. The continuance of this traditional power structure is thought to be one of the reasons for the ineffectiveness of land dispute resolution mechanisms. The "patron-client relationship" is based on the assumption that the patron would always act benevolently toward the client, for fear of losing power, influence, and authority. However, this assumption is true only if the client is able to exert sufficient influence on the patron. Observers have noted that majority of the Cambodian population are unable to exert enough pressure to force a resolution of land disputes.

CASE STUDY #1

The Killings in Kbal Spean

On 21 March 2005, a mass eviction took place in Kbal Spean, a village in Poipet commune, O'Chrov district, Banteay Meanchey province. In the ensuing scuffle, 5 villagers were killed and at least 40 others were injured. Three members of the military and police forces were arrested, but were later released without charge.

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

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

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

uncertain fate. Nobody was charged for what the villagers regard as an illegal eviction, nor for the deaths of the 5 villagers. No land titles have been distributed to the villagers.

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

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

Until now, Human Rights Organizations are urging the government to continue its investigation of the eviction and the killing of the five villagers of Kbal Spean. They argue that the resolution of the land dispute does not expunge the culpability of the murderers nor the victims' right to justice.



Land Ownership and Distribution

- In 1999, 5% of landowners held close to 60% of all privately held land. By 2003, their share had risen to 70%. This means that the top 5% of landowners are increasing their control of private lands by 2% per year.
- Farming households own an average of 1.5 hectares of land. However, 40% of households own less than 0.5 hectare.
- Twenty (20) percent of rural people are landless.

- Only 20% of landowners in Cambodia hold secure title to their land.
- Landlessness is a key indicator of vulnerability to poverty. The following landless groups are especially vulnerable:
 - > Female headed households. The rate of landlessness among female headed households is 21.2%.
 - > Rural families, especially female-headed ones, that rely on common property resources, such as public land and water, are more likely than most to fall victim to land grabs, insecure land tenure, and food insecurity.
 - > People who live in or next to concession areas.
 - > Residents of informal settlements in urban areas.
 - > Indigenous peoples.

Issues Affecting Access to Land and Tenurial Security

Rising Demand for Land as an Economic Asset

Because of economic growth and development, the demand for land is increasing and land values are going through the roof. Even if overall population densities are fairly low in Cam-

CASE STUDY #2

The Dispossession of Cambodia's Indigenous Peoples

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

Even without a formal title, indigenous peoples have certain property rights, for example, user rights, by virtue of the Forest Law.

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

The failure to implement national laws is not the only problem. Until now the Government of Cambodia has not yet ratified Con-

vention No. 169 Concerning Indigenous and Tribal Peoples (1989) of the International Labour Organization (ILO). This convention seeks to protect indigenous peoples as a workforce on their land, and thus their way of life. An important provision of this convention, Article 14.3, obligates the State to take all necessary steps to fully implement international laws for the protection of indigenous peoples at the national level. If the Cambodian Government were to ratify this convention, it would find itself in a bind; hence, it is wavering in signing the convention.



bodia, compared to its neighbors, land speculation and the unregulated allocation of land concessions are putting increasing pressure on the land. The rising demand for land is also attributed to the privatization of public lands, mega-development projects, the establishment of Special Economic Zones (SEZs), land grabbing, and the allocation of land to the military. The price of land has skyrocketed, especially along the national borders, coastal areas, urban centers, and roads being rehabilitated. Settlers in Anlong Veng District, Oddar Meanchey province, near the Thai border, have reported that the price of land along the main road to Thailand has tripled, in anticipation of the boom in tourism and business. As a result, land grabbing has run rampant throughout the country. The culprits are mostly military officials, businessmen, and politically influential persons. Land grabbing has become the main cause

of land dispossession in both urban and rural areas in Cambodia. These property thefts are made easier because local people rarely have titles to their land.

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

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

CASE STUDY #3

No Poor People Allowed in Angkor Wat

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

In the year 2003, the APSARA Authority, the government agency tasked with overseeing Angkor Wat, started to impose restrictions on the activities of residents in the area. It listed the names of the villagers, took pictures of their houses, and forbade them to make improvements on the latter, or to build new ones. APSARA also prohibited the collection of firewood from the forest.

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

Poor Land Governance

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

In regard to land governance, Cambodia has performed as badly. The Cadastral Commission, which was set up in 2002 as a dispute resolution mechanism, is plagued with bureaucracy and corruption. The NGO Statement on the Monitoring of CG Indicators, issued in June 2006, noted the Commission's general weakness and lack of resources. It reported that while the Commission has improved its ability to address small conflicts, "it is not very successful in addressing more complicated cases that involve powerful people because of the pressure and threats it [is subjected to] when dealing with such cases."

Elin Enge, of the NPA Oslo Land and Resource Rights Advisor, observed that "land registration leads to speculative investment and more and better land being held by the elite." Land redistribution is not a priority of the government and leading international organizations. To benefit the poor and marginalized people, land registration needs to be participatory and should

include the poor in all decision-making processes. Other rights, especially collective land rights, in regard to indigenous communities, need to be considered.

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

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

The parallel and overlapping operations of the Cadastral Commission, the court, and the National Authority of Land Dispute Resolution (NALDR) have resulted in many legal ambiguities. At the eighth meeting of the Government–Donor Committee in October 2006, the Ambassador of Germany, Pius Fischer demanded that “its [NALDR’s] relationship and jurisdiction vis-à-vis the cadastral commissions and the courts be clarified, as the lack of clarity is causing general legal concerns.” The NGO Statement on the Monitoring of CG Indicators (June 2006) also raised the concern that the NALDR might be undermining “the capacity of existing judicial institutions mandated to resolve land disputes.”

Other problems that are indicative of poor land governance are as follows:

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

Insufficient Implementation of the Land Law

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

For example, Article 5 of the Land Law of 2001 provides protection against eviction and, where eviction is unavoidable, fair compensation, for the evictees. In 2005, more than 70 families were illegally and forcibly evicted from Koc Pich Island, Phnom Penh, in the Tonle Bassac River. The island would be developed as a “satellite city,” and the land was valued at US\$25 per square meter. After a long negotiation with the residents of the island, the latter agreed to sell their land at US\$5.25 per square meter, and thereafter left the island. Other families were able to get US\$12 per square meter.

Article 18 and 19 of the Land Law of 2001 set a ceiling of 10,000 hectares for concessions. However, the government continues to grant ELCs for areas that are beyond the mandated ceiling.

Another sub-decree of the Land Law of 2001 that has yet to be adopted by the government is that which recognizes and provides for the registration of the land rights of indigenous peoples.

Lack of Access to Land as a Determinant of Poverty

Farming households that own a hectare of land, or less, are unable to earn enough income for subsistence. In Cambodia, 40% of households own less than 0.5 hectare.

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

The increasing incidence of landlessness and near-landlessness among the rural poor, combined with the latter’s diminishing access to common property resources, especially forests, which

are awarded to private interests through a concession, have reduced many of Cambodia's poor to dire straits. Chronic starvation is a real concern. Female-headed households used to be able to fend for their families by gathering snails, shellfish, firewood, weeds and other non-timber forest products. Today, because of the concessions, this alternative source of livelihood has been closed to them.

Legal and Policy Framework for Access to Land and Tenurial Security

Laws

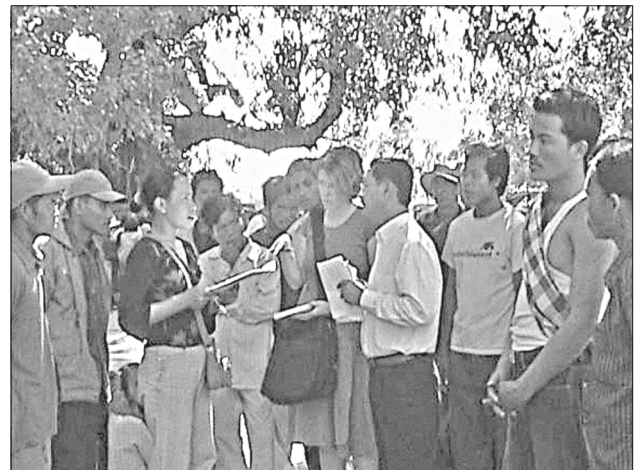
Constitution of the Kingdom of Cambodia (1993)

- Provides that "all persons, individually or collectively, shall have the right to ownership. Legal private ownership shall be protected by Law. The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law, and shall require fair and just compensation in advance. (Article 44);
- Provides that the control, use, and management of state land should be protected by law. (Article 58); and
- Declares the Kingdom of Cambodia's adherence to the United Nations Charter, the Universal Declaration of Human

Rights, Article 17(2) which states that, "No one shall be arbitrarily deprived of his property."

Land Law of 2001

- Guarantees the inalienability of land, which is recognized by Cambodia's Constitution;
- Creates a status of registerable ownership of land, which specifically puts women on an equal footing with men (Article 168);
- Establishes the legal framework for a collective ownership arrangement, which is specifically designed for the protection of indigenous land and traditional ways of life (Article 23–26); and



CASE STUDY #4

Village Lost to Landgrabbers

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

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

gue fever and malaria are common ailments among the residents of Knal Roveas.

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

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

Reap to Thailand.

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

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

- Provides for a land distribution policy to benefit the rural poor, specifically through the grant of Social Land Concessions (SLCs) (Article 17).

Forest Law of 2002

- Provides the framework for forest classification;
- Provides for the creation and management of community forests, such that communities are granted an area within the Permanent Forest Reserve to manage and derive benefit from;
- Guarantees the entry rights of local communities into forest concessions (Article 15,40);
- Prohibits the logging of certain trees valuable to local communities, such as resin producing trees, or trees likely to produce resin; as well as trees and areas of cultural or religious significance, such as spirit forests (Article 45); and
- Mandates the sustainable logging of natural and plantation forests (Article 10).

Sub-Decrees of the Land and Forestry Laws

Sub-Decree on Social Land Concessions of 2003

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

Sub-Decree on State Land Management of 2005

- Describes the principles and mechanisms for the identification, registration, and classification of state land, including regulations on its allocation, management and re-classification. The determination of which are state public lands and which are not is necessary for the allocation of SLCs and ELCs.

- Problems in implementation:
 - > There are many government agencies involved in the various steps for identifying, mapping, and demarcating land. Hence, progress, especially in demarcating land, has been slow. Unless lands are properly demarcated, the process of determining which lands could be awarded as concessions will take longer. Civil society groups believe that once land has been completely demarcated, disputes concerning concessions will be significantly reduced.

Sub-Decree on Economic Land Concessions of 2005

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

Sub-Decree on Community Forestry of 2003

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



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

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

Development Plans

Royal Government of Cambodia's Rectangular Strategy of 2004

- Focuses on four growth "rectangles," one of which is "Enhancement of Agricultural Sector." This covers:
 - > Improved productivity and diversification of agriculture;
 - > Land reform and clearing of mines;
 - > Fishery reform; and
 - > Forestry reform.

In the chapter on land reform and de-mining, the government promises to strive for the implementation of the Land Law and land distribution for the benefit of the poor. It sets forth the aim of "strengthen[ing] an equitable and efficient system of land management, distribution, and utilization, including land registration and distribution, land tenure security, eradication of illegal settlements and land grabbing, and the control of land ownership concentration for speculative purposes." It also gives priority to the strengthening of the land tenure rights of people who need small lots for settlement and family production within the SLC framework.

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

Cambodia Millennium Development Goals (CMDGs) [updated in 2005]

- Goal 1 of the CMDGs is the "eradicate[ion of] extreme poverty." However, as updated by the Government, Goal 1 does not directly include pro-poor redistribution of land.

International Conventions

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

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

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

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

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

- Aims to protect wetlands and waterfowl, and requires signatory countries to choose which of their wetlands would be included in the RCW protection list. The wetlands would then be protected as national parks.
- Compliance by the Government: Efforts to demarcate protected land are hindered by the Government's failure to delineate state public and state private land. State public land is land which has a public interest use, while state private land is neither state public land nor privately or collectively owned land. The distinction is important because only state private land could be awarded as ELCs or SLCs.

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

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

Actors Facilitating or Impeding Access to Land and Tenurial Security

Civil Society and National and International NGOs

National Civil Society Organizations (CSOs)

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

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

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

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

The National NGOs in Cambodia include Adhoc, Licadho, and Legal Aid of Cambodia. The network organizations are the NGO Forum of Cambodia, STAR Kampuchea, and the Cambodian Human Rights Action Committee. The Pagoda (monks) is also involved in the political affairs of the country.

International Donors

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

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

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

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

The Private Sector

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



National and Local Government

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

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

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

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

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

- **Ministry of Rural Development**

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

Prime Minister Hun Sen has declared that the Cambodian Government has made significant progress toward developing legal frameworks required for land reform.⁵ However, the Government has also acknowledged that the majority of rural farmers have yet to benefit from the country's economic growth (8.4% per year from 1994 to 2006), and that building tenurial security is the first step toward improving the economic conditions of the poor.

Hun Sen has also announced the tightening of criteria for granting ELCs and cited the need to allocate land to the landless

CASE STUDY #5

Private Interests vs. Local Needs

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

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

In November 2004, the company restarted its activities after securing a permit from the Ministry of Agriculture, Forestry and Fisher-

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

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

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

In March 2005, the village resumed its protest, but this time adopted the strategy of active non-violence. Following this, Pheapimex's operations suddenly stopped.

A resolution calling for the establishment of a Community Forestry group among the affected communities has been submitted to the Provincial Office in Pursat. The resolution was formulated with the help of STAR Kampuchea and the Civil Society Advocacy Coordination Alliance (CACA), and the Commune Council.

This case highlights four important aspects. Firstly, companies make decisions without consulting the affected communities, and often despite opposition from the latter. Secondly, companies make only token efforts to resolve a conflict⁶ (including public dissemination of relevant information). Thirdly, government officials, at all levels, tend to ignore even the most obvious violations committed by private companies⁷. Fourthly, affected people and villagers need the help of NGOs to develop their advocacy skills, to utilize non-violent resolution mechanisms, and to be made aware of their rights.

by allocating SLCs. He blamed the country's politicians for abetting the illegal occupation of state or privately owned land for political ends⁸, and thus for hindering the process of SLC distribution. He also pointed to the difficulty in identifying the genuinely landless households.

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

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

However, even on prodding by donors, the Government is still loathe to release information concerning the allocation of concessions to private interests and the military, thus raising doubts about the sincerity of Hun Sen's declarations.

Joint Monitoring Indicators

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

Impact of Government Policies

NGO network representatives have acknowledged that the Prime Minister holds the real power in the country. He has a strong incentive for resolving land disputes in favor of the poor,

but he often fails to do so because of a poor governance structure. The ministries exercise little authority in comparison to the Prime Minister, but they are ultimately responsible for implementing government policy and drafting laws. However, because not all of them are involved in land disputes, the ministries are regarded as "neutral" vis-à-vis land issues. Furthermore, even if they should choose to intervene in favor of the poor, the ministries are often powerless to act, and have to defer to higher-ranking officials. The courts have much more power, but are generally viewed as anti-poor.

Land Partnerships in Cambodia

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

Land Action Network for Development

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

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

LAND is highly appreciated by Cambodian NGOs and is often cited as a successful example of partnership between NGOs. However, LAND's effectiveness is hampered by the refusal of Government representatives to attend its meetings. The infrequency of LAND meetings also works against sustaining the commitment of international NGOs.



Land Management and Administration Project, Ministry of Land Management, Urban Planning and Construction

The Land Management and Administration Project (LMAP) is a multi-donor funded project formed in 2002 which is being implemented by the MLMUPC. LMAP, which is operating in 11 provinces, is credited with the issuance and registration of one million land titles under the systematic titling process, as well as the reinforcement of land administration staff at the provincial and national levels.

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

Technical Working Groups

Technical Working Groups (TWGs) are partnerships between the Government and international donors with some civil society representation. There are 18 TWGs covering different development priority areas, including TWG-Land.

The TWG-Land had helped to ensure that the sub-decrees on ELCs and State Land Management were developed in consultation with TWG members and the public. However, the private sector is not represented in the TWG, despite its increasingly influential role in land concerns. In addition, the NGO and civil society representatives in the TWG have so far played only a limited role. Coordination within and between the different TWGs also needs improvement.

National Authority on Land Dispute Resolution

The National Authority on Land Dispute Resolution (NALDR) was created by the Government in March 2006 to complement the work of the courts, and to resolve land disputes beyond the jurisdiction or capacity of the Cadastral Commission. Civil society groups have declined to join the NALDR for fear that the institution was biased, that they would be exploited by the Government and would lose their independence. As an alternative to formal membership in the NALDR, the NGOs would provide support and act as an independent monitor. However, since the NALDR was formed, its representatives have not met with the NGOs, despite the latter's request. The institution also creates a parallel level of bureaucracy without a clear mandate or terms of cooperation with the Cadastral Commission. This has under-

mined the role and rule of the courts and the Cadastral Commission in adjudicating land cases.

Opportunities, Risks and Challenges to Advance Access to Land and Tenurial Security

Opportunities

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

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

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

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

Risks and Challenges

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

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

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

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

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

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

A clear example of the Government's unwillingness to work with NGOs is its lack of interest in joining the Land Partnership Study that was conducted by STAR Kampuchea and the NGO Forum of Cambodia. These two networks believe that Government's reluctance to participate in the study epitomizes the current problems of lack of communication and trust, which hinder opportunities for partnership on land issues.

- **Disharmony Between Donor and Government Programs**
While international donor organizations declare their intent to work in harmony with the Government, the uncoordinated donor support for different methods of land use mapping in Cambodia is proof to the contrary.
- **Political Apathy of Donors**
International donor and development organizations are primarily oriented toward providing technical support. The majority of them avoid getting enmeshed in controversial or political issues. They have never used their political clout to pressure the Government to improve its human rights record, and observers believe they will not begin anytime soon, i.e., become advocates against landlessness and other land disputes.
- **Constraints to Strengthening NGO–Donor–Government Relationships**
Firstly, there is a power imbalance between National NGOs and international development and donor organizations, and this is tilted against the former. Secondly, donors feel that the inherent mistrust between the Government and NGOs restricts progress for tripartite cooperation in regard to land and natural resources management, and believe that land distribution would be more effective if the Government and the private sector were to team up instead. Thirdly, donors and development organizations question the legitimacy of NGOs to represent affected communities and vul-

nerable groups, since the latter do not normally elect which NGOs would speak on their behalf. Donors prefer increased direct representation and organization by affected peoples. Donors are also concerned that a number of NGOs are not genuinely interested in empowering people, but operate more as private enterprises concerned with turning a profit.

Endnotes

- ¹ Cristina Mansfield, *Advocacy in Cambodia: Increasing Democratic Space*, 2002, Phnom Penh, Cambodia
- ² See NGO Forum on Cambodia: *Rethinking Poverty Reduction to protect and promote the rights of indigenous minorities in Cambodia: A Human Rights approach to land and natural resources management*. April 2005, p. 7.
- ³ STAR Kampuchea's Land Partnership Study, conducted from October 2006–March 2007.
- ⁴ Report of the Special Representative of the Secretary–General for Human Rights in Cambodia, Mr. Yash Ghai, February 2006, Paragraph 39.
- ⁵ Prime Minister Hun Sen, "Address at the First Cambodia Development Cooperation Forum," Phnom Penh, 19 June 2007: paragraph 38.
- ⁶ It was reported to STAR Kampuchea interviewers that the company once approached the communities with an offer to settle the growing dispute but residents refused.
- ⁷ Due to the large size and nature of the land it can be concluded that the concession must have been decided by the National Government and not only by the Ministry of Agriculture.
- ⁸ Prime Minister Hun Sen, "Address at the First Cambodia Development Cooperation Forum," Phnom Penh, 19 June 2007: paragraph 40.

References

- Brownell, M. (2007). *Statement on agriculture and natural resources management*. Testimony given at first Cambodia development cooperation forum, Phnom Penh.
- Cambodia Development Review. (2006). *The World Bank's 2006 Cambodia poverty assessment: A CDRI response*. Phnom Penh: Cambodia Development Review.
- Cambodian League for the Promotion and Defense of Human Rights (LICADHO). (2006). *Human rights in Cambodia: The façade of stability*. Phnom Penh: LICADHO.
- Community Based Natural Resource Management Learning Initiative.



- (2005). *The development of community based natural resource management (CBNRM) in Cambodia*. Phnom Penh. Community Based Natural Resource Management Learning Initiative.
- Constitution of the Kingdom of Cambodia. (1993).
- Council for Land Policy. (2006). *Strategy of land policy framework*. (Interim paper, 2006). Approved by the Council of Ministers, Royal Government of Cambodia, Phnom Penh.
- Danish Ministry of Foreign Affairs (Danida) et. al. (2007). *Joint annual review of the natural resource management and livelihoods program, review aide memoire*. Phnom Penh.
- Enge, E. (2006, November). *Will formalizing property rights empower the poor? Or is this just another blueprint?* Presentation, Phnom Penh.
- Engquist, M. (2003). *Strengthening the people's voice: Decentralization reforms in Cambodia*. Roskilde & Phnom Penh.
- KI-media. (2007, March 6). *Hun Sen to land grabbers: This is war*. Retrieved July 5, 2007 from <http://ki-media.blogspot.com/2007/03/hun-sen-to-land-grabbers-this-is-war.html>
- United Nations Economic and Social Council, Commission on Human Rights. (2006). *Advisory services and technical cooperation in the field of human rights*. Ghai, Y., February 2006, United Nations Economic and Social Council, Commission on Human Rights
- Global witness. (2006, February 2). *Cambodia: Donors must demand progress, not promises; human rights, land, and rule of law should top donor advocacy agenda*. Retrieved July 13, 2007 from http://www.globalwitness.org/media_library_detail.php/426/en/cambodia_donors_must_demand_progress_not_promises_
- _____ (2007, June): *Cambodia's family trees: Illegal logging and the stripping of public assets by Cambodia's elite*. Retrieved July 13, 2007 from http://www.globalwitness.org/media_library_detail.php/546/en/cambodias_family_trees.
- _____ (2007, June 17): *Cambodia's international donors must demand investigation of mafia*, [Press release]. Global Witness.
- Landlessness and land conflicts in Cambodia*. (2007) Retrieved January 1, 2008 from http://www.landcoalition.org/pdf/07_r%5Bt_land_cambodia.pdf.
- Sen, H. (June 19 2007). Address presented at the First Cambodia Development Cooperation Forum, Phnom Penh, Cambodia.
- Sen, H. (June 7 2007). Address presented at the launching of the official report on "Financial sector development strategy for 2006–2015" and the opening of the conference on "Royal government of Cambodia–Asian development bank partnership toward an integrated and sound financial system, Phnom Penh, Cambodia.
- International Development Association and International Monetary Fund Cambodia (2006). *Joint staff advisory note of the Cambodia national strategic development plan (NSDP), 2006–2010*. Phnom Penh: *International Monetary Fund Publications Services*.
- International Land Coalition (2003). *Land Program Description and Guidelines for Establishing Land Partnerships*. Rome: International Land Coalition.
- Gecker, J. (2006, February 3). New killing fields in great Cambodian land grab. *The Standard: China's Business Newspaper*. Accessed July 13, 2007 from http://hkimail.singtao.com/news_detail.asp?we_cat=9&art_id=13177&sid=6874307&con_type=1&d_str=20060302
- Mansfield, C. (2002). *Advocacy in Cambodia: Increasing Democratic Space*. Phnom Penh: Pact.
- Minutes of the Misereor Partner Symposium, Access to land: Challenges for the poor and the response of the NGOs in Cambodia. (2007).
- NGO Forum on Cambodia. (2005). *Rethinking poverty reduction to protect and promote the rights of indigenous minorities in Cambodia: A human rights approach to land and natural resources management*. Phnom Penh, Cambodia. NGO Forum on Cambodia.
- NGO Statement to the 2006 Consultative Group Meeting in Cambodia*. (2006). Statement given at the NGO Forum on Cambodia, Phnom Penh.
- NGO Statement to the Cambodia Development Cooperation Forum*. (2007). Statement given at the Non-Governmental Organization Forum on Cambodia. Phnom Penh.
- Royal Government of Cambodia. (2004). *The rectangular strategy for growth, employment, equity and efficiency in Cambodia*. Phnom Penh: Royal Government of Cambodia.
- World Bank. (2005). *Cambodia rural sector strategy note. Towards a strategy for rural growth and poverty reduction*. Phnom Penh: World Bank, Rural Development and Natural Resources Sector Unit, East Asia and the Pacific Region.
- _____ (2005). *Assessment of potential impacts of social land concessions*. Phnom Penh: World Bank, East Asia and Pacific Region.
- _____ (2006). *Cambodia: Halving poverty by 2015? Poverty assessment 2006*. Phnom Penh: World Bank, East Asia and the Pacific Region.
- _____ (2007). *Sharing growth: Equity and development in Cambodia*. Phnom Penh: World Bank, Poverty Reduction and Economic Management Sector Unit East Asia and the Pacific Region.
- United Nations, Special Representative of the Secretary-General for Human Rights in Cambodia (2004): *Land concessions for economic purposes in Cambodia. A human rights perspective*. Phnom Penh: *United Nations, Cambodia Office of the High Commissioner for Human Rights*.
- Universal declaration of human rights*. (1948).

Riding the Crest of People's Movements

INDIA Country Paper
Land Watch Asia





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Acronyms

AVARD	Association of Voluntary Agencies for Rural Development
BJP	Bharatiya Janata Party
CPI	Communist Party of India
CPI(M-L)	Communist Party of India (Marxist-Leninist)
CPM	Communist Party (Marxist)
CSOs	Civil Society Organizations
DFID	Department for International Development
FD	Forest Department
GOI	Government of India
IFA	Indian Forest Act
IFAD	International Fund for Agriculture Development
IFI	International Financial Institutions
INC	Indian National Congress
MJVS	Manav Jeevan Vikash Samiti
NAC	National Advisory Council
NAP	National Agriculture Policy
NDA	National Democratic Alliances
NSS	National Sample Survey
PESA	Panchayat Extension to the Scheduled Areas
POs	People's Organizations
SCs	Scheduled Castes
SEZs	Special Economic Zones
STs	Scheduled Tribes
UPA	United Progressive Alliance
UNPA	United National Progressive Alliance
VANI	Voluntary Action Network of India
WLPA	Wildlife Protection Act

Glossary

Baiga	A tribe in India.
Bazar	Market.
Bhoodan	Land gift.
Dalits	Scheduled Castes.
Jan andolan	People's movement.
Janadesh	People's verdict; Retrieving people's dignity through land and livelihood campaign in India in October 2007
Lakh	One hundred thousand.
Panchayat	Local governance unit.

INDIA



QUICK FACTS

- In 1971–72, large and medium-size holdings covering 54% of the total land area were owned by the top 10% of landowners. By 2003, the proportion of owners of large and medium-size holdings had declined to 4%, and their combined area had been reduced to 35% of all land.
- The proportion of marginal holdings has increased from 63% in 1971–72 to 80% in 2003. Over the last 10 years, the proportion of marginal holdings has increased in all states.
- About 43% of the population is still absolutely or near landless, owning less than 0.2 hectare.
- An estimated 87% of landholders among Scheduled Castes (SCs) and 65% of landholders among STs in the country are classified as small and marginal farmers. Fifty-four (54) percent of SCs and 36% of STs are primarily agricultural workers.
- According to the Ninth Plan, 77% of SCs and 90% of STs are absolutely landless, though this is inconsistent with data from the 1992 National Sample Survey that states that 13.34% and 11.5% of SCs and STs respectively are absolutely landless.

Overview of Land Policy Formulation in India

Land management has been an important issue in India even in pre-British times. The land-revenue system introduced by the Mughal Emperor Akbar (1556–1605) is widely believed to be the beginning of systematic efforts to manage the land. Akbar introduced a system of land survey and assessment that was adapted to local conditions (Majumdar, Chaudhuri, Dutt, 1946). Succeeding Mughal Emperors continued and extended this land management and revenue system. Under the pre-British Mughal regimes, the State was regarded as the sole owner of all land, and all land revenues accrued to it.





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

However, there was a third one, called *Mahalwari* system, which was a modified version of the *Zamindari* system. In all of these systems, excessive land revenue to be paid to the government was as high as 33–55% of gross production. In the permanent settlement *Zamindari* areas, it even reached 60%. It resulted in decay of agriculture, heavy indebtedness of peasants and total loss of community autonomy and initiative. These three systems were in existence when India won freedom from British colonial rule in 1947.

Land Policy Formulation in Independent India

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

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

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

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

Abolition of Intermediaries

The Uttar Pradesh *Zamindari* Abolition and Land Reforms Act of 1950, which covered Uttar Pradesh, the most populous State of India, was the first State land reforms law to be enacted. While the law was in the process of being enacted and enforced, the *Zamindars* (intermediaries) sold or disposed of unassigned land, particularly by assigning it to relatives and family controlled trusts, or through *benami* (false-name) transactions, or to other influential persons for consideration due to certain loopholes in the law. The Act was struck down by the High Court of Uttar

Pradesh as being invalid. When the Indian Constitution was amended for the first time in early 1951, the Act was incorporated in the Ninth Schedule of the Constitution, and thereby became immune and enforceable. By the end of 1955, all the States had enacted laws for the abolition of *Zamindari* and other intermediary interests.

The *Bhoodan* Movement of Vinoba Bhave³

Land related violence had escalated between 1950 and 1955. The Tebhaga Movement, which called for the reduction of land rent by a third, had turned violent, and in Telangana in the State of Andhra Pradesh, rampant land grabbing had led to armed uprising. It was at this stage that Vinoba Bhave, a follower of Mahatma Gandhi, intervened and started the *Bhoodan* ("Land Gift") movement. On 18 April 1951, Bhave went around Telangana, asking landlords to hand over to him part of their land, which he would thereafter redistribute to the landless. Bhave estimated that landless families comprised one-sixth of the country's rural population at the time. Hence, he demanded that all landholders donate to him a total of 20.23 hectares of land, which, by 1957, made up one-sixth of the total cultivable area in the country. Reiterating this demand, he travelled all over India—over 80,000 kilometers—on foot, carrying a "beggar's bowl." Before his death in November 1982, the *Bhoodan* movement had collected some 1.94 million hectares of land. However, only 0.68 million hectares of this were redistributed to the landless, while the remaining 1.26 million hectares could not be distributed for various reasons, such as opposition from the donors' heirs, the donated land being unusable, or the inefficiency of the distributing agencies. However, the latest (2006) GOI data shows that 1.13 million hectares of *Bhoodan* land has been redistributed so far.

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

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

By December 1970, about a million hectares of ceiling surplus agricultural land had reverted to the States for redistribution to the landless. Fifty per cent of this land was redistributed to the rural poor—but not necessarily to the landless—because most if not all of the land ceiling laws failed to provide clear eligibility criteria for recipients of surplus land.

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

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

A conference of the chief ministers of States in New Delhi on 23 July 1972, marked the beginning of the third phase of India's land reform venture. At this conference, the Government managed to push a proposal for a comprehensive land reform program, which included a lowering of land ceilings. A ceiling of four to seven hectares was imposed on government-irrigated land; and five to seven hectares, on privately irrigated land. However, the ceiling on other kinds of agricultural land was higher.

The new land ceiling law provided that landless agricultural laborers, particularly those belonging to Scheduled Castes (SCs) and Scheduled Tribes (STs), would be prioritized in the redistribution of ceiling surplus land. The States were directed to amend their respective laws in accordance with the new land ceiling law by 31 December 1972. Yet, in spite of the directive to the States and the implementation of a 20-Point National Program (during the National Emergency), which also included land reforms to be enforced in letter and spirit, no significant headway was made in the implementation of the land ceiling laws. According to data compiled by the Ministry of Agriculture, by the middle of 1986, only 1,850,447 hectares of land had been declared ceiling surplus; of this, 1,312,536 hectares had reverted to the States, and only 922,529 hectares had been redistributed. Hence, the new land ceiling laws had yielded few improvements compared to the old ones: a 58% increase in ceiling surplus land; a 27% increase in land that reverted to the States; and a 10% increase in land

redistributed to the landless. However, the Eleventh Plan (2007–12) document shows that 2.1 million hectares of 2.98 million hectares of ceiling surplus land have been redistributed so far.

PHASE 4: Land Development Program (1985–1995)

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

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

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

During the fifth phase, India has seen an increase in caste and class violence. The Naxalite movement in Bihar was fed by the age-old exploitation of agricultural laborers and by the latter's resentment and the apathy of the authorities. Left-leaning parties and other major political parties in the State believe that land reforms are the key to checking extremism in Bihar. Therefore, in 2006 the Bihar government appointed a Land Reforms Commission headed by D. Bandyopadhyay. In its report submitted recently (2008) to the government of Bihar, the Commission recommended sweeping land reforms such as providing legal safeguards to *bataidars* (sharecroppers), improving the revenue administration, identifying and taking over ceiling surplus land still illegally held by landlords, and addressing the discrepancies in contract farming. In addition, it recommended:

- abolition of the distinction between agricultural and non-agricultural land;
- doing away with the general exemption given to plantations, fisheries, etc;
- a ceiling of 15 acres per family as well as per religious establishment and per sugar mill;
- acceptance of 9 July 1949 as the cut-off date, absentee landlords to be given the option of personal cultivation or through government;
- and the allotment of between one acre and 0.66 acre of



ceiling surplus land to 16.68 lakh households of landless agricultural workers and assignment of 10 decimals of land to each of 5.84 lakh households of homeless non-farm rural workers. The report also attributed the rural violence in Bihar to the failure of land reforms and inequitable, inequalitarian and exploitative agrarian asset holdings.

At the national level, the Government has started computerizing land records all over India, thereby promoting transparency and efficiency. Under its fifth phase, it has come under pressure from civil society organizations, the leftist political parties and extremists to carry out the unfinished agenda of land reforms.

Impact of Reforms

By 31 March 1995, some 2.66 million hectares of land had reverted to the States under the old and new land ceiling laws. This is less than 1.5% of the country's total agricultural land. Of the 4,949 million target beneficiaries, at least 5% had not actually received the allotted land. Moreover, much of the allotted land was of poor quality.

Meanwhile, less than half-a-million beneficiaries received grants to improve the land that had been given to them. As a result, the general return from the allotted land was between Rs. 1,000 to 1,200 per acre per annum (approximately US\$ 58 to \$70 per hectare per annum, at year exchange rate). In most cases, the beneficiaries received less than 0.3 hectare of land each, and hence could not provide adequately for their families by farming alone. Forty percent of the holdings should have been allotted exclusively for women beneficiaries, with the remaining 60% allotted as joint holdings to husband and wife. This provision has not been implemented.

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

Size of Landholdings

Government statistics show a drop in the number of large and medium-size holdings, and increase in the number of small-size

and marginal holdings. In 1971–72 large and medium-size holdings owned by the top 10% of landowners covered 54% of the total land area. By 2003, the proportion of owners of large and medium-size holdings had declined to 4%, and their combined area had been reduced to 35% of total land. On the other hand, the proportion of marginal holdings has increased from 63% in 1971–72 to 80% in 2003. The proportion of the area under marginal holdings has also increased from about 10% in 1971–72 to 23% in 2003. The proportion of marginal holdings to total number of holdings has increased in all the States over the last 10 years.

Landlessness Among Scheduled Castes and Tribes

The incidence of landlessness is more pronounced among the SCs and STs, the bulk of whom are agricultural laborers having miniscule holdings, sharecroppers, or other types of insecure tenants⁴.

Around 87% of the landholders among the SCs and 65% per cent of landholders among the STs in the country belong to the category of small and marginal farmers (Agricultural Census 1990–91). According to the 1991 Census of India, 64% of the SCs and 36% of the STs are primarily agricultural workers. The poorest among the poor in Indian society are largely from these groups.

The National Sample Survey (NSS) conducted in 1992 reported that 13.34% of the SCs and 11.50% of the STs belong to the "absolutely landless" category. This report is inconsistent with the Ninth Plan document, which reported a much higher incidence of landlessness among these groups: 77% among the SCs, and 90% among the STs. The discrepancy in the data on landlessness from different government sources raises obvious questions of accuracy and reliability. This inconsistency calls for a detailed study of landlessness in India.

The *Bhoodan—Gramdan* movement has benefitted members of SCs and STs all over the country. Records show that of the 1,935,986 hectares of land that had been collected as "gifts" across the country, 683,326 hectares were distributed to 709,209 poor households, most of them Scheduled Caste and Tribe households. In Bihar State, where the most land was received and redistributed, a survey in late 1960s revealed that about 75% of the beneficiaries of the redistributed *Bhoodan* land were in possession of the land as against less than 20% of the beneficiaries of government redistributed ceiling surplus land.

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

The poor in rural India are found mostly among landless agricultural laborers and marginal and small farmers. NSS data indicate that landlessness is the best indicator of poverty in India (Rao, 1992). In the first quantitative study of its kind in India, Besley and Burgess (1998) investigated the relationship between land reforms and poverty reduction at the State level, using panel data for the 16 major States. Their main conclusion is that land reforms appear to have led to poverty reduction in India. In their analysis, the authors controlled for other factors that may be associated with poverty reduction, in order to rule out the possibility that land reform activity merely served as a proxy for other policies. Their detailed analysis showed that while skepticism is warranted with respect to the prospects for redistributing land through land ceilings, the abolition of intermediaries and other tenancy reforms (at least in some States) appear to have been more successful in reducing poverty. These findings accord reasonably well with existing, empirical assessments of the relative success of Indian land reforms.

Naxalite Movement

The Naxalite movement⁵ is closely associated with loss of land, forests, lack of any alternative livelihood, and an insensitive government. In early 2005 the Government informed Parliament that 126 districts (from a total of 600) in 12 States were Naxalite-affected; of these, 76 districts in nine States were said to be "badly affected." The reasons for the Naxals' success are fairly straightforward. Naxals flourish where there are huge disparities in assets and incomes, and where injustice and violence by the privileged have run rampant. Prakash Singh, former Border Security Force chief and author of a book on Naxalism, wrote:

*The Naxal movement is irrepressible because it draws sustenance from the grievances of the people which have not been addressed by the government... Regarding land reforms, even the Tenth Plan document admits, 'the record of most States in implementing the existing laws is dismal.'*⁶

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

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

Issues and Trends Affecting Access to Land and Tenurial Security

Forest Act and Wildlife Protection Act

The Indian Forest Act of 1927 (IFA) allowed the British colonial government to declare as reserved forest huge swaths of land inhabited by indigenous communities to serve their commercial interests. The IFA is still being misused by the Indian Government to forcibly acquire land. Between 1951 and 1988, some 26 million hectares were brought under the control of the Forest Department (FD). Sixty percent of these lands are located in regions whose populations were predominantly indigenous groups and tribals.

From the 1970s onwards, the State, particularly its Forest Department, shifted its emphasis from production oriented forestry and forest management to conservation. This was facilitated by laws like the Wildlife Protection Act (WLPA) of 1972 and the Forest Conservation Act of 1980. Under the WLPA, large forest areas were brought under the Protected Area Network of National Parks and Wildlife Sanctuaries, which were intended to be "human-free" wilderness zones.

Today, there are 94 national parks and 492 sanctuaries in India. About four million people reside in these areas and are regarded as illegal occupants. No survey was conducted prior to delineating these protected areas to take into account the current occupants and their land rights. Thousands of communities have been displaced. For instance, in Pench National Park in the State of Madhya Pradesh, eight villages composed of 16 households were resettled. There is no record of what became of the people from the other villages or where they have been relocated. At the same time, between 1951 and 1981, a total of 4.238 million hectares



of forest land were cleared for purposes like river valley, infrastructure, and industrial development projects.

Special Economic Zones

Land is acquired by the State for "public purpose" to set up Special Economic Zones (SEZs), or free trade zones. These are special enclaves with their own infrastructure to churn out export products exclusively.

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

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

SEZs enjoy several tax breaks and other exemptions, which, when totted up, would result—within five years of an SEZ's operations—in a loss of revenue to the State of over Rs. 1,750 billion. Yet, the Government remains undeterred. Prime Minister Manmohan Singh has repeatedly said that SEZs are the necessity of the moment. No wonder agricultural land, which is a scarce commodity,

is suddenly available in abundance. Despite the fact that the per capita landholding is already an abysmally low 0.1 hectare, the Government continues to acquire any land it sets its sight on, using the draconian Land Acquisition Act. For the first batch of SEZ applications approved by the Government, a total of 125,000 hectares of prime agricultural land would be taken over. The second batch would require an area just as large.⁷

Corporate/Contract Farming

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

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

There are other concerns about corporate farming, such as corporate farming vs. food security, food security vs. biofuels and corporate farming vs. cooperative farming.

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

CASE STUDY

India's Unprotected Forests

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

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

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

Through the efforts of Ekta Parishad, a People's Organization (PO), the Baigas have started farming again, in spite of threats from the FD. The tribals have pinned their hopes of regaining their rights to forest land on the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act of 2006) notified on 1 January 2008 for enforcement. In the meantime, their lives and livelihood remain at risk.

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

Legal and Policy Framework for Access to Land and Tenurial Security

The Constitution of India

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

"Land to the tiller" is the guiding principle of India's land reforms program. But the *right to property* is not provided for in Part III of the Indian Constitution. In other words, it is not a justiciable right. Nevertheless, the concept of equity is built into India's Constitution. For instance, the 44th Amendment to the Constitution, altered Article 38 to introduce the following clause:

The State shall, in particular, strive to minimize the inequalities of income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst the individuals but also among groups of people residing in different areas or engaged in different vocations.

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

Article 39 of the Constitution provides that the ownership and control of the material resources of the community should be distributed in such a way that the common good is best served, and that the economic system does not result in the concentration of wealth and the detriment of the means of production. Thus, the equitable distribution of assets and social justice are given emphasis in the Indian Constitution. The latter also stipulates that *States [must] direct policies to ensure that all citizens have the right to adequate means of livelihood and that all community resources be distributed so as to serve the common good.*

It is important to note that the Constitutional makers also gave each State, rather than the Central Government, the exclusive power to make laws with respect to land, including land reform laws.

State Land Reform Laws

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

- Abolition of *Zamindari* system to eliminate intermediaries;
- Ceiling on land holdings to do away with uneven distribution of land and for redistribution of ceiling-surplus land among the landless;
- Tenancy reforms to ensure security of tenure for peasants, regularization of rent/revenue, and ownership;
- Regulation of share-cropping to safeguard the interest of the share-croppers;
- Protection against alienation of land belonging to weaker sections such as SCs and STs;
- Consolidation of fragmented land holdings;
- Provision of homestead to the landless households;
- Providing government land to the landless on long-term lease including tree-lease; and
- Statutory minimum wages to agricultural labor.

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

Forest Rights Act of 2006

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 recognizes and gives forest rights, as well as rights to occupy forest land, to STs and other traditional forest dwellers and provides the framework for recording forest rights. There are, however, several aspects of the law that leave room for doubt as to how effective it would be in terms of rectifying what the Government of India has conceded as "historical injustices" to the forest dwelling STs and other traditional forest dwellers. Until these discrepancies are addressed and the loopholes in the Act are removed, the land rights of forest dwelling communities will remain insecure.

Constitutional and Legal Provisions for Tribal Land Rights

Article 244 of the Constitution in Schedule Five makes it mandatory for the State to ensure the total prohibition of immovable property to any person other than a tribal group and to protect the possession, title and interests of the tribals. The provisions under Schedule Five of this clause are not only applicable to the administration of areas designated as "scheduled areas" but also to those assigned to original tribal owners.



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

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

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

Policy on Women's Land Rights

Land reform laws have not adequately addressed the issue of unequal ownership of land between men and women. The Land Ceiling Act classifies the family unit as comprising husband, wife and three minor children. While adult sons are considered separate units, unmarried adult daughters are left out. Even the Tenancy Act gives priority to males (from the father's side) in inheritance and to widows only in the absence of male heirs. However, now the Hindu Succession (Amendment) Act of 2005 has been enacted to remove gender discriminatory provisions in the Hindu



Succession Act of 1956, and make the daughter a coparcener in her own right by birth in the same manner as the son.

Factors Facilitating or Impeding Access to Land and Tenurial Security

Government

While land reforms are under the jurisdiction of the States, the Central Government has taken the following measures to promote land reforms:

- Directed State governments to enact agricultural land ceiling laws, and to redistribute ceiling-surplus land among landless and marginal farmers;
- Amended the Constitution 13 times to remove legal obstacles to land reforms;
- Formulated Five-Year Plans (through the National Planning Commission) which consistently emphasized land reforms and incorporated policy guidelines in this regard. The current Eleventh Five-Year Plan (2007–2012) has also incorporated the component of land reforms in all its dimensions.
- Ministry of Rural Development—Department of Land Resources as the nodal agency in the Central Government has since been active in promoting land reforms in various ways.

Political Parties

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

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

Bharatiya Janata Party (BJP)

The BJP⁸ is regarded as rightist, but would rather be characterized as nationalist. The NDA, a coalition of which the BJP is the major partner, has carefully avoided the issue of land distribution through land reforms since it was formed in 1998.

However, in its election manifesto in 2004, the BJP spelt out specific steps to implement land reforms. Furthermore, in discussions on "land use and acquisition" at the party's National Council Meeting on 28–29 January 2008, the BJP decried that fertile land was being lost to development. It described the Land Acquisition Act of 1894 as "outdated," citing its misuse and the "mindless" acquisition of land in the name of 'public purpose.' The BJP proposed that this law be amended to ensure that the government does not acquire fertile irrigated land arbitrarily for private companies and that it should serve the public purpose. A BJP document on this matter stressed the need to define "public purpose" for which government forcibly acquires agricultural land from the farmers. It said that the government should acquire land on behalf of private companies only in exceptional circumstances and that in such cases the farmer should be paid the prevailing market price for his/her land and made a shareholder in the company for which his/her land was acquired.

Indian National Congress (INC)

The INC⁹ was the first national party to call for land reforms in the 1930s (before independence). As the first party to form a government following independence, the INC spearheaded land reforms and directed the State governments to enact similar laws in their States. The party's manifesto for the Elections in 2004 proclaimed that State governments would be urged to enact laws conferring ownership rights of minor forest produce on tribal people, particularly those dwelling in forests. Landless families would be given some land through the proper implementation of land ceiling laws. The manifesto also demanded more effective systems of relief and rehabilitation for tribal communities displaced by development projects.

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

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

Prime agricultural land should not normally be diverted to non-agricultural uses...Industry requires land no doubt. But this must be done without jeopardizing our agricultural prospects. Farmers must get proper compensation

when their land is acquired. Could farmers also not become stakeholders in the projects that come up on the land acquired from them? Our resettlement and rehabilitation policies must be strengthened and implemented in an effective and credible manner which will inspire confidence in the people who are displaced.

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

Communist Party (Marxist) (CPM)

The Communist Party (Marxist) (CPM)¹⁰ is India's leading left-wing party, with 45 representatives in the Indian Parliament. It was formed after the split in the Communist Party of India (CPI) in 1964.

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

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

The CPM called for the protection of indigenous communities and for the restoration of land that had been illegally taken from them. It sought to ensure these groups' right of access to forests and forest produce, by amending the Forest Act of 2006 and by recording the names of forest dwellers. The CPM protested against the implementation of projects that resulted in the displacement of tribal people without providing for a comprehensive and sustainable rehabilitation package. Such a scheme must be put in place before any displacement or work begins. Ultimately, CPM called for regional autonomy for tribal compact areas.



Donor Agencies and International Institutions

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

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

The Private Sector

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

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

Corporate Interest in Agriculture

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

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

Civil Society

NGO networks in India operate at the national and regional level. The Sarva Seva Sangh, Association of Voluntary Agencies for Rural Development (AVARD) and the Voluntary Action Network of India (VANI) are among the networks working nationwide. Networks operating at the regional level are Mazdoor Kisan Shakti Sangathan, Manav Kalyan Trust, Dalit Land Rights Federation, Bharat Nirman, Disha, Janvikas, Janpath, CECODECON, Confederation of Voluntary Organizations (COVA), FIAN, and several others. A few NGOs focus on working on access to land, like AAK, Allahabad; Gorakhpur Environment Action Group (GEAG); ActionAid; Vikalp, and Banwasi Seva Kendra (UP); MGSA, NRSS, MJVS, Nayi Disha in Madhya Pradesh; Prayog, GVP in Chhattisgarh, PGVS, Prayas in Bihar; APVVD, Samata in Andhra Pradesh; NCAS, Pune, and Gandhi Peace Foundation (GPF).

People's Organizations

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

More than 300 such organizations have supported the land rights movement in the 2007.

Janadesh 2007: Ekta Parishad led a non-violent peoples' movement to ensure the land and livelihood rights. The Janadesh "People's Verdict" conducted a non-violent pilgrimage or people's march to force the Government to address the land and livelihood concerns of marginalized communities, such as the Scheduled Castes/Tribes and indigenous groups. The march lasted for 28 days, starting from Gwalior and ending in Delhi, and was participated by 25,000 people from the Scheduled Castes and indigenous communities. On the way to Delhi, they were joined by supporters from more than 250 civil society organizations. On 29 October 2007, the Union Rural Development Minister met with the marchers in Delhi and made a commitment to form a National Land Reforms Council and a National Land Reforms Committee that would look into the marchers' demands.



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

In a similar case, a people's protest has forced the West Bengal Government to drop a SEZ planned in Nandigram by Salim Group; however, the clash and violence persist.

Opportunities and Strategies to Advance Access to Land and Tenurial Security

Strategic Policy Level Interventions

In his paper entitled "A Critical Evaluation of Land Reforms in India", Das Sukumar (2000) states that, based solely on the figures, it is possible to provide all the farm households of India with economically viable landholdings.

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

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

In addition to the aforesaid urgent land reform measures, the government may also extend all the necessary support services, including the development of infrastructure, provision of credit and inputs, remunerative marketing facilities, development of agro-processing, etc. Rural industrialization will also prove help-



ful in utilizing additional workforce in non-farm activities so as to reduce the excessive pressure on land, and increase the incomes of farm households. These measures are necessary to gradually make farming viable in the future and also to meet the growing demand of the industrial sector by producing commodities both for domestic and international markets.

Unless and until about 68% of India's rural population that is engaged in agriculture and allied activities finds an economic holding of arable land and/or enhanced income from subsidiary sources, the country cannot achieve growth with equity and social justice.

Strategic Policy Level Interventions: From the People's Perspective

These are summarized below:

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

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

- > Formulating laws that promote land reforms, such as the West Bengal land reforms law to: (1) plug loopholes that allow evasion of the land ceiling laws; (2) prevent absentee landlordism; (3) bring holdings of all trusts, industries, government and non-government institutions under ceiling restrictions; and (4) ensure that entitlements are issued jointly to men and women;
- > Formulating laws that provide for land registration, and that legalize tenancy across the country, on terms that are fair to both landowners and tenants;
- > Setting up a centrally funded program for creating and displaying at a public place in each village, colored maps showing the different kinds of land (Panchayat land, forest land, grazing land, etc.) along with details of all holdings;
- > Formulating a program for detecting concealed surplus holdings and concealed tenancies, and demarcating all ceiling-surplus allotments, by holding block and village level camps with the involvement of local people and NGOs, in a three-to-five-year "campaign";
- > Setting annual land redistribution targets (in terms of area of land and number of beneficiaries) for all States, with financial incentives like higher allocation of funds for high performance; and
- > Acquiring/transferring unused large holdings of big government, industry, and educational organizations for redistribution or for low-cost housing.

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

- > Directing States that have not done so to set up land tribunals under Article 323-B of the Constitution; and
- > Formulating an enabling centralized law to bar civil courts from hearing land ceiling cases.

However, a long-term national land use policy has to be drawn up, involving all stakeholders and keeping in mind the following:

- > Food and livelihood needs of the poor;
- > Food requirements of the entire country;
- > Availability of adequate water; and
- > Protection and expansion of the country's forest cover.

Opportunities to Pursue Land Reforms

- **Space for Strategic Interventions**

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

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

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

- **Legal Interventions**

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

- **Participatory Spaces**

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

- **Space for Non-violent Mass Actions**

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

- **Policy Level Spaces**

There are policy level spaces that are available to land advocates. Recently, the Government of India formed the Committee on State of Agrarian Relations and the Unfinished Task of Land Reforms. Participating in seminars and conferences and offering one's opinion constitute one such space.

- **Advocacy**

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

national organizations should be explored and maximized for advocacy purposes.

- **Media Space**

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

- **More Space for Women and Gender Equity in Land Rights**

Giving women space and opportunity at all possible levels is important. To promote gender equity in regard to land rights, it is necessary to first create awareness of this issue, empower women, and lobby for the enforcement of laws providing for equal rights to land between women and men.

- **Right to Livelihood as a Fundamental Right**

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

- **Space for Democratic Mass Actions**

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

Concluding Remarks

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



Endnotes

- ¹ Under this system, land could be acquired mostly free of charge from the British colonial government. The landowner or *Zamindar*, did not cultivate the land himself but rented it out to cultivators.
- ² There was no intermediary between the State and the cultivator under this system. The cultivator, or *ryot*, had the right to sell, transfer, or lease his land and his tenure remained secure as long as he paid the land revenue.
- ³ *Bhoodan* (Land Gift) movement received millions of hectares of land. State governments enacted Bhoodan Yagna Acts to legalize and facilitate gift and redistribution of Bhoodan land to the landless.
- ⁴ Diwakar, D.M. "Dalit questions of inequality, exploitation and mobilization (*Articles*)", *Journal of Indian school of political economy*, Vol. 10 no.2, April-June 1998
- ⁵ The Naxalite movement takes its name from a peasant uprising which took place in May 1967 at Naxalbari—a place on the northeastern tip of India situated in the state of West Bengal.
- ⁶ Bidwai, P., "Meeting the Naxal challenge, Rediff News, October 11, 2005, <http://www.rediff.com/news/2005/oct/11bidwai.htm>
- ⁷ Devinder S. and Goswami, B. "India's new maharajas," *InfoChange News & Features*, CCDS, Pune, December 2006, <http://www.infochangeindia.org/analysis193>
- ⁸ Excerpts taken from <http://www.bjp.org>
- ⁹ Excerpts taken from <http://www.congress.org.in>
- ¹⁰ Excerpts taken from <http://www.cpim.org>

References

- Agenda for Governance of the National Democratic Alliance. Approach Paper to the Eleventh Five Year Plan.
- Behar, A. (2002) Peoples' social movements: An alternative perspective on forest management in India. In *Overseas Development Institute, Working Paper No.177*. December 2002. London.
- Besley, T., & Burgess, R. (1998). Land reforms, poverty reduction and growth: Evidence from India. In *London School of Economics, STICERD Research Paper No. DEDPS13*.
- Brown, J. (2002). Landed with unfair deal. In *The Telegraph*.
- Das, S. (2000). A critical evaluation of land reforms in India. In *Land Reforms in India* (Vol. 5). New Delhi: Sage Publications.
- Deshpande, R.S. (2003, March). Current land policy issues in India. In *Land reforms (Special edition)*. Rome: Food and Agriculture Organization.
- Diwakar, D.M. (1998, April-June). Dalit questions of inequality, exploitation and mobilization. In *Journal of Indian school of political economy*, 10 (2). Agrarian structure and reforms towards sustainable basic needs and human development in Uttar Pradesh. (2007). In *Dalit and Human Development*. Abhijeet Publication.
- Gupta, A. (2007). *A journey towards people's verdict*. Bhopal: Ekta Parishad.
- Harris, J.C. (2004). *Land first*. Bhopal: Ekta Parishad.
- Carr-Harris, J. (2005). *Struggle-dialogue: Tools for land movements in India*. International Institute for Environment and Development.
- Jha, P.K. (2002). A perspective on land and forests in Madhya Pradesh. In *Land reforms in India, Vol. 7, Issues of equity in rural Madhya Pradesh*. New Delhi: Sage Publications.
- Land Acquisition (Amendment) Bill. (2007).
- Majumdar, R.C., Chaudhuri, H., & Dutt, K.K. (1946). *An advanced history of India* (1st ed.). London: McMillan.
- Mander, H. (2002). *Tribal land alienation in Madhya Pradesh: The problem and legislative remedies*. In P.K. Jha (Ed.). *Land reforms in India: Vol. 2. Issues of Equity in Rural Madhya Pradesh*. New Delhi: Sage Publications.
- Ministry of Rural Development. (2002). *Annual report*.
- Mearns, R. (1999) *Access to land in rural India: Policy issues and options*. World Bank Policy Research Working Paper No. 2123. Washington, DC: World Bank.
- National Centre for Advocacy Studies. (2005, October-December) *Advocacy update on land rights*, 18 (18).
- Pai, S. (2007, November 17) *Janadesh 2007: The land question*. In *Economic and political weekly*.
- Rao, V.M. (1992, June 27). Land reform experiences: Perspective for strategy and programmes. In *Economic and Political Weekly*.
- Samuel, J., Prakasham, G., & Bedi, P. (Eds.). (2002). *Land for life*. Pune, India: National Center for Advocacy Studies.
- Sarin, M. (2005, May 21). Scheduled tribes bill 2005: A comment. In *Economic and Political weekly*.
- Sethi, M. (n.d.) *Land reforms in India: Issue and challenges*.
- Sharma, D., & Goswami B. (2006, December). *India's new maharajas*. In *Infochange India*. Retrieved from <http://infochangeindia.org/200612166338/Other/Analysis/India-s-new-maharajas.html>.
- The National Common Minimum Programme of the United Progressive Alliance.
- The National Policy for Farmers*. (2007).
- The NSSO surveys.
- The rehabilitation and resettlement bill*. (2007).
- The scheduled tribes and other traditional forest dwellers (Recognition of forest rights) act*. (2006).
- The special economic zones act*. (2005).
- The World Development Report*. (2008). World Bank.
- Thirumalai, S.T. (n.d.) *Post-war agricultural problems and policies in India*, 195, 13. Bombay.
- Other documents referred to in this paper.

The Persistence of Popular Will

INDONESIA Country Paper
Land Watch Asia





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Glossary and Acronyms

ADB	Asian Development Bank.
Agrarische Wet	Agrarian Act of 1870; land law during the Dutch colonial system in Indonesia.
APBN	Indonesian national budget or Anggaran Pendapatan dan Belanja Negara.
BPN	Badan Pertanahan Nasional or National Land Agency
BPS	Central Bureau of Statistics.
Bulog	National Logistics Agency.
FAO	Food and Agriculture Organization of United Nations.
HGU	Hak Guna Usaha or long lease rights or plantation concession rights.
HMN	Hak Menguasai dari Negara or the State Rights to Control the Land all over Indonesia.
HPH	Hak Pengusahaan Hutan or Forest Concession Rights.
HTI	Hutan Tanaman Industri or Industrial Timber Plantations.
IMF	International Monetary Fund.
Inhutani	State-owned enterprise in the timber sector; usually operates outside Java island.
MPR	Majelis Permusyawaratan Rakyat or the Indonesian People's Consultative Assembly; one of the highest decision making bodies in Indonesia.
Orde Baru	New Order, related with Suharto administration in Indonesia (1966–1998).
Orde Lama	Old Order, related with Sukarno administration in Indonesia (1959–1965).
Perhutani	State-owned enterprise in the timber sector; usually operate in Java island.
PIR-Bun	Perusahaan Inti Rakyat-Perkebunan or contract growing; or NES (Nucleus Estate and Small Holder Scheme); a program for the expansion of large plantations supported by the World Bank in Indonesia from 1970–1980.
RPPK	Revitalisasi Pertanian, Perikanan, dan Kehutanan or Revitalization of Agriculture, Fisheries, and Forestry; an official policy document of the current Government of Indonesia under President Yudhoyono (2004–2009) on land, water, forestry, and food issues.
TAP MPR	The Indonesian People's Consultative Assembly Decree.
UUPA	Undang-Undang Pokok Agraria or 1960 Basic Agrarian Law (BAL).
WB	World Bank.
WTO	World Trade Organization.

INDONESIA



QUICK FACTS

- In 1993, 10.8 million farming households owned less than a hectare of land. By 2003, this number had increased to 13.7 million, or an increase of 2.6% a year.
- In 1993, over half (52.7%) of the country's farming households were considered poor; by 2003, the proportion was 56.5%.
- The number of families that make their living from agricultural activities increased from 20.8 million in 1993 to 25.4 million in 2003, or an increase of 2.2% a year.
- Of the 25.4 million farming families recorded in 2003, 54.4% lived in Java, and the rest (45.6%) in outer Java. Poverty among Javanese farming families rose from 69.8% to 74.9% during the period 1993–2003. In outer Java, the number of poor farming families increased from 30.6% to 33.9% during the same period, representing an increase of 3.3% a year.

Overview of Agricultural Development in Indonesia

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

The second phase was consolidation (1967–1978). During this period, the agricultural sector grew 3.4%. Growth was primarily

driven by the food crop and plantation sub-sectors. Rice production increased by more than two million tons during the 1970s, and productivity more than doubled since 1963, to more than 2.5 million tons per hectare.

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

The third phase was that of high growth (1978–1986). This period was significant in Indonesia's agricultural economy. The agricultural sector grew by more than 5.7% percent, because of an economic development strategy that was based on agriculture. Production of food, plantation crops, fish, and livestock all increased, with a growth of 6.8%; research and technological

development played a key role in this. The Green Revolution program and technological advancements led to an increase in productivity of 5.6% and by 1984, the country had attained self-sufficiency in food. Rice production was correlated with improved living conditions among rural communities.

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

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

Since the mid-1980s, several components protecting industrial sectors had been in place, contributing to double-digit growth in the industrial and manufacturing sectors. At that time, the notion that Indonesia was already capable of transforming itself

from an agrarian nation to an industrial nation gained currency. Policies which the government adopted at that point were geared toward channeling all the resources from the agricultural sector to industry, because the government believed that agricultural projects could not produce results as fast as industry or urban investments. A policy of subsidizing industry by stabilizing the prices of basic goods was adopted to pander to urban workers. This policy led to the destruction of farmers' livelihoods and the deterioration of agricultural development in Indonesia.

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

The sixth phase is transition and decentralization (2001–present). This period is very uncertain for both economic players and the Indonesian agricultural sector. Despite decentralization, agricultural development has not moved forward because of the lack of regional autonomy and authority, which are essential to formulating strategies based on comparative and competitive advantages. Left to regional governments, the agricultural sector is increasingly being neglected. A summary of the development path taken by Indonesian agriculture can be seen in Table 1.

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

PHASE	FOOD	PLANTATION	LIVESTOCK	FISHERIES	TOTAL AGRICULTURE
Revolutionary 1945–1965	2.38	1.90	—	—	2.40
Consolidation 1967–1978	3.58	4.53	2.02	3.44	3.39
High Growth 1978–1986	4.95	5.85	6.99	5.15	5.72
Deconstruction 1986–1997	1.90	6.23	5.78	5.36	3.38
Economic Crisis 1997–2001	1.62	1.29	-1.92	5.45	1.57
Decentralization 2001–present	2.81	5.85	5.19	4.59	3.83

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

Notes:

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

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

Issues Affecting Access to Land and Tenurial Security

The Abandonment of the Agrarian Reform Agenda by the New Order Regime (1966–1998)

The Old Order era (1962–1967) and the New Order Regime (1968–1998) operated under the same legal framework for implementing agrarian reform. But while the former was able to make some progress in redistributing land (as Table 2 shows)—even though it was ill-matched against anti-reform forces—agrarian reform under the New Order Regime was an utter failure, in all respects—economic, political, and social—because it was reduced by Suharto to land administration that benefitted elite interests.

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

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

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

One by one, the New Order regime revoked agrarian reform regulations. In 1970 it abolished the Land Reform Court, and disbanded the Land Reform Committee.

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

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

- The ineffectiveness of land administration made it difficult to determine how much land was available for distribution under the agrarian reform program. This opened up opportunities for many deviations—wittingly or not;
- The public has not fully appreciated the need for agrarian reform to complete the country's "revolution" for poverty eradication. Agrarian reform is blamed on any pretext;
- Committee members have shown little interest in agrarian reform, either because they are otherwise preoccupied or because it goes against their self-interest. This negligence on the part of Committee members has been blamed for the tampering of land registration records, such that names of registrants have been deleted from the land lists, or addresses of registrants are mixed up;
- Peasant mass organizations that are supposed to provide support and oversight are not sufficiently represented in land reform committees at the regional level;
- The agrarian reform lobby is still not strong enough to with-

Table 2. Comparative Accomplishments of Land Reform, by Political Regime

Political Regime and Years of Implementation	Lands Redistributed (in hectares)	Number of Agrarian Reform Beneficiaries (families)	Average Land Size Received (in hectares)
Old Order (1962–1967), 5 years	801,317	847,912	0.95
New Order and its Successors (1968–2005), 37 years	358,210	662,850	0.54
Total in 42 years (1962–2005)	1,159,527	1,510,762	0.76

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



stand the psychological and economic pressure that landlords can bring to bear on them;

- The Committee's work of defining priorities is hampered by the sheer number of impermanent tillers and changes in government administration.

Plantations as the Colonialist's Continuing Curse on Indonesia

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

The latest incarnation of the plantation is what is euphemistically referred to in Indonesia as the "partnership model." This is nothing more than contract farming. During the administration

of Suharto, this model was adopted in the World Bank (WB) funded Nucleus Estate and Small Holder Scheme (NES) Project, which aimed to attract foreign investments in plantation companies in the country.

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

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

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

Table 3 shows how much land is controlled by plantation concession holders and long-term lease holders. In December 2000, 1,887 individuals held such concessions covering 3,358,072 hectares, or an average of 1,780 hectares of plantation lands each.

The expansion of plantation areas has resulted in the rapid conversion of forest lands. In 1996, the Government allocated 9.13 million hectares of forest lands in Kalimantan, Sulawesi, and

Table 3. Distribution, Control and Ownership of Plantation Lands, 2000

Scale of Plantation (in hectares)	Number of Plantation Concession Holders	Number of Plantations of Designated Size
More than 48,000	4	209,251
24,000 to 48,000	7	212,948
12,000 to 24,000	29	521,513
6,000 to 12,000	111	996,543
Less than 6,000	1,729	1,417,817
TOTAL	1,887	3,358,072

West Papua for the expansion of big palm oil plantations. In March 1999, some 8.55 million hectares of forest lands were earmarked for conversion into palm oil and rubber plantations; of these, 4.6 million hectares have already been converted. The biggest land conversions have taken place in Riau Province, Sumatra, where 1.53 million hectares of forest lands have been cleared to make way for plantations.

Indiscriminate Awarding of Forest and Timber Concessions

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

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

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

As a result of the Basic Forestry Law of 1967 and Government Regulation No. 21 of 1970, all commercial forestry has become the preserve of private investors holding forest concessions. Communities that live in or around forest areas are prohibited from cutting timber within concession areas, and could do so only if they have a permit from the concessionaire. Conflicts between communities and forest concession holders have erupted.

Mining on Indigenous Peoples' Lands

Article 33 of the 1945 Constitution of Indonesia grants to the State exclusive rights to the country's mineral resources. Law No. 11 of 1967, also called the Law on Mining, provides that all mineral deposits are national assets which are under State con-

trol. These two laws have given the State blanket authority to conduct its own mining operations, or to assign the task to mining concessions.

PT Freeport is a large mining company based in the US that is mining for gold in Irian Jaya. Freeport has been the subject of protest actions because of the injurious effects of its operations on indigenous communities in Irian Jaya.

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

Legal and Policy Framework for Access to Land and Tenurial Security

Laws

Indonesian Constitution

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

Decree of the People's Consultative Assembly (MPR) No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management, or TAP MPR No. IX/2001

- Seeks to correct the errors of agrarian reform implementation (under the Basic Agrarian Law, or Law No. 5 of 1960);
- Mandates the Agrarian Reform Ministry to:
 - > Conduct a study of various laws and regulations related to agrarian matters in order to harmonize the policies of the sectors;
 - > Implement a land reform program based on the "land to the tiller" principle;
 - > Conduct a land registration program through a comprehensive and systematic survey of the control, use, ownership, and exploitation of the land;
 - > Resolve all agrarian disputes, and forestall future conflicts by strictly implementing the law;
 - > Strengthen the institution responsible for implementing agrarian reform; and
 - > Seek out funding for agrarian reform implementation.



- Using the framework provided by TAP MPR No. IX/2001, the laws on mining (Law No. 11 of 1967), forestry (Law No. 5 of 1967 and amended by Law No. 41 of 1999), and the Law on plantations are contradictory to its provisions and should be revoked.

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

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

Related legislation:

1. Law No. 56 Prp/1960, Article 8

- > Creates different kinds of rights that may be awarded to persons, groups, or legal entities. These rights are Property Rights, Lease Rights, Right to Build, User Rights, Right to Rent, Right to Open the Land and to Collect Forest Products, and Water Use Rights. (Article 16)
- > Sets the ceiling for landholdings of families and legal entities to prevent monopoly ownership of land. Land in excess of the ceiling must be turned over to the State upon compensation. (Article 17)

2. Law No. 56 Prp/1960 provides for the following Agricultural Land Ceilings:

For paddy fields:

- > 15 hectares in non-densely populated areas;
- > In densely populated areas:
 - » 10 hectares in low density areas;
 - » 5 or 7 hectares in moderately densely populated areas;
 - » 5 hectares in very densely populated areas.



For dry land:

- > 20 hectares in non-densely populated areas;
- In densely populated areas:
- > 12 hectares in low density areas;
 - > 9 hectares in moderately densely populated areas;
 - > 6 hectares in very densely populated areas.
- However, this law exempts the following categories of agricultural land from the ceiling: (a) Long-term concessions granted by the Government; and (b) Land controlled by legal entities.

Presidential Regulation No. 36 of 2005

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

Presidential Decision No. 30 of 1990

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

Government Regulation (PP) No. 224 of 1961

- Defines the following lands as subject to land reform:
 - > Lands in excess of the maximum limits set by Law No. 56 Prp/1960, and lands of violators of this law;
 - > Lands whose owners reside in another subdistrict, and were thus expropriated by the Government;
 - > Swapraja lands and former Swapraja state lands that are automatically transferred to the State;

- > Other lands controlled directly by the State and designated by the Agrarian Minister.
- The abovementioned lands are first taken over by the State before they are redistributed to land reform beneficiaries.
- Identifies the beneficiaries of land reform, in the following order of priority:
 - > The tiller who has been cultivating the land;
 - > The landowner's farm worker who had previously worked on the land;
 - > Settled farm workers who had worked for the former landowner on such land;
 - > The tiller who has been working on such land for less than 3 years;
 - > The tiller who still works on the landowner's land;
 - > The tiller who has been awarded land rights by the Government;
 - > The tiller who owns less than 0.5 hectare of land;
 - > Other peasants or farmworkers.

Law No. 2 of 1960 on Sharecrop Agreement (UUPBH)

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

Government Policies

Revitalization of Agriculture, Fisheries and Forestry (RPPK) Policies

- Aims to revive the agriculture, forestry, and fisheries sectors, and thereby promote the recovery of the national economy. Its main target is the achievement of food self-sufficiency by 2010.
- Although land regulation is cited as an important component of agricultural revitalization, it would be conducted against the framework of the Green Revolution.
- *Kompas*, an influential daily newspaper in Indonesia, has opined that "conducting agricultural revitalization without implementing land reform will only open old wounds."

- President Yudhoyono's adoption of RPPK policies while neglecting agrarian reform shows that he is like "the foolish donkey who falls into the same trap twice."

Actors Facilitating or Impeding Access to Land and Tenurial Security

Government

"In Indonesia's history, no government has succeeded in undertaking land reform."

—Ahmad Erani, Indonesian economist

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

Yudhoyono's policies have not departed from those of Suharto. Both leaders adhered to market oriented development and liberalization policies. Yudhoyono's economic priorities are reflected in his Government's agrarian and agricultural policies, namely the **Revitalization of Agriculture, Fisheries and Forestry (RPPK)** policies. These aim to revive the agriculture, forestry, and fisheries sectors, and thereby promote the recovery of the national economy.

The RPPK outlines a number of policies, under a general strategy to revitalize the agriculture, fisheries, and forestry sectors, as follows:

- Reduction of poverty and unemployment, along with increasing the economic scale of rural sector activities, par-



ticularly through agrarian-oriented land management and land-use planning; facilitation of rural employment opportunities outside of agriculture, including the development of rural agro-industries; diversification of rural sector products; development of infrastructure; and developing the institutions of farmers, fishers and agro-foresters along with fulfilling their basic rights;

- Increasing the competitiveness, productivity, value-added and independence of production and distribution in the sectors, primarily through better agricultural practices; developing new activities and multi-products; increasing access to services, and reducing or removing obstacles and high economic costs to productive activities; and protecting work activities against unfair competition;
- A sustainable approach to the use and protection of natural resources, primarily through conservation management and an agrarian approach to land management and land use-planning; along with encouraging the development of activities, technology, and institutions which are environmentally friendly; and strengthening the rule of law.

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

Land regulation is cited as an important component of agricultural revitalization in the RPPK document, but this task would be conducted against the framework of the fully discredited Green Revolution technologies.

Multilateral Development Agencies and Financial Institutions

Observers in Indonesia have noted the increasing involvement of multilateral development agencies (the World Bank Group) and international financial institutions (the International Monetary Fund) in integrating free trade and the allocation of agrarian resources. This is exemplified by the process and outcome of the Land Administration Project (LAP). The LAP is a huge undertaking of the Government of Indonesia (represented by the National Land Agency, the National Planning Agency, and the

Ministry for Economic Affairs), the World Bank (WB), and Australian Aid (AusAid). For the first phase of LAP (1995–2000), the WB gave a loan to the Government of Indonesia amounting to US\$80 million. The project would run for 25 years (1995–2020).

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

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

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

Civil Society Organizations and NGOs

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

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



Stanvac, Total Oil Company, etc. are examples of big corporations that are able to influence the policies of the Indonesian Government in regard to land and other natural resources.

The *second* factor is the inefficiency of production which is the legacy of many years of feudalism. Where modern technology has been introduced, this has benefitted not the small peasants but big local businessmen, big landowners, and transnational agricultural corporations.

Third, is state violence and the anti-democratic, anti-people, and anti-peasant policies of the Government. Successive administrations have used draconian measures intended to maintain the security of the state, particularly in the face of agrarian unrest. Peasant leaders have been arrested, jailed, and even murdered. Cases like these have taken place in Bulukumba (South Sulawesi), Garut, Subang, Pangalengan, Bogor, Sumedang, and Ciamis (West Java), Banyumas and Wonosobo (Central Java), Manggarai (East Nusa Tenggara), Muko-Muko (Bengkulu), Labuhan Batu and Porsea (North of Sumatra), Sesepa-Luwu and Dongi-Dongi (Central Sulawesi), Lombok (West Nusa Tenggara), Halmahera (Northern Moluccas), and Banyuwangi and Pasuruan (East Java).

The State uses violence to put down local resistance to many state or corporate infrastructure projects funded by multilateral financial institutions, such as the ADB and the WB. These infrastructure projects generally infringe on the land rights of local communities, particularly indigenous peoples. Infrastructure projects are Yudhoyono's second priority after the expansion of big-plantation areas for bio-fuel energy.

Civil society organizations and NGOs in Indonesia are conducting their advocacy work in response to the abovementioned

analysis of the country's agrarian crisis. A number of them are demanding the cancellation of all infrastructure projects and debt problems. These groups include peasant movements such as AGRA (Alliance of Agrarian Reform Movement), STN (Serikat Tani Nasional), API (Aliansi Petani Indonesia), Petani Mandiri, and other social movements. Since the 1990s the networks of NGOs and a number of progressive intellectuals have played an important role in promoting land rights. These are Bina Desa, KPA (Konsorsium Pembaruan Agraria), Walhi (Wahana Lingkungan Hidup Indonesia), and YLBHI (Yayasan Lembaga Bantuan Hukum Indonesia).

The Indonesian peasant movement is demanding an end to state violence directed at their sector, and the release of peasant leaders that have been thrown in prison on the basis of anti-peasant laws. At the same time, the Indonesian peasant movement rejects the plan of the current government to repeal the Basic Agrarian Law of 1960 (UUPA). The draft law intended to replace the UUPA strongly favors the interests of big landowners. It totally rescinds the spirit and intent of the UUPA to carry out agrarian reform.

Strategies to Advance Access to Land and Tenurial Security

Maximizing Opportunities Made Available by the RPPK Policy

The RPPK outlines the policy of the Yudhoyono government in discussing, evaluating, and resolving problems in the agricultural sector, particularly in regard to farming, plantations, fisheries, and forestry, and especially those arising since the 1997-1998 economic crisis.

In other words, the policy defines the government's strategy to address challenges that affect farmers, farm workers, fishers, forest dwellers, and other poor communities. The RPPK is a starting point for observers attempting to understand how the Yudhoyono government intends to address poverty in the country and to improve the lives of farmers. For the present, at least, the RPPK would be judged according to the actions of the government in the past two years (2005-2007).

The RPPK emphasizes not just production and economic aspects, but ideological ones as well. The ideology behind the RPPK policies demands that agricultural revitalization must be

based on approaches which are humanitarian, just and popular, and which respect national sovereignty. Agriculture occupies a vital position in these policies. Hence, agriculture is no longer viewed as a subset of industry, producing food and the raw material for manufacturing, but as being closely intertwined with production and economics.

In addition, the task of revitalizing agriculture requires that different governments work in tandem in formulating strategies and policies in relation to efforts to address poverty, unemployment, and economic growth.

Three government departments are most closely involved in the tasks set forth by the RPPK. These are the Department of Agriculture, the Department of Forestry, and the Department of Maritime Affairs and Fisheries, which are under the Coordinating Minister for Economic Affairs, Aburizal Bakrie.² These departments are crucial to the future of the agricultural sector because they hold the governmental power and authority related to the use and management of agrarian resources (particularly agricultural and plantation lands, aquatic resources and forest areas) in Indonesia. Therefore, because they are mandated by the RPPK to work together, it is hoped that better coordination among these agencies, which to this point has been very weak, would result in the improvement of the livelihoods of farmers, in particular, and of the agricultural sector, in general. As such, the RPPK could prove to be an important tool for moving forward more fundamental reforms in the agrarian sector, especially since such reforms require a unified approach among the various state agencies working in the sector.

If Indonesia genuinely seeks to reform the weaknesses in its agrarian structures and revitalize agriculture, then state institutions which work in the field must have a common perspective of farmers and farming. The various departments which bear on farmers' livelihoods and agriculture must first be reformed, and coordination among them improved, to form a strong basis for the implementation of agrarian reform and the RPPK initiative.

Challenges

- **Overlapping Responsibilities among Government Agencies**

The challenge will come from the tendency of state institutions to protect their turf. Moreover, because they are addressing similar issues, there are overlaps in policies and implementation among the different agencies.



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

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

- **Low priority given to agricultural development despite the RPPK.**

One must consider the government's overall economic development policies, which are closely intertwined with policies related to the agricultural sector. It is important to understand for instance whether or not current banking and monetary policies are working in favor of agriculture, or not. The policies of the Department of Trade and of Bulog (the National Logistics Agency) in regard to food imports influence decisions by the Department of Agriculture to improve agricultural production and to expand the area of production. The problem of debt also needs attention, because it is related to how the people's money, as set forth in the national budget (APBN), would be allocated, i.e., whether the money is put to good use or is used to repay loans.

From an examination of the budget, it is clear which sectors are prioritized by the Government. The draft national budget for 2008 provides for an increase in budget allocation for infrastructure development, through two departments: the Department of Public Works (DPU) and the Department of Transportation. The DPU budget increased by 41% percent, to Rp 35.6 trillion, and the Transport Department's budget, by 64%, to Rp 16.2 trillion. Meanwhile, the allocation for agricultural programs was only Rp 14.1 trillion.

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

Mining is another priority sector because it generates the highest foreign exchange revenues for the Government. According to data from *Kompas*, the expected revenues from the mining sector in 2007 was Rp 5.74 trillion, a significant increase from earnings reported in 2006. This kind of earning power is contingent on large-scale mining operations, such as those of PT Freeport Indonesia, Inco, Newmont Nusa Tenggara, and Arutmin, which generated Rp 663 billion, Rp 154 billion, Rp 169 billion, and US\$25 million, respectively, in 2007³

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

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

The foreign exchange that one department generates at the cost of environmental degradation is then squandered

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

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

Revocation of Anti-Peasant Land Laws

The enactment of TAP MPR No.IX/2001 has the potential to give the peasant movements and the agrarian struggle new momentum. The TAP MPR No.IX/2001 declares that "the prevailing agrarian/natural resources management has been creating environmental degradation, inequality of land control and ownership, and agrarian conflicts." The Decree goes on to instruct the House of Representatives (DPR) and the Indonesian President "to immediately withdraw, amend, and/or to change any laws and related regulations that are not suited with this Decree" (Article 6). The MPR Decree on Agrarian Reform and Natural Resources Management also gives the Government the mandate "to implement [...] land reform, to solve agrarian conflicts, and to provide [...] the funds for [the] agrarian reform program and resolution of agrarian conflicts" (Article 5).

TAP MPR No.IX/2001 thus gives agrarian advocates and the peasant movement in Indonesia the legal right to push the Government to implement land reform (including the unfinished land reform of the 1960s) and to solve agrarian conflicts.

Despite such a law, the land occupation and land reclamation that have taken place in many parts of Indonesia during the reform era (1998–present), which could be viewed as change from below and a manifestation of peasant struggles, are still regarded by the Government as illegal acts. At the same time, the Government has passed several laws that contravene the intent of TAP MPR No.IX/2001, such as the Law No.18 of 2004 on Plantations and Law No. 25 of 2007 on Capital Investments.



Both laws also go against the grain of the 1960 Basic Agrarian Law. Despite the greater democratic space prevailing in the country, the conditions of the Indonesian peasantry have actually taken a turn for the worse. Therefore, the resolution of land and agrarian conflicts is contingent on the revocation of anti-peasant laws.

Developing a Strong and Democratic Peasant Based Organization

As a key strategy, advocacy to promote the agenda of agrarian reform must be undertaken, especially among the rural poor people. Among the peasantry, the development of a strong and democratic peasant-based organization is urgently needed. The movements involving land occupation and land redistribution, which have taken place in the last 10 years in Indonesia, show that the pursuit of genuine land reform is the main agenda and historical mandate of the Indonesian peasant movement.

Toward realizing the agrarian reform agenda, at least five main tasks must be undertaken:

1. Resolution of all land and agrarian conflicts and disputes;
2. Implementation of land reform programs (including the unfinished land reform of the 1960s);
3. Rearrangement of rural production and improving productivity by prioritizing peasants in efforts to improve access to land;
4. Revocation of anti-people and anti-peasant land laws and regulations; and
5. Development of a strong and democratic peasant-based organization.

Land reform implies a major change in social relations. It is a policy option that few governments take willingly. The state is never a consistently rational, unified, and benevolent entity. It is beholden to dominant social forces. Hence, the state cannot be expected to adopt policies benefiting a fragmented and unorganized peasantry at the expense of landlords and other groups on whom it depends for support.⁵

For these reasons, the development of a strong and democratic peasant-based organization is a very important agenda in agrarian reform implementation as well as the most urgent strategic intervention in Indonesia today. From the beginning, peasant protests and struggles have significantly influenced the dynamics of Indonesian social movements—even if many of them had started out as a reaction to land eviction brought about by the

expansion of capital in the rural areas, in particular, and development activities, in general.

Peasants and poor farmers are the beneficiaries of any agrarian reform program. In this regard, the participation and support of peasants through their strong and democratic organizations will be a decisive factor in the successful implementation of agrarian reform.

Building a Coalition to Support the Land Rights Struggle

In every case where land reforms have succeeded, protests by organized peasant producers and rural workers have been a crucial factor. Peasant activists who organize themselves to bring about reform usually comprise only a small minority of the rural poor, especially in repressive contexts, but they invariably have the support—albeit silent—of a much larger constituency.

Today, however, the possibilities of a mobilized and organized peasantry seizing and maintaining control of large landholdings, such as what happened in Bolivia, Mexico, and China during revolutionary upheavals, are now extremely remote in most countries. Economic and political power is increasingly centralized under urban-based national and transnational agencies and corporations. The frequent exhortations by those wielding centralized power for greater decentralization of state and corporate governance seldom include a prior democratization of land tenure and other social relations in rural localities. Such decentralization, when it does happen, usually results in even tighter control by the powerful at local levels and in diminished opportunities for the poor to get support from potential allies at the national and international levels.

The privatization of land has been governed by the law of supply and demand: land to the highest bidder, benefitting the land speculators and big corporations, first, and poor peasants, a far second, if at all.

These developments have led many observers to give up on the agrarian reform effort. The rural poor, they conclude, will simply have to wait until alternative employment becomes available by other means. At best, they think the poor should be provided with “safety nets” to keep them from starving to death.

However, the opportunities for land reforms are still available. Globalization has affected both the rural and urban poor nega-

tively, and give them reason to make common cause with each other. These two sectors have also found allies among the urban middle class and a few progressive minded landowners. Moreover, the spread of formally democratic multi-party political regimes offers new opportunities for pressing for reform through the electoral process.

Environmental movements can likewise become powerful allies of the rural poor. So too can social movements aimed at advancing gender equality and human rights. Growing urban unemployment stimulates political pressures to improve social conditions in the countryside in order to slow the migration of the rural poor to the cities and abroad.

The concentration of economic and political power in national capitals and imperialist country centers leaves governments more exposed to pressures for reform from national and international progressive social movements. These movements may focus on other issues, but they all have good reason to support the demands of peasants and rural workers for a more equitable distribution of rights to land because this could help advance their own special causes.

Progressive NGOs and committed international organizations can play important roles as catalysts in helping grassroots peasant and landless movements organize and press their demands for land. They can help through research focused on the livelihood and sustainable development problems of the rural poor. They can provide valuable technical assistance, material resources, and legal aid. They can facilitate the use of modern communication technologies by peasants and others struggling for reform. They can publicize violations of socio-economic and human rights, corruption, and other abuses suffered by the poor. They can advance land reforms through advocacy at all levels.

But their roles will always be auxiliary to what must fundamentally be a domestic political process. The main actors in bringing about and consolidating genuine land reform must always include the landless and near landless, together with their political allies and the state. Well-intentioned NGOs and international organizations can help, but they could also hinder the peasants' struggle if they fail to take into account the complex social dynamics that underlie the pursuit of agrarian reform.

Endnotes

- ¹ See further Sri Hartati Samhadi, *op.cit.*, *Kompas*, 16 August 2005, p.50.
- ² According to report of *Forbes Asia* magazine, October 2006 edition, Aburizal Bakrie Family which controls Bakrie Group owns the wealth of USD 1,200 million or equivalent to Rp 11.16 trillion (at rate USD 1= Rp 9,300). Therefore, Bakrie Family at this moment is number 6 of the richest families in Indonesia. Cited from Special Edition of *Tempo* magazine on 10 Years of Economic Crisis, 23–29 July 2007, "Ini Dia Superkaya Indonesia", pp. 42–43. Meanwhile, according to Pusat Data Bisnis Indonesia (1994), the Bakrie Family also owns HPH (forest concessions) of 1.2 million hectares.
- ³ See "Pertambangan: Investor Takut Isu Lingkungan", in *Kompas*, 19 June 2007.
- ⁴ See further "Apa Kata Mereka: Indonesia Masih Perlu Belajar!", in *Kompas*, 2 June 2007, p. 37.
- ⁵ See Solon L. Barraclough, *An End To Hunger?: The Social Origins of Food Strategies*. London and New Jersey: Zed Books Ltd., 1991, p. 130.

References

- Adityaswara, M. (2007, July 23). Perbankan setelah satu decade. In *Tempo*, 38–39.
- Alliance of Agrarian Reform Movement. (2006). *Reforma agraria sejati: Jalan utama menuju kedaulatan dan kemakmuran bangsa sejati*. Aliansi Gerakan Reforma Agraria (AGRA).
- Anggaran merangsang jelang pemilu. (2007, August–September). In *Trust* (45)5, 64–65.
- Apa kata mereka: Indonesia masih perlu belajar!*. (2007, June 2). In *Kompas*, 37.
- Arifin, B. (2006, January 22). Episode ketiga kontroversi impor beras. In *Tempo*, 109.
- Arifin, B., & Rachbini, D.J. (2001). *Ekonomi politik dan kebijakan publik*. Jakarta: Grasindo.
- Bagi-bagi duit bulog. (2007, April 8). In *Tempo*, 23.
- Banjir beras di sentra produksi. (2005, September 24). In *Kompas*, 34.
- Barraclough, S.L. (1991). *An end to hunger?: The social origins of food strategies*. London and New Jersey: Zed Books Ltd.
- _____. (1998, December 3–5). *Land Reform in Developing Countries: The Role of the State and Other Actors*. Paper presented at agrarian reform conference of Konsorsium Pembaruan Agraria (KPA) and Pusat Penelitian dan Pembangunan Pedesaan dan Kawasan (P3PK), University of Gadjah Mada, Yogyakarta.
- Baswir, R. (2003). *Di bawah ancaman IMF*. Yogyakarta: Pustaka Pelajar.
- Breman, J. (1997). *Menjinakkan sang kuli: Politik kolonial, tuan kebun, dan kuli di Sumatra Timur pada awal abad Ke-20*. Jakarta: Pustaka Utama Grafiti.



- Country report paper of government of Indonesia. (2006, March 7–11). Paper presented at International Conference on Agrarian Reform and Rural Development (ICARRD) in Porto Alegre, Brazil.
- Dana Masyarakat: 'Booming' di pasar uang, 'Merana' di sektor riil. (2007, June 2). In *Kompas*, 38.
- Department of Information of the Republic of Indonesia. (n.d.). Peraturan dasar pokok-pokok agraria dan landreform. In *Memori Pendjelasan atas Rantjangan Undang-Undang Pokok Agraria Special Publication (169)*. Jakarta: Department of Information.
- Faryadi, E. (2000, December 5–8). *Agrarian reform in Indonesia after Soeharto*. Paper presented at the International Conference on Agrarian Reform and Rural Development (ICARRD) of the Department of Agrarian Reform of the Philippines and Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Manila.
- _____. (1998). *Seri panduan organisasi tani buku ke-1, land reform berdasarkan inisiatif rakyat (Cetakan pertama)*. Bandung: KPA.
- _____. (2002). Tahapan baru dalam perjuangan petani Indonesia: Mendesak pelaksanaan TAP MPR No.IX/MPR/2001. In *WACANA*, (9), 139–152.
- Fauzi, N. (1999). *Petani dan penguasa: Dinamika perjalanan politik agraria di Indonesia*. Yogyakarta: Insist Press, KPA, dan Pustaka Pelajar.
- Government of Republic of Indonesia. (2005). *Revitalisasi pertanian, perikanan, dan kehutanan (RPPK) 2005*. Jakarta: Kementerian Koordinator Bidang Perekonomian Republik Indonesia.
- Hardiyanto, A. (1997). *Land reform by leverage: Reformation of the system and structure of control and ownership of land based on the needs and interests of the people*.
- Harsono, B. (1975). *Hukum agraria Indonesia*.
- Hong, G.S. (2007, July 23). Goncangan ekonomi, akankah terulang. In *Tempo*, 52–53.
- Indonesia, supermarket bencana. (2007, May) In *Tempo*, (13/XXXV), 84–88.
- Jhamtani, H. (2001). *Ancaman globalisasi dan imperialisme lingkungan*. Yogyakarta: Insist Press, Konphalindo, and Pustaka Pelajar.
- Jatuh-bangun satu dasawarsa. (2007, July 23). In *Tempo special edition 10 years of economic crisis*, 30–31.
- Kartodirdjo, S., & Suryo, D. (1991). *Sejarah perkebunan di Indonesia, kajian sosial ekonomi*. Yogyakarta: Aditya Media.
- Kartodihardjo, H. (1999). *Belunggu IMF dan world bank: Hambatan struktural pembaharuan kebijakan pembangunan kehutanan di Indonesia*. Bogor, Indonesia: Pustaka Latin.
- Kebijakan setengah hati. (2006, January 22). In *Tempo*, 102–105.
- Kisah bedinde di rumah mewah. (2007, April 8). In *Tempo*, 28.
- Koalisi Ornop Indonesia Pemantau WTO. (2000). *Waspada WTO!*. *Kompas*. (2004, July 7).
- Landreform, infrastruktur, dan aturan main. (2007, August 16). In *Kompas*, 40.
- Lembaga Alam Tropika Indonesia (LATIN). (1999). *Kehutanan Indonesia pasca Soeharto: Reformasi tanpa perubahan*. Bogor, Indonesia: Pustaka Latin.
- Munggoro, D.W., et.al. (1999). *Menggugat ekspansi industri pertambangan di Indonesia*. Bogor, Indonesia: Pustaka Latin.
- Nasoetion, L. (2002, May 8). *Pengarahan kepala badan pertanahan nasional*. Paper presented at the seminar Rethinking Land Reform in Indonesia of the National Land Agency, Land Law Initiative and Rural Development Institute, Jakarta.
- Noertjahyo, J.A. (2005). *Dari ladang sampai kabinet: Menggugat nasib petani*. Jakarta: Penerbit Buku Kompas
- Nugraha, P. (2007, February 24). Revitalisasi pertanian jalan di tempat?. In *Kompas*, 34.
- Pertambangan: Investor takut isu lingkungan*. (2007, June 19). In *Kompas*.
- Rapid Agrarian Conflict Appraisal (RACA) Institute. (2003). *RUU perkebunan: Melestarikan eksploitasi dan ketergantungan*. Jakarta: Rapid Agrarian Conflict Appraisal (RACA) Institute.
- Rafick, I. (2008). *Catatan hitam lima presiden Indonesia: Sebuah investigasi 1997–2007, mafia ekonomi, dan jalan aru membangun Indonesia*. Jakarta: Ufuk Publishing House.
- Samhadi, S.H. (2004, February 24). Akibat salah urus pertanian. In *Kompas*, 33.
- _____. (2005, August 6) Sektor pertanian dianaktirikan. Special report 60 years of Indonesia independence. In *Kompas*, 50.
- _____. (2007, August 16). Pelajaran krisis: Stabilitas makro saja tak cukup. In *Kompas*, 34.
- Sangaji, A. (2002). *Buruk inco, rakyat digusur: Ekonomi politik pertambangan Indonesia*. Jakarta: Pustaka Sinar Harapan.
- Sobhan, R. (1993). *Agrarian reform and social transformation: Preconditions for development*. London and New Jersey: Zed Books.
- Sulistyo, H. (2000). *Palu arit di ladang tebu: Sejarah pembantaian massal yang terlupakan (1965–1966)*. Jakarta: Kepustakaan Populer Gramedia.
- Suruji, A. (2007, August 16). Reinkarnasi konglomerat Indonesia. In *Kompas*, 45.
- Sutomo, S., & Suhariyanto, K. (2004). *Data konversi lahan pertanian: Hasil sensus pertanian 2003*. (Workshop paper). Jakarta: Pusat Data dan Informasi Pertanian, Departemen Pertanian, Republik Indonesia.
- Tak sudah dirundung utang. (2007, July 23). In *Tempo special edition 10 years of economic crisis*, 48–49.
- Tandan Sawit*, (4) 2, 3. (2002.)
- Task Force Indonesian Human Rights Commission. (2004). *Naskah akademik penyelesaian konflik agraria dan usulan pelembagaannya di Indonesia*.
- Target ekspor hasil hutan 1999 US\$ 8,5 milyar. (1999, March 13). In *Suara Pembaharuan*.
- Tuma, E.H. (2001, April–May). Land reform. In *Gerbang*, (9) 4, 62–85.

Asserting Freedom from Central Control

NEPAL Country Paper
Land Watch Asia





Acknowledgments

This paper is an abridged version of the Nepal Land Watch Country paper for Land Watch Asia on the status of Access to Land and opportunities and strategies for Civil Society advocacy. This is a collective effort of more than 37 individuals and civil society organizations (CSOs) in Nepal

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We dedicate this work and our collective commitment to Asia's rural poor and their pursuit for equitable access to land and resources for their sustained development.

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Acronyms

ADB	Asian Development Bank
APP	Agriculture Perspective Plan
APPROSC	Agriculture Project Support Centre
BS	Bikram Sambat (Nepali calendar year)
CAS	Country Assistance Strategy
CBO	Community Based Organization
CBS	Census of Bureau of Statistics
CPA	Comprehensive Peace Accord
CPN	Communist Party of Nepal
CSRC	Community Self-Reliance Centre
Danida	Danish International Development Assistance
DDC	District Development Committee
DFID	Department for International Development
DLRO	District Land Reform Office
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FECOFUN	Federation of Community Forest Users Nepal
HDI	Human Development Index
HLCLR	High Level Commission on Land Reform
HRC	Human Rights Committee
HUGOU	Human Rights and Good Governance Advisory Unit
ICCPR	International Covenant on Civil and Political Rights
ICEARD	International Convention on Elimination of All forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IIDS	International Institute for Development Studies
ILO	International Labour Organisation
IMF	International Monetary Fund
LDC	Least Developed Countries
LWA	Land Watch Asia
MNC	Multinational Company
NC	Nepali Congress (a political party)
NLRCG	National Land Rights Concern Group
NLRF	National Land Rights Forum
NMKP	Nepal Majdur Kinsan Party (a political party)
NPC	National Planning Commission
NPR	Nepali Rupees
NSCA	National Sample Census of Agriculture
NSP	Nepal Sadbhawana Party (a political party)
PRSP	Poverty Reduction Strategy Paper
RPP	Rastriya Prajantra Party (a political party)
SAP	South Asia Partnership
SDC	Swiss Development Cooperation

SJN	Samyukta Janamorcha Nepal (a political party)
UDHR	Universal Declaration of Human Rights
UML	United Marxist and Leninist
UNDP	United Nations Development Programme
USAID	United States Assistance for International Development
VDC	Village Development Committee
WB	World Bank
WTO	World Trade Organization

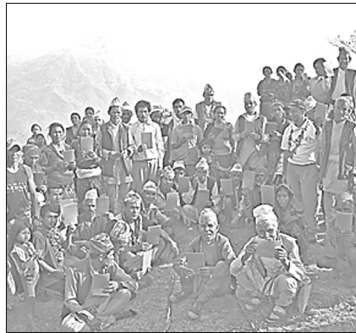
Glossary

Aputali	No heirs for property.
Bhumi	Land.
Bigha	A unit of land measurement used in Terai, comprising 1.6 acres or 0.67 hectare. A <i>Bigha</i> is divided into 20 <i>Katthas</i> .
Bijan	A system under which land taxes on un-irrigated lands in the hills are assessed on the basis of the estimated quantity of seed maize needed for sowing.
Birta	Land grants made by the state to individuals in the form of reward or gift usually on an inheritable and tax-exempt basis, which was abolished in 1969.
Birtawal	Person owning <i>Birta</i> land.
Brahmin	Highest caste in Nepali caste hierarchy.
Charuwa	Cattle herder.
Chepang	An indigenous community of Nepal (still this is highly marginalized).
Chhetri	Second highest caste of the caste system.
Chut Guthi	Endowment land administered by temple or monastery that was not surveyed.
Dalit	A group of caste discriminated as so called 'untouchables' or 'impure'.
Deuki	A traditional system practiced in some society where a girl child is offered to the god and kept in the temple. The child is not allowed to enjoy human freedoms until the age of 14.
Gothala	A permanent labor system where these people are kept in the landlord's house for the purpose of cattle grazing and other manual labor.



Guthi	An endowment of land made for any religious or philanthropic purposes.	Land Holding	An agricultural land holding economic unit of agricultural production. The holding includes all land operated by a holder whether rented or owned. A holder is the person who exercises management control over the operations of the land and may or may not be the same person as the household head (CBS).
Guthi Tainathi	Certain categories of <i>Guthi</i> lands where the <i>Guthi</i> Corporation has been cultivating itself, or else may appoint tenants on a permanent basis to do so.	Limbu	Ethnic and indigenous nationalities in Nepal.
Haruwa	Plough man (a kind of bonded system mostly practiced in Terai).	Majhiyas	A feudal leader or landlord of community.
Jagir	Arable lands assigned to government employees and functionaries in lieu of their emoluments, which was abolished in 1952.	Mukhiya	A village head appointed by the government to settle dispute in the hill regions.
Jagirdar	The government employees who were paid their emolument with allotment of land for their service.	Munda	A kind of indigenous community of Nepal.
Jamindar	Landlord.	Muri	Unit of quantity of grain used in local communities.
Janajati	Ethnic and indigenous nationalities in Nepal.	Mushahar	A caste of Terai falls under <i>Dalit</i> group who are discriminated and humiliated.
Jhangahd	An indigenous community of Nepal.	Panchayat	The autocratic regime where the King exercised absolute state powers for the period 1960 to 1990.
Jhoda	Name of a place where the land rights movement was started in the name of <i>Jhoda</i> farmers' struggle.	Raikar	Lands on which taxes are collected from individual landowners; traditionally regarded as state-owned.
Jimidar	An individual responsible for land tax collection at the village level in Terai region who was responsible for autocratic regime before 1951.	Raj Guthi	Endowments of the lands under the control or management of the Trust Corporation.
Jimidari	A <i>Jimidar's</i> administration or exercising his powers (all <i>Jimidars</i> were men).	Rakam	Unpaid and compulsory labor services due to the government from peasants cultivating <i>Raikar</i> , <i>Kipat</i> , and <i>Raj Guthi</i> lands; abolished in 1963.
Jimuwal	An individual responsible for land tax collection at the village level in hill region who was responsible for autocratic regime before 1950.	Rana	Surname of group of elite people who ruled Nepal from 1846 to 1950.
Jirayat	A plot of taxable land attached to the <i>Jimidar's</i> emoluments	Ropani	A unit of land measurement used in hill districts, comprising an area of 5,476 square feet.
Kamaiya	A bonded labor system widely prevalent in the five district in the Mid and Far Western development region of Nepal.	Talukdar	A village-level revenue-collection functionary in the hill region.
Kattha	A unit of land measurement used in Terai comprising slightly over 300 square meters.	Tenant	Tillers of landlord's land.
Kipat	A system of communal land ownership prevalent among the <i>Limbus</i> and other Mongoloid communities in the hill regions.	Terai	The plain land of the southern part of the country.
Kut	A system of sharecropping under which the landowner appropriated a specific quantity of the produce or a stated sum in cash as rent.		

NEPAL



QUICK FACTS

- Nepal's total land area is 147,181 square kilometers. Only 20% of this is cultivable.
- According to the 2001–2002 agricultural census:
 - ▷ 94.1% of holdings is agricultural land, covering 24.98 million hectares. The remaining land (156,400 hectares) is non-agricultural;
 - ▷ Forested/woodland areas have been reduced from 108.8 thousand hectares in 1991–1992 to 37,200 hectares in 2001–2002—a decrease of 71,600 hectares, or 66%, during the 10-year period.
 - ▷ Some 20–25% of cultivable land is left fallow because of land ownership disputes.

Overview of Access to Land

Land Tenure System

The system of land tenure in Nepal has evolved into various forms and phases over the years. Historically, state ownership was the traditional form of land tenure in Nepal. The land belonged to the State and its rulers. After 1946, six major types of land tenure were recognized; these are *Raikar*, *Birta*, *Jagir*, *Rakam*, *Kipat* and *Guthi* (Tuladhar, 2005). Today, however, only two types of tenure prevail: *Raikar* and *Guthi*.

Raikar

The term *Raikar* is probably derived from the Sanskrit words *Rajya* (state) and *Kara* (tax), thus denoting land on which the state levies taxes. This is what distinguishes *Raikar* from other forms of land tenure, such as *Birta*, *Guthi*, and *Kipat*, where the occupant does not necessarily pay taxes and is generally not listed in official records.

Under this tenure system, the tenants have to pay a yearly land tax to the Government for cultivating the land. The tax used to be paid through local agents (called *Jimidar*, *Talukdar*,

Jimwal, or *Mukhiya*) of government. The agents also used to perform the task of land administration—and, in fact, acted as landlords—for which they retained a certain percentage of the collected land tax as their fee/salary. Numerous cases of exploitation of tenants were reported during the administration of these local agents. The system of collecting land tax by appointing local agents was abolished by the Land Act 2020 (1964).

The *Raikar* system was adopted at a time when the supply of land in the country far exceeded the demand for it. In fact, the law (the Nepal Muluki Ain) which instituted the *Raikar* system visualized land as a free commodity to be distributed among the local inhabitants on the basis of their need and on the availability of land.

Rights to *Raikar* land are limited to occupancy rights vis-à-vis the state. These rights can be freely sold or transferred to any person; in practice, it is almost like ownership. The term used for *Raikar* transactions is "*Rajinama*," literally "resignation," or giving up the right to land.

Ninety-eight (98) percent of Nepali farmland currently operates under the *Raikar* tenure system.



Birta

The term "*Birta*" was probably derived from the Sanskrit word *Britti*, which means livelihood. Hence, *Birta* refers to land granted to individuals to enable them to make a living. *Birta* land is awarded to individuals by the state, tax-free, for their bravery or loyalty (Chapagain, 2001). The *Birta* owner has tenants working the land, from whom he—rather than the State—collects land tax. The *Birta* owner retained an agreed portion of the collected tax as his income and remitted the rest to the Government.

There were two types of *Birta*: non-inheritable *Birta* and inheritable *Birta*. Ownership of non-inheritable *Birta* land lasts only during the recipient's lifetime, while inheritable *Birta* could be sold or transferred to another person. In many cases, however, non-inheritable *Birta* was transferred to the heir/s after the death of the *Birta* owner (HLRC, 1995). *Birta* was not only the source of income of the *Birta* owner but was also an indication of high social and economic status (Regmi, 1977). More than one-third (36.3%) of the country's farmland was under this tenure type before the 1950s (Regmi, 1977).

Birta tenancy was officially abolished with the promulgation of the *Birta* Land Abolition Act 2016 (1957), which required all *Birtas* to be converted into Raikar. However, the abolition of *Birta* took effect only after the formation of the Nepali Congress government in 1959.

Jagir, Rajya and Rakam

Jagir refers to the system wherein the government authorized civil servants to collect land tax (in cash or kind) and to use it for a certain period of time in lieu of a salary. In this system, the civil servant could not sell or transfer his right to his heir/s, nor to any other persons. However, the owner or tenant of *Jagir* land could do so (HLRC, 1995). This tenure system was abolished in 1951 with the end of the Rana Regime in Nepal as most of the *Jagir* assignees were Ranas. The abolition of the *Birta* and *Jagir* tenure systems signaled the disappearance of feudal lords from the agrarian scene in Nepal (Regmi, 1977).

Rajya is another type of land tenure which came into effect after the unification of the country by Prithivi Narayan Shah, King of Nepal from 1723 to 1775. The unification abolished the small fragmented kingdoms in the country. However, even after unification, the former kings (chiefs of certain territories) were authorized to collect land tax from certain lands and could use the money freely. In some circumstances, they had to pay a

certain portion of the collected land tax to the State. This authority was assumed by heirs of the kings. However, they had no authority to sell or reallocate land to different tenants. This right was vested in the tenants or landowners. This type of tenure was abolished in 1971 (HLRC, 1995).

Rakam originated from the assignment of land as compensation for the performance of specific functions, mostly of a manual nature. *Rakam* lands were assigned to carpenters, bricklayers, mail carriers, wind-pipe players, caretakers of religious places, and similar categories of manual workers. This system was limited to the hill region of Nepal, particularly Kathmandu Valley (Regmi, 1977). *Rakam* was a temporary assignment and ended upon the death or termination of service of the assignee. The *Rakam* system was abolished in 1955, and *Rakam* lands were converted into *Raikar* lands.

About 7.7% of the country's farmland is estimated to have been under *Jagir*, *Rajya* and *Rakam* prior to abolition (Regmi, 1977). None of these tenurial systems is currently practiced.

Kipat

Kipat is land collectively owned and cultivated by the Limbu community in the hills of eastern Nepal for their own purpose. *Kipat* land could be sold, or rights to it transferred to members of the same community but not outside it. *Kipat* landowners had to pay tax to the State for the portion of the land used as homestead. Paddy lands were exempted from tax (Regmi, 1977). About 4% of the nation's farmland was under this tenure system. It was abolished in 1961 by a government decree that converted *Kipat* land into *Raikar* following a survey of the land (Regmi, 1977). All *Kipat* lands have since been converted into *Raikar* (HLRC, 1995).

Guthi

The term *Guthi* was probably derived from the Sanskrit *Gosti*, or council. *Guthi* refers to land allocated for the purpose of covering the expenses of certain religious, charitable, cultural, or social functions. *Guthi* lands were registered to religious/cultural institutions by the State. However, individuals could also offer their land as *Guthi*. *Guthi* land is exempted from taxes.

The tenure right of tenants cultivating *Guthi* land is transferable to other tenants and is inheritable. At present, *Guthi* lands are administered by *Guthi Sansthan* (*Guthi* Corporation). About 2% of the nation's farmland belongs to this tenure type. How-

ever, the Government has initiated the process of converting most *Guthi* into *Raika* land.

Before the 1950s, the country's cultivable land was divided as follows:

<i>Raika</i>	963,500 hectares
<i>Birta</i>	700,080 hectares
<i>Guthi</i>	40,000 hectares
<i>Kipat</i>	77,090 hectares
<i>Rajya, Jagir, Rakam and others</i>	146,3336 hectares

(Evaluation of land reform in Nepal—1973, M.A. Zaman FAO)

While *Guthi* and *Raika* tenure systems are the only officially recorded systems in Nepal, an informal land tenure system exists alongside these. This type of land tenure system is mostly found in urban and semi-urban areas of Nepal, but it has also been observed in remote areas. Government and public lands are occupied by landless people, conflict victims, bonded laborers and rebel groups. (Paudel, 2006).

Dual Ownership of Land

The tenancy based tenure system is the kind which gives rise to "dual ownership," as both land owner and holder (tenant) exercise control over the land.

Dual ownership tends to discourage long-term agricultural investments because of the insecurity of tenancy and the unequal apportionment of benefits. Moreover, due to fear of eviction, the tenant is often forced to accept onerous rental conditions of the landowner, leading to severe exploitation in certain cases.

Dual ownership of land was abolished by the fourth amendment (1996) of the 1964 Land Act. However, about 13% of farm holders are still operating under rented tenure arrangements on about 8.7% of the country's land. This means that as much as 13% of landholdings and 8.7% of all farmlands still remain under dual ownership. Of lands operating under rented tenure arrangements, about 6% are run under the "share of produce" rental arrangement. Given that landowners are not inclined to report this kind of arrangement, and tenants fear reprisals from their landlord, the incidence of dual ownership of land is likely to be far higher than has been officially reported.

The process of putting an end to dual ownership is also hampered by the fact that 85% of tenants are unable to present the docu-

ments necessary to establish their rights to the land: (1) the contract with the landlord; and (2) a receipt of grain payment.

Insecurity of Land Tenure

To be considered a tenant, a farmer must have tilled or worked on another person's land for livelihood for at least two crops in a row. Tenancy rights conferred ownership rights on half of the land being tilled.

In 1964, when the government formulated the first Land Act and in so doing established tenancy rights, 1,818,975 tillers applied for tenancy rights; of this number, 1,546,734 got provisional certificates. However, only 318,596 of these were actually registered as tenants. Another round of registration was called pursuant to the fourth amendment of the Land Act, promulgated in 1996, and those who did not register had their tenancy rights cancelled. Because many of the tenants were illiterate and unaware of this law, as many as 560,000 of them failed to register, and lost their tenancy rights in the process. Today, more than 40% of peasants have no tenancy rights.

Even those with tenancy rights are not that secure of their land tenure. At least one tenant is evicted by a landlord in Nepal every day (CSRC, 2005). The Land Act 1964 has given the landlord all sorts of excuses to do this.

Feudal and Exploitative Practices: *Haliya/Haruwa*

Literally, *Haliya/Haruwa* is a male who ploughs his master's field for very low wages. Such a ploughman is called *Haliya* in the hills, and *Haruwa* in the plains. *Haliya/Haruwa* also refers to a kind of bonded labor—debt bondage in particular. The *Haliya/Haruwa* ploughs the landlord's farm on an annual contract, but since he cannot make enough money to pay off the principal, he tills the land to pay off the interest. Since he is not free to do work for anyone else, he has little chance of earning enough to repay his loan. Since it is in the interest of the landlord to keep the *Haliya/Haruwa* in his debt, he plays all sorts of tricks, such as making the *Haliya/Haruwa* sign for a loan much more than what he actually received (e.g. having the *Haliya/Haruwa* sign for a 5,000 rupee loan, then surreptitiously adding another "0" to the amount in the signed document). Even when *Haliyas* go to pay back the principal, the landlord makes up one excuse or another not to accept it. And when the loan interest is compounded from year to year, the whole family is bound to repay the loan.



There are an estimated 60,000 *Haliya* families in the hills of the Mid and Far Western regions, and 300,000 in the western, central and eastern Terai districts in the country. These *Haliya/Haruwa* are mostly *Dalits*. Likewise, there are over 30,000 former bonded laborers in five Terai districts of the Mid and Far Western regions of Nepal who have been living miserably for ages.

Figure 1. Land-based Hierarchy in Terai

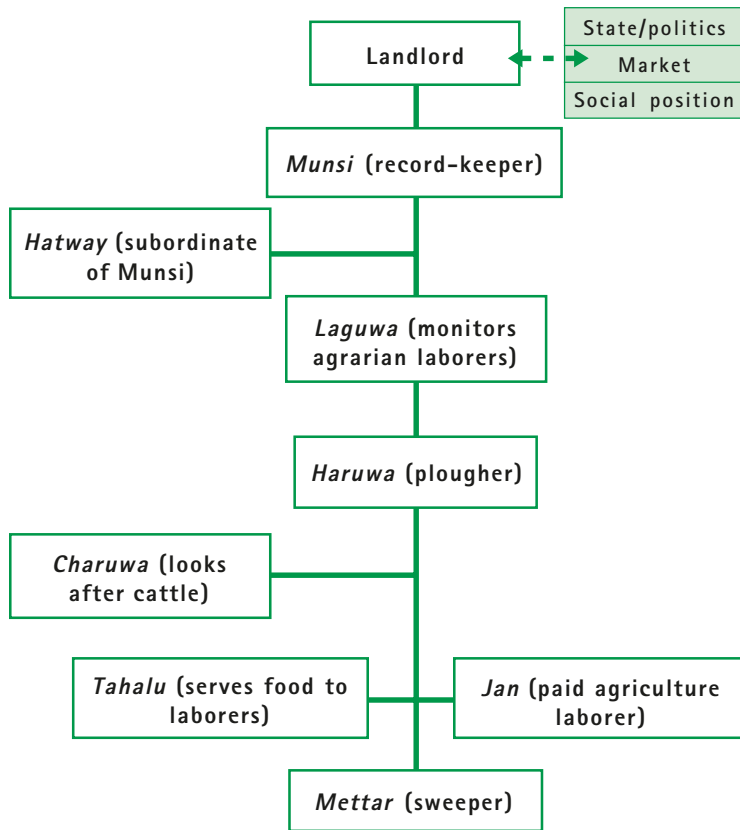


Figure 1 illustrates the land-based social hierarchy in Nepal, especially in the Terai region. This hierarchy supports some of the most exploitative feudal practices. The landlord hires many groups of workers to plough his land, look after his cattle, work on the farm, take care of the animals and sweep the grounds.

The figure also shows how the land-based bonded system is organized, particularly in the household as a production unit. The landlord continuously maintains his relationship with state, local or national political organizations, to secure power and authority. It is often the case that most elected representatives are themselves landlords or close kin to them. At the same time, a landlord also has to maintain linkages with the market to buy and sell products required for production. The market favors landlords because of their connection with state or political authorities. Further, in one way

or another they can ensure the continuous flow of commodities demanded in the market. They also maintain a social persona, by performing some kind of social work (e.g., as chair of a school management committee), by being benevolent to the poor, regularly performing religious rituals, and giving donations to charity organizations (such as for the construction of a temple), etc.

Land Ownership and Distribution

Landlessness

- According to the 2001 census, out of a total of 4.2 million households, 1.3 million households (or 25% of the populations) are landless (CBS, 2001).
- According to the Human Development Report of 2004:
 - > In rural areas, almost 29% of households, or over 5.5 million rural-based Nepalese (given that the average household size of Nepal, according to the 2001 census, is 5.45), do not own any farmland.
 - > The marginalized groups include freed bonded laborers (about 26,000 families); landless peasants; squatter settlers; indigenous peoples; *Haliya* (300,000 persons); *Haruwa/Charuwa*; *Dalit* (22%); *Badi/Badini* (4,442 persons); and most indigenous and minority groups such as *Chepang* (52,237 persons); *Mushahar* (172,434 persons); *Santhal*, *Jhangadh*, *Munda* and many internally displaced people, *Deukis* (virgin girls offered for the service of a temple) and so on.
- Over 70% of peasants own less than a hectare of arable land (Nepal National Planning Commission, 1998).
- There is a huge gender disparity in the number of male and female landholders. Only 8.1% holders are female, though the proportion is gradually improving (CBS, 2004). The lower proportion of female holders is directly related to the lower proportion of female household heads. Also, only 10.8% of women own land (Nepal National Planning Commission, 1998).
- Some 217,000 families do not have enough land on which to build a house. These are considered the agricultural landless. Landlessness is highest in the Terai districts.

Size of Holdings and Distribution

Landholdings less than a hectare in size make up close to 75% of the country's farmlands, yet, together, they account for less than 40% of the total farm area. On the other hand, big farm-lands (5 hectares and over) comprise less than 1% of all holdings, but cover more than 7% of the total farm area.

A regional analysis of land distribution indicates that the proportion of landless holdings is higher in the Terai, compared to the hills and mountains. Sixty (60) percent of holdings in the hills and mountains comprise less than half of the country's total land area whereas 41% of the holdings in the Terai make up little more than half of the total land.

Other facts on landholdings:

- Average size all over the country: 0.8 hectare
- In the Terai: 0.94 hectare
- In the mountain region: 0.73 hectare
- In the hills: 0.66 hectare (the smallest)
- Female-owned or operated holdings are 35% smaller than those of males (CBS, 2004).
- Less than 1% of landowners hold 5 hectares and more.

Prior to the implementation of the Land Act of 1964:

- Sixty five (65) percent of poor peasants had access to just 15% of the land; while a miniscule number of rich landlords (3.7% of the population) owned 39.7% of the land (CBS, 1962)

- Distribution of farmland: 75% of landholders own less than 40% of farmlands, while 25% of landholders own 60% of farmlands.

Issues Affecting Access to Land

Centralized Land Governance

In Nepal, land management is centralized. All decisions related to land management are made at the Ministry level. Thus, people living in remote areas either have to travel to the capital, Kathmandu, to bring their case before the government, or wait for the Ministry's decision to be handed down to the district offices. Because the poor cannot afford the cost of traveling to the capital, they usually take their concerns to local government agencies, which usually do not have authority to settle issues and which are frequently biased against the poor. Land administration is procedurally complex and poor people cannot deal with the formalities it requires.

Table 1. Size of Holdings in Nepal

Size of Holdings	Holdings		Area		Average Land Size
	Number	Percent	Hectares	Percent	
Holdings without Land	26,700	0.79	118.2*	0.0	0.00
Holdings with Land	3,337,439	99.21	2,653,918.9	100.0	0.80
< 0.1 ha	260,547	7.74	13,241.6	0.5	0.05
0.1 ha and < 0.2 ha	346,113	10.29	49,864.2	1.9	0.14
0.2 ha and < 0.5 ha	972,259	28.90	327,060.8	12.3	0.34
0.5 ha and < 1 ha	915,674	27.22	641,659.3	24.2	0.70
1 ha and < 2 ha	588,649	17.50	791,965	29.8	1.35
2 ha and < 3 ha	157,026	4.67	371,223	14.0	2.36
3 ha and < 4 ha	51,573	1.53	175,690.5	6.6	3.41
4 ha and < 5 ha	20,241	0.60	89,257.5	3.4	4.41
5 ha and < 10 ha	21,575	0.64	139,750.2	5.3	6.48
≥ 10 ha	3,783	0.11	54,206.7	2.0	14.33
Total (Nepal)	3,364,139	100	2,654,037.1	100	0.79

Source: CBS, National Sample Census of Agriculture 2001/02

* Holdings without land refer to holders living on encroached public land.



Abolition of Collective Rights

Indigenous and ethnic groups are rapidly being displaced from their native land. This is the result of state-supported activities on indigenous peoples' lands that bring in big revenues, such as oil exploitation, mining, dam building, logging, monoculture of cash crops, cattle ranches, and the establishment of national parks, nature reservations and tourism.

Legal and Policy Framework for Access to Land

Laws

Land Reform Act of 1964

- Fixed a ceiling on the size of landholdings;
- Sought to protect the rights of tenants by including their names in the owner's land title;
- Fixed the rent on agricultural land and reduced interest on rural loans;
- Allowed tenants to apply for tenancy rights at the District Land Reform Office (DLRO) provided that they had tilled the land the previous year and could present proof of this fact, such as a grain payment receipt;
- Has been amended 6 times, the most important being:

Fourth Amendment (1996)

- > Provided that the land being cultivated by the tenant be divided equally between landlord and tenant, to ensure that tenants would become landowners themselves
- > A credit facility would also be made available to the tenant who wished to buy the landlord's half;
- > Sought to abolish dual ownership of land.

Fifth Amendment [failed to be implemented in 2001]

- > Attempted to reduce the ceiling on the size of landholdings.

- Problems in implementation:
 - > Despite the law's intent to abolish the practice of dual ownership of land, as much as 13% of landholdings and

8.7% of all farmlands remain under this arrangement. The likelihood that the incidence of dual ownership of land could even be higher than officially reported due to landowners withholding information or tenants' fear of reprisals.

- > Gave landlords unrestricted rights to evict tenants who fail or refuse to pay higher rents; thus, tenants had no secure tenancy rights, and were subject to arbitrary rent increases.
- > To get around the law, landlords evicted the tenants from their land. Thus, there has been a marked decline in the number of tenants and the area under tenancy from 1961 to 2001 (*refer to Table 2*).
- > According to the Badal Commission for Land Reform (1995), more than 450,000 tenant families were not yet registered, and that even those that have been registered have not been able to avail of their rights. In 2000–2001 a survey conducted by the Department of Land Reform and Management showed 266,261 registered tenants in 35 districts that were eligible land claimants but had not been able to avail of their tenancy rights. About a million poor households (majority of whom are Dalits) have been deprived of their rights to land.
- > A 1973 study showed that close to 10 years after the enactment of the Land Act of 1964, only 32,331 hectares of land had been acquired out of the 50,580 hectares (owned by 9,136 landlords) that had been identified for distribution, and of this only 64% had been distributed. Moreover, 31.2% of farmers were still tenants (Zaman, 1973). Another study found that 9.9% of landlords owned 60.8% of the land after 8 years of implementing the Land Act, thus leaving the pattern of land distribution basically unchanged (Regmi, 1976). More recent studies showed that after 20 to 30 years of implementing the Land Act, 28% of households were still unregistered tenants, especially in the Terai region (IDS, 1986 and Khanal, 1994).

Table 2. Tenants and Tenancy, 1961–2001

Description	1961	1971	1981	1991	2001
Total tenant households	40.4	19.0	9.5	15.9	12.2
Area under tenancy (in mill ha.)	25.5	15.9	6.2	8.5	8.7

Source: Ministry of Land Reform and Management (2006)

Interim Constitution of 2007

- Committed to “pursue [a] policy of adopting scientific land reform programs by gradually ending capitalistic land ownership practices.” (Part 4, Article 33 [f]);
- Mandates the State to pursue a policy of providing adequate land and livelihood to freed bonded laborers (Part 4, Article 35 [15]).

Programs and Policies

Interim Plan for 2007–2008

- Declares its objective of improving farmers' standard of living and contributing to the national economy through implementation of “scientific land reform.”
- Sets the specific goal of ascertaining the land rights of landless slum dwellers, freed bonded laborers and tenants, to ensure their food security, address poverty, and make the land more productive;
- Outlines an implementation strategy that includes the formulation of appropriate laws and setting up of mechanisms to distribute land to landless groups;
- Aims to form a high-level Commission to resolve problems concerning landless groups.

Programs and Policies for Fiscal Year 2007–08

The government's annual program and budget includes the following land-related policies and plans:

- Government-owned, unused and barren land would be made available for commercial and cooperative farming under long-term lease, giving priority to the landless;
- The foundation for implementing scientific land reform to put an end to the feudal system of land ownership will be prepared. A system of issuing one certificate—recording all land owned by one person wherever the land may be situated in the country—will be commenced. Activities remaining to end dual land ownership (landlord and tenant) will be completed. Necessary amendments will be made to increase the participation of the landless in the land. The rehabilitation program with freed bonded laborers will be continued.

Tenth Periodic Development Plan (2002–07)

- Declares that the long-term policy of the Land Reform and Management Sector is to “bring about social justice and good governance and contribute in achieving the national goals of poverty alleviation through the development of an effective, trustworthy, and qualitative land utilization and management system in the country”.

- States the objectives of the Land Reform and Management Sector as follows:
 - > To strive for an efficient, service oriented and informative land administration system based on modern technology.
 - > To increase access to land by actual farm workers (those whose skills and labor are directly linked to farming) and thereby contribute towards poverty reduction by establishing and rehabilitating target groups.

In order to achieve these sectoral objectives, several strategies and policy actions have been proposed with respect to each of the objectives. Similarly, sectoral quantitative targets have also been set. The strategies and policy/action plans as stated in the Tenth Plan are as follows:

1. Preparing land use and national land policies
Under this strategy the following policy actions will be carried out:
 - > Formulation of a National Land Policy to govern all activities related to land and formulation of an integrated law related to land and its implementation.
 - > Implementation of a land utilization action plan to discourage non-agricultural use of fertile land.
2. Developing the desired legal framework for contract and cooperative farming with due respect to the rights of land owners, and aiming to reduce the trend of leaving large landholdings fallow or unproductive;
3. Strengthening the land information system, which aims to secure and update land records, develop a geographical information system for the smooth flow of information, and maintain records of land entitlements disaggregated by gender;
4. Updating topographical maps and developing the required manpower for land management;
5. Discouraging land fragmentation, specifically fixing and implementing a minimum size of land eligible for registration and discouraging land fragmentation beyond a certain minimum size;
6. Efficient management of the settlement of *Kamaiya* and improving their livelihoods—with efforts directed toward proper management of the settlements of landless and freed *Kamaiya*, provision of skills training to improve capabilities for income generation, and distribution of land that is available after imposition of new land ceilings to the landless and economically marginalized sections of society;

7. Seeking ways to implement and manage the new provision of land ceiling and preparing grounds for the formulation of a progressive taxation system in order to discourage unproductive land holding;
8. Mobilizing peoples' participation in the management of *Guthi* land and updating *Guthi* records.

Several programs and their quantitative targets have also been set corresponding to the above objectives, strategies and policy action plans. The programs seem to be highly progressive. Yet, while the period of the Tenth Development Plan has already elapsed, many of these proposed initiatives have yet to be implemented.

Agriculture Perspective Plan (APP) (1996–2010)

- Main thrusts are enhancement of the productivity of land; commercialization of agriculture; diversification of products, and focusing on products in which Nepal has a comparative advantage;
- Identifies dual ownership of land and land fragmentation as major constraints to agricultural development and recommends taking actions toward terminating dual land ownership and initiating land consolidation based on the recommendations of the High Level Commission on Land Reform (HLCLR) 1995. It is further mentioned in the Plan that dual land ownership discourages investment on land development activities. Further, initiation of land reform programs and land consolidation programs have been identified as the basis for the selection of pocket areas in the Terai region;
- Problems in implementation: no action is being taken in pursuit of land reform and/or against land consolidation.

National Agriculture Policy of 2004

- Emphasizes the need to increase access to land by landless and marginal farmers for the general development of the agriculture sector and improvement of farm productivity;
- Recommends the following measures:
 1. Implementation and monitoring of compliance with land ceilings, the imposition of a progressive taxation policy, and formulation of contract rules for hiring farm land;
 2. Establishment of a Land Bank to enable landless groups to purchase farm land for agricultural production. Information services would be made available to the buyer and sellers of the land through involvement of local

authorities (bodies);

3. Provision of free technical assistance and seed grants to the *Dalit*, marginal, landless agricultural laborers contracting and operating farms, ponds or other water bodies for the purpose of producing agricultural commodities;
4. Lease of marginal public lands, grazing lands, degraded forest areas, and unutilized public lands to targeted community members.

Unwritten Practices Related to Customary Land

- Tradition dictates that where a person has tilled and sown the seeds for a crop, he/she cannot be evicted; and where a person has built and roofed a house on land that is not his/her own, the house cannot be demolished;
- Unfortunately, the legal system does not support any kind of ownership of cultivable land that is based on customary law.

Actors Facilitating or Impeding Access to Land

Rights-Holders/Tenants and Landless Groups

Successive farmers' movements have been undertaken by tenants and peasants since the 1950s. The following provides a summary of organized, farmer-led movements and revolts, from the 1950s to date:

Civil Society Organizations

The Community Self Reliance Centre (CSRC) is one of the NGOs at the forefront of advocacy for poor people's land rights. Starting with two Village Development Committees (VDCs) in Sindhupalchok District, CSRC has expanded its work to 42 of the country's 75 districts.

CSRC began by providing non-formal education classes. It took some time to establish land rights as a crux for the struggle against poverty and other forms of injustice and discrimination. It started organizing the farmers and advocating for a pro-tenant farmer policy framework. Within a couple of years, CSRC's initiatives evolved into a campaign that reached beyond Sindhupalchok. Development organizations (both national and international) began to recognize land rights as an important aspect of protecting human rights, building peace, and addressing poverty and discriminations, and joined hands in supporting the land rights work.

Table 3. People's Movements for Land Rights, 1950–2007

YEAR	NAME OF MOVEMENT/PLACE OF ORIGIN	CAUSE/AIM	RESULT
1950 to 1960			
1950	Somlingtar, Bhaktapur District	Tenants' refusal to pay land rent in the form of grain payments	Set off a movement against share-cropping in Rajapur, Bardiya District; the Jamindar Birodhi Andolan (Movement against landlords) in Lumbini; the Dharmabhakari Andolan, in Bara and Rautahat Districts; led to an organized and focused movement against the <i>Birta</i> tenure system, and the <i>Jamindari</i> system, and in support of tenancy rights; inspired the formation of an agricultural union parallel to the Akhil Nepal Kishan Singh (All Nepal Farmer Association);
After 1950	Western Nepal, specifically in Dadheldhura and Baitadi Districts	Widespread disaffection from the Ranas, an autocratic regime that ruled Nepal for 104 years and was put down by the Revolution of 1950; Led by Bhim Dutta Panta, whose main goal was to abolish the <i>Haliya</i> and <i>Kamaiya</i> (another bonded-labor system); Panta's rallying cry was "[T]ill the land, or leave"—a challenge directed toward the feudal lords.	Panta's revolt spilled over to the Kailali and Kanchanpur Districts
October 1954	Kathmandu and Bhaktapur District	Six demands issued to the government, including the abolition of the landlord system	Various demonstrations against the government, which led to the arrest of 19 demonstrators; led the way to the second phase of the revolt in March 1957, following which 55 farmers were imprisoned; inspired a movement for farmers' land rights which persisted until the 1980s: led by Nepal Majdur Kisan Party
1956–1957	Ji Kaho, No Re Kaho (Address us respectfully) Revolution/ Rautahat and Bara Districts	Revolt against feudal lords and their misdeeds	Evolved into a movement for dignity and self-respect, especially in the face of maltreatment of poor landless people by landlords; led to demands for and establishment of a grain bank by the union, and to which farmers as well as the feudal lords contributed grains and money; Police authorities, acting on behalf of the feudal lords, attempted to suppress the revolt by arresting its leaders but were defeated by the farmers.

Table 3. *con't.*

YEAR	NAME OF MOVEMENT/PLACE OF ORIGIN	CAUSE/AIM	RESULT
March 1954	Ratamata Bijayanagar, Pyuthan District	Started as political education and physical training; trainees who were called in to help the people in Narikot who complained about being oppressed were attacked by Thakuries, whom they defeated.	Warrants of arrest were issued against the trainees, who were forced to go underground.
1953–1955	All Terai Districts	Agitation among farmer youth against domination and exploitation and formation of the Socialist Farmers Party	Mass reprisals against farmers movements in 1960 led to the banning of the Farmers Union, which re-grouped as the Farmers Organization under the Panchayat System.
1960	Dang Deokhuri District	Eviction of farmers	Farmers united against the combined forces of the landlord and the local police. Fighting ensued, during which farmer leaders were shot at. One of them died.
1960 to 1990			
1970–1974	Jhapa	Oppression by feudal lords	Recruited youth supporters, who engaged in violent encounters with government; the killing of a number of youth supporters in 1973 paved the way for a higher form of revolt.
1978–1979	Chintang Revolution/ Dhankuta District	Widespread famine prompted starving poor people to break into the grain stores of the <i>majhayas</i> , or landlords. The <i>majhayas</i> owned all the fertile lands, while the poor farmers had to eke out a living from marginal lands, apart from paying land rent. They were also forced to work in the fields or in the <i>majhaya's</i> home for two weeks every year without compensation. In Dashain, the poor had to offer the <i>majhaya</i> gifts such as cocks, hens, alcohol, wooden pots, and sometimes, money. Poverty led to the insurgency.	As the <i>majhaya</i> stores were heavily guarded, the starving people failed in their attempt to break in.

Table 3. *con't.*

YEAR	NAME OF MOVEMENT/PLACE OF ORIGIN	CAUSE/AIM	RESULT
1978–1983	Piskar Movement/ Sindhupalchok District	Looting of paddy by the feudal lords of Piskar, called Pandeys.	Organized attempt by the farmers (Thami community) to take back the rice that had been stolen from them; after the leader of the Pandeys sent in the police, a number of the farmers fled, while the rest were arrested.
1990 to 2007			
1993	Kanara Movement/ Bardiya District	Demand for land rights by the Tharu community; government oppression	
1995	Rasuwa District	Tenants' refusal to pay grain payments to the fake owner of land under the <i>birta</i> tenure system, which has been abolished.	
1996	Sindhupalchok District	Filing of 42 cases at the District Land Reform Office for the grant of tenancy rights	Led to the formation of the National Land Rights Forum
1997	Bagdari Movement/ Bardiya District; Pitmari Movement/ Banke District	Landless people demanding land rights Education of the <i>Kamaiya</i> laborers concerning their rights	
1998	Banke District	Landless people taking over a piece of land owned by a private company	
2000	Kamaiya Movement Sindhupalchok District	Liberation of the <i>Kamaiyas</i> Protest action at all the land offices to resolve the land problem in Sindhupalchok	Expansion of the <i>Kamaiya</i> Movement into 5 districts Forced the government to form a committee to address the problem related to <i>Guthi</i> land in Sindhupalchok; regarded as a historic event in the struggle for land rights in Sindhupalchok.
2004	Nationwide Rajbiraj City, in Saptari District	73,000 cases filed with the land registration committee's offices in regard to pending applications for tenancy rights 2-day hunger strike demanding land rights and citizenship cards	

Table 3. *con't.*

YEAR	NAME OF MOVEMENT/PLACE OF ORIGIN	CAUSE/AIM	RESULT
2004–2006	Several districts	21,000 cases filed by tenants to claim their right to 50% of tenanted land	
2006	Sunsari District	Relay hunger strike in front of the land reform office	Support extended to the hunger strikers by the Indian Land Rights Movement's leader PV Rajagopal
	Dang, Banke, Bardiya, Sunsari, Sindhupalchok, Sapatari, Siraha, Mahottari, and other districts	Advocacy for land rights	Padlocking of district land revenue offices to force the government to decide on pending cases
2007	Kathmandu	Sit-in strike at the Prime Minister's residence and at the offices of the major political parties	
	Singh Durbar, Kathmandu	Demonstration started by Badi women for land rights and security of livelihood, which lasted for 2 months	Government promised to form a high-level land commission, but this has not materialized yet

Since land reform is a complex political issue, the idea of forming a broader civil society alliance around this issue was conceived. Thus, the National Land Rights Concern Group (NLRCG) was established. Its members consist of media groups, human rights advocates, and social activists, among others. The alliance adopted the strategy of enhancing the capacity of the tillers and landless farmers to undertake and lead rights claiming initiatives themselves. By the end of 2007, the NLRCG had been able to reach 1.6 million tenants and landless farmers, develop 996 local activists among the tillers, and strengthen tiller's organizations to launch rights claiming movements on their own.

The tiller's organization, the National Land Rights Forum (NLRF), is a membership-based national people's organization (PO) formed in 2004. Its members, which currently number over a million, consist of land deprived people, such as squatter settlers, slum dwellers, tenants, trust land tenants and landless

farmers, former bonded laborers, landless farmers, *Dalits*, women, and other excluded and marginalized groups. As of March 2008, the NLRF operates in 42 districts of Nepal.

It has 28 district-level and 1,211 village-level organizations, along with 48,133 members (one person per family), including 19,098 women and 23,531 *Dalits*. NLRF is led by 4,718 community leaders, of whom 7,067 (48%) are women and 8,251 (56%) *Dalits*. NLRF has been leading the land rights movement throughout the country and advocating for pro-people land reform. NLRF has a democratic set-up with leaders elected from members of the primary organizations. The NLRF aims to:

- Establish an organization from the community to national level, and develop leaders for and among land deprived people;
- Make tenants and landless farmers aware of their land rights and encourage them to fight for the establishment of their land rights;

- Generate public awareness of land rights as an important factor in ensuring social justice, eliminating poverty, and promoting progress;
- Conduct powerful agitation programs from the community to the national level in order to abolish discrimination in terms of class, caste, gender, etc.;
- Participate in all kinds of non-violent agitation programs related to the formation of a democratic government and the establishment of human rights and social justice; and
- Manage land in a productive and systematic manner.

The movement has adopted a democratic, participatory approach, and adheres to transparent and responsive processes at all levels of decision-making and organizational operations. It strives toward democratic leadership and building consensus in making decisions. It is not aligned to any political party.

The State/Government

After restoration of democracy in 1990, the Parliament has been a little more active and has taken up the issues of poor tillers and peasants. For example, the Parliament declared the abolition of the bonded labor system in Nepal in July 2002. They have called attention to the continued practice of bonded labor, particularly *Haliya*, and a number of specific cases of land displacement resulting from development projects.

There are two main government agencies instrumental in directing and guiding land access and tenure issues in Nepal. The National Planning Commission (NPC) has overall responsibility for setting up development policy and strategies. The Land Reform and Management Ministry implements the agreed policies and strategies on the ground. NPC is the advisory body for formulating development plans and policies of the country



under the directives of the National Development Council. It explores and allocates resources for economic development and works as a central agency for the monitoring and evaluation of development plans, policies and programs and facilitates their implementation. Moreover, it provides a platform for the exchange of ideas, discussion and consultation pertaining to the economic development of the country. The NPC serves as an institution for analyzing and finding solutions to the problems of civil society and NGOs, and the private sector in the country.

The Supreme Court and the lower courts rule on petitions filed by the people. So far, the Supreme Court has issued two major rulings on the rehabilitation of former bonded laborers, including *Haliyas*, and on directing government to pass laws to protect the rights of such victims.

Political Parties

All the eight major political parties have acknowledged that agriculture is the backbone of the Nepalese economy, and proposed multi-dimensional programs to develop it. Based on their declarations, the political parties—whether rightist, leftist, or centrist seem to share the opinion that development of the agriculture sector is possible if all the issues related to it, including tenancy rights, are addressed simultaneously and with equal vigor.

Since 1990, three parliamentary elections (1991, 1996, and 1999) have been held in Nepal. In their electoral manifestos, the parties have all raised the issues of land management, tenancy and agriculture. Most of them appear to be sympathetic to the concerns of squatters, landless peasants, freed bonded laborers, indigenous/disadvantaged people, tenants and other similar groups of landless people. They are also worried about accelerated land fragmentation and have debated issues, such as the commercialization or privatization of agriculture, and proposed 'revolutionary' or 'scientific' land reforms.

The following are the common points in the electoral manifestos of the eight major political parties:

- Land reform is a priority concern.
- Land reform is a vital aspect of overall agricultural development, and not only in regard to the management of land ownership.
- Dual ownership of land should be abolished.
- The establishment of a fertilizer factory is an urgent goal.

All parties across the full spectrum of Nepali political ideology have equally realized the need for land reform. Because there are few conceptual differences among them, the possibility of reform built on consensus is, in theory, very high.

International Institutions/Agencies

International institutions and agencies are key actors in setting up the policy framework for development in Nepal. Nepal is heavily dependent on international communities and donors for its national development. In this context, international communities and agencies exert a strong influence on national policy formulation.

There are a number of international agencies that have shown an interest in a certain type of land reform and have been trying to steer the government in that direction. However, Nepali land rights advocates are debating the pros and cons of such approaches. In the recent times, there is growing realization among the international actors that pro-people land reform is one of the key interventions to ensure justice that would pave the way toward sustainable peace and to overcome extreme poverty in Nepal.

However, there are only a few international agencies present in Nepal that support the land rights movement by the tillers and peasants and CSOs. These are ActionAid International, Danida, HUGOU, Canadian Cooperation Office, MS Nepal, and Care Nepal, among others.

Opportunities, Challenges and Strategies to Advance Access to Land and Tenurial Security

Accomplishments to Date

1. State's Declared Intent to Implement Land Reform

The Interim Constitution of 2007 is committed to "pursue [a] policy of adopting scientific land reform programs by gradually ending capitalistic land ownership practices." It mandates the State to pursue a policy of providing adequate land and livelihood to freed bonded laborers. Likewise, the Three-Year Interim Plan (2007–2010) has clearly set policy and specific objectives for land reform.

2. Politically Aware Citizenry

With democratic space and intensive education, the people



have increasingly become aware of their rights, social justice, and the pathways to it. This has created tremendous pressure on political actors to fulfill their promise of delivering pro-people land reform. The disadvantaged people have become organized, speaking and acting as one. Consequently, they have reaped the dividends of a democratic government.

3. Proactive Civil Society

Nepal's experience of democracy in the last 10 years has helped nurture Nepali civil society and establish its importance. Civil society has been organized into several specialized segments, such as human rights activism, democratic advocacy, community empowerment, poverty eradication and human development, among others. All these practices have made Nepali civil society a key partner for national development, social transformation and peace and democracy in the country.

4. Technical Skills Enhancement

The Nepali social movement, especially the land rights movement, has taught lessons and promoted critical awareness of national laws and procedures. Tillers and peasants who used to be ignorant of their rights under existing laws are now aware of the provisions in the Interim Constitution of 2007 and other legal documents which concern them. They have developed the capacity to analyze these laws, especially whether or not these would work in their favor. Moreover, people have also learned to mobilize themselves to bring their agenda to the attention of political actors and state mechanisms. People have organized into issue-based networks and alliances.

Conditions for Success

Land reform is a complex political matter. It is deeply rooted in the country's socio-cultural system, values, and norms. It is

hindered by a vicious cycle that is difficult but not impossible to break. The following are the conditions or prerequisites for the successful implementation of land reform in the country:

1. Democratic space.

People can claim their rights only in a democratic system. Democracy based on social justice provides enormous space to the people and civil society to pursue their agenda. Political will is another important aspect of this precondition.

2. Critical mass and political clout.

People need to be organized and increase their influence among political actors and state mechanisms in order to get a proper hearing for the problems of victimized people. A critical and supportive civil society, pro-people state mechanisms, supportive donors, and other international actors are some of other important conditions for effective land reform in Nepal.

3. Access to land-related information.

Both the land rights victims and CSOs should have in-depth knowledge of the causes and symptoms of poverty, injustice, and violation of human rights. Based on these facts, civil society and ordinary people could make a convincing case to the political actors such that they are forced to take appropriate actions to respond to the issues. Civil society and human rights organizations can also publicize information widely enough, such as exposés of corruption and injustice, to draw the attention of concerned duty bearers. Another important factor for the success of a land rights movement is increasing and productivity. A concentrated effort should be made in this regard.

4. Building multi-stakeholder cooperation and partnerships.

Land reform and ensuring social justice for the poor is no easy task. It is linked with the political economy, with all its complexities. Thus, there should be a collective effort by as many stakeholders as possible, such as the State, the private sector, civil society, and farmers. In particular, to decentralize land management at the local level, enhancing farmers' capacity to produce surplus, and simplifying land governance, and legal and institutional mechanisms are key areas of intervention.

5. Shared commitment to land reform.

The shared appreciation for the urgency of land reform among the political actors, and the provisions in the Interim

Constitution of 2007 promoting scientific land reform should support advocacy efforts.

Opportunities

Nepal is going through political transition. Despite ups and downs, people in general are confident about making changes. The landless and people without tenancy rights are aware and are getting organized. The present government was formed through people's popular power. Thus, politicians are anxious to bring about changes not just to improve conditions in the country but also to keep themselves in power.

The current legislation (e.g., the Interim Constitution of 2007; the Three-Year Interim Plan) already provides a road map toward the goal of land reform. Civil society and the development sector have come to understand the importance of land reform as an effective means to address poverty and to enable landless people to claim their rights. Institutions such as the NLRF and NLRG have emerged, and NGOs such as CSRC are supporting them in every way possible. Their skills in dealing with land issues have improved significantly.

Risks and Challenges

As much as land reform is important, it is undeniably challenging. History has shown that land is the source of socio-economic and political power. The small elite class will not readily relinquish such power, and is likely to oppose or create obstacles to the implementation of land reform.

The leaders of political parties come from the same elite class. Hence, it is likely that they would pay lip service to the scientific land reform prescribed in the Interim Constitution of 2007, but oppose it in practice.

Globalization poses another challenge. A market-based economy, which globalization espouses, regards land as a commodity whose value needs to be maximized, rather than as an entitlement of the landless. Donors, such as the World Bank and Asian Development Bank, among others, have been pursuing a market-based approach to land reform, which might not work in the interests of poor tillers and peasants. This needs to be analyzed and studied critically and carefully.

Strategies

Since Nepal is undergoing socio-economic restructuring of the State, the following actions should be prioritized. A number of



subsidiary interventions should be made, but only the primary ones are presented as follows.

1. Inclusive Policy Formulation and Implementation

Current land-related acts and policies need to be repealed and new ones formulated on behalf of landless, poor tenant farmers. Most important of all, the Constitution should guarantee implementation of land reform. The success of land reform in West Bengal, India was due to the implementation of progressive land policies as dictated by the country's constitution.

2. Restructuring of Land Administration

In Nepal, land management is highly centralized. Although the Ministry of Land Reform and Management has extended units across the country, these do not have power to settle issues concerning land at the local level. All decisions related to land management are made at the Ministry level. Unfortunately, poor people cannot afford even the cost of travelling to the Ministry. Besides, land administration is marred by procedural complexities and duplicities, which the poor are unable to deal with. Thus, there is an urgent need to simplify and decentralize land administration. The authority over land reform and administration should be delegated to District Development Committees (DDCs) and Village Development Committees (VDCs), with the District Land Reform Office (DLRO) serving as secretariat to these units. A separate land court at the VDC and DDC levels should be established to expedite the settlement of land issues concerning poor people. The court at the district level should be given as much authority as the Appellate Court, in regard to resolving land disputes.

3. Establishment of a High-Level Land Authority

A high-level authority needs to be created to look into the claims and data of the state, real life problems facing the people in relation to land, and ways to address problems. Such an authority should be independent of vested interests, with experts in the field and representatives of the poor and marginalized, including women, *Dalits*, *Madeshis*, *Haliyas* and *Haruwas*. The authority should have its offices expanded from the central down to VDC levels, with a clear, written mandate at each level. The central committee of this high-level body should concern itself only with technical and advisory matters, while the VDC and district level committees should have the power to recommend concrete actions. The success of land reform in Japan, Taiwan and

South Korea depended on the power and authority of local level committees.

4. Educating and Organizing Landless and Poor People

No changes occur at the high level without constant pressure from below. This is as true in Nepal as everywhere else. As long as the poor remain unorganized, the elite will continue to keep them under feudal, semi-feudal, bondage and exploitative systems. The victims should therefore be organized, made aware of their situation, and mobilized against their ongoing deprivation and oppression. The oppressed and exploited should be made aware that they have the right to peaceful resistance against suffering and oppression. Awareness gives them the power to fight oppression. Organization makes the fight constructive and logical. There is therefore a need to invest in organizing and educating the landless and the poor.



5. Budget Allocation for Comprehensive Land Reform and Agriculture Sector

The Government of Nepal collects billion of rupees as tax from land transactions, yet hardly 10% of the revenues from land taxes is invested in land management issues. There are hardly any efforts to enhance land productivity. As a result, land productivity is decreasing as is the contribution of agriculture to the country's Gross Domestic Product (GDP). However, efforts to enhance agricultural productivity should follow, not precede, a progressive land reform program. The additional budget allocation for agriculture would be meaningful only after the issue of inequitable land ownership has been properly addressed.

6. Making Land Reform a Common Concern

Among certain groups, land reform or land redistribution smacks of revolution, or at the very least, implies punitive action against rich landlords and even those who have been able to acquire land through hard work. It is therefore important to transform the national perception of land reform: to help the public understand that it is in the interest of the national economy and even the industrialists to correct the imbalance in land ownership. Unless genuine land reform is implemented, there will be few if any incentives to invest on productivity-enhancing agricultural technology; productivity will plummet; and land fragmentation will worsen. Land reform is needed in order to upgrade Nepali farmers from subsistence farmers to surplus producers.

Higher agricultural productivity creates employment, and provides the raw material for industries. The reduction of social unrest is not the sole objective of land reform. A broader alliance among political parties from all sides, the private sector, and civil society needs to come up with a mutually acceptable position on this issue.

Points of Intervention

- **Party Leaders**

All the political parties agree in principle on the need for land reform. However, when it comes to actually making provisions for land rights, one or another excuse is made. The parties must be held accountable for the promises they made in their electoral manifestos.

There are a number of ways in which this could be done: (1) make the leaders aware of the situation, and show them the benefits of land reform in practice; and (2) impress on them the consequences of their failure to provide land to the landless. The Fifth Amendment of the Land Act of 1964 was nullified by the Supreme Court because it imposed a new land ceiling than what was provided for in the Constitution of 1990. However, this amendment was not incorporated in the Interim Constitution of 2007. Land rights advocates should ensure that the upcoming constitution would not prove to be a hindrance to a pro-tenant and pro-landless land reform in Nepal. It is high time to educate and influence the leaders of political parties.

- **The Bureaucracy**

Land is a complex form of property. It involves a number of agencies. One agency points to another to settle a case. It involves VDCs or Municipalities, and the Land Revenue,

Land Reform and Land Survey Offices at the district level, the Department of Land Reform, and the Ministry. If the disputes are not settled by these line agencies, one has to go through a legal process starting at the district courts, up to the Appellate Courts, and eventually at the Supreme Court.

Over 70% of court cases are related to disputes over land. Common folk, especially tenants and landless people, who are often illiterate, are unable to understand the existing provisions concerning land dispute resolution. It is important therefore that the bureaucracy supports the land reform process at the outset and does not create problems. Training and orienting them on issues of land is necessary so that they do not become a hindrance to land reform.

The setting up of a Land Court at the local level is necessary so that disputes over land are settled. One study has shown that the Land Revenue Office is the most corrupt sector in the bureaucracy.

- **The Rights-Holders/Tenants and Landless Farmers**

Neither political parties nor the bureaucracy can be expected to be benevolent overnight without genuine pressure from the rights holders—the landless and the tenants. These communities need to become organized and aware of the legal provisions for and against their claims, so that they can demand their due rights. It is easier to get instructions from the government on how to prepare a hydration solution than it is to get land-related information, which is a matter of life and death to the average Nepali household. No radio program tells farmers to keep the receipts of their grain payments to the landlord, or to go and get their tenancy registered at the district land revenue office.

Many tenants still do not understand that since they earn their livelihood from farming, they are entitled to own the land. They also do not have a notion of tenancy rights. Even after a number of years, when dual ownership had been abolished, the owner is frequently unaware of this change.

- **The Donors**

Few if any donors invest on land reform in Nepal. Many of them prioritize increasing agricultural production but overlook landlessness or tenancy. Donors are most likely oblivious to these issues. It is necessary to draw their attention to such issues and to educate the donors that are unaware of these. In view of donors' influence on the government, it is imperative that they are helped to get their priorities right.



- **Civil Society and the NGOs**

Civil society and the NGOs are also not that focused on land reform. Many institutions advocate for human rights but few raise the issue of tenancy and land rights. Many poverty-focused NGOs are content to distribute seeds and to give away a couple of goats "to improve nutritional status or generate income," but overlook the more important element of the poor's coping strategy: growing grain or working for a landlord. Civil society and NGOs need to be educated and informed of this reality and challenged to expand their understanding of the situation of the landless and the poor. It is necessary to make use of the connections and expertise of these institutions so that they could expand their activities all over the country and in the right direction.

References

- All Nepal Peasant Association. (2004). *Fifty years of peasant movement, 2004*. Kathmandu, Nepal: Nawayug Cooperative Printing Press.
- Amartya, S. (1999). *Development as freedom*. Oxford: Oxford University Press.
- Basnet, J. (2007). *Presentation paper of land issues in Nepal*.
- Bhattra, B. (2003). *The nature of underdevelopment and regional structure of Nepal: A Marxist analysis*. New Delhi: Adroit Publishers.
- Bhushal, Y. (2006). *Concept of land bank*. (Working paper.).
- Blaikie, P.M., Cameron, J., & Seddon, J.D. (2005). *Nepal in crisis, growth and stagnation at the peripheri*. Delhi: Adroit Publishers.
- Chandra, R.M. (1999). *Thatched huts and stucco palaces, peasant and landlords in the 19th century Nepal*. New Delhi: Adroit Publishers.
- Communist Party of Nepal (Unified-Marxist-Leninist). (1993). *Electoral manifesto—1993*.
- _____. (1996). *Electoral manifesto—1996*.
- _____. (2000). *Electoral manifesto—2000*.
- Community Self-Reliance Centre. (various years). *Land first*. Kathmandu: Community Self-Reliance Center
- _____. (various years). *Annual reflection: Land Rights Movement in Nepal*. Kathmandu: Community Self-Reliance Centre.
- _____. (2007). *Chunabi gosnapatra ra dastabeharuma bhumisudhar (in Nepali) or Political Manifest and Land Reform issues in major peace process*. Kathmandu: Community Self-Reliance Centre.
- Community Self-Reliance Centre and International Labour Organisation. (2006). *Different forms of bondage in Nepal*. Kathmandu: Community Self-Reliance Centre.
- Ghimire, K.B. (1998). *Forest or farm? The politics of poverty and land hunger in Nepal*. New Delhi, India: Manohar Publishers and Distributors.
- _____. (2001). *Land reform and peasant livelihoods; the social dynamics of rural poverty and agrarian reform in developing countries*. Colchester, UK: ITDG Publishing.
- Informal Sector Service Centre. (1995). *Human rights yearbook*. Kathmandu: Informal Sector Service Centre.
- Institute for Integrated Development Studies. (2000). *The fourth parliamentary election: a study of the evolving democratic process in nepal*, Kathmandu: Institute for Integrated Development Studies.
- Keliang, Z., & Prosterman, R. (2006, July 1). From land rights to economic boom. In *The China Business Review*. Retrieved from www.chinabusinessreview.com/public/0607/zhu.html
- Khadka, N. (1994). *Politics and Development in Nepal*. Jaipur: Nirala Publication.
- Mikesell, S.L. (1999). *Class, state and struggle in Nepal: writings, 1989-1995*. New Delhi, Manohar Publishers and Distributors.
- Nash J. (2003). *Social movement: An anthropological reader*. Oxford: Blackwell Publishing.
- Quan, J., & Toulmin, C. (Eds.) (2000). *Evolving land rights, policy and tenure in Africa*. London: Department for International Development, International Institute for Environment and Development, and Natural Resources Institute.
- Ramachandran, V.K., & Swaminathan, M. (Eds.) (2002). *Agrarian studies: essays on agrarian relations in less-developed countries*. New Delhi: Tulika Publications.
- Regmi, M.C. (1999). *A study in Nepali economic history*. New Delhi: Adroit Publishers.
- Rastriya Prajatantra Party. (2000). *Election declaration—2000*.
- Shah, G. (2004). *Social movement in India, a review of literature*. New Delhi: Sage Publications.
- Shrestha, N. R. (2001). *The political economy of land, landlessness and migration in Nepal*. Jaipur: Nirala Publications.
- Shangkar, T. (2000). *Historical study of agrarian relations In Nepal 1846 – 1951*. Delhi: Adroit Publishers.
- Sing, C.C., & Denmark, R. A. (1999). *The underdevelopment of development*. New Dehli: Sage Publications.
- Upreti, B.R. (2002). *Management of social and natural resource conflict in Nepal, realities and alternatives*. Delhi: Adroit Publishers.

Defending the Gains of Tenurial Reform

PHILIPPINES Country Paper
Land Watch Asia





Acknowledgments

This paper is an abridged version of the original Philippine Land Watch Country Paper "Taking Common Action for Access to Land" on the status of access to land, water and opportunities and strategies for civil society advocacy. This study (and its processes) is unique since it offers a cross-sectoral analysis on access to land, particularly conflicting land policies affecting poor farmers, indigenous peoples, fisherfolk and forest dwellers in the Philippines.

The paper provides insights and directions into the advocacy of groups working on access to land issues and presents common advocacies and strategies that all sectors could pursue with positive effect on their respective issues. However, it does not intend to provide a comprehensive account nor an assessment of the specific provisions or content of such land policies and programs in the Philippines.

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Abbreviations and Acronyms

ADB	Asian Development Bank	ILC	International Land Coalition
ADSDP	ancestral domain sustainable development plans	IP	indigenous peoples
AFMA	Agriculture and Fisheries Modernization Act	IPRA	Indigenous Peoples Rights Act
A & D	alienable and disposable	IRR	Implementing Rules and Regulation
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development	ISF	Integrated Social Forestry
AR	agrarian reform	JBIC	Japan Bank for International Cooperation
ARB/ARBs	agrarian reform beneficiary/ beneficiaries	KAISAHAN	Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan
ARC/ARCs	agrarian reform community/communities	KII	key informant interview
ARCDP	agrarian reform community development plan	LAD	land acquisition and distribution
AR Now!	The People's Campaign for Agrarian Reform Network	LAMP	Land Administration and Management Project
AusAID	Australian Agency for International Development	LARA	Land Administration Reform Act
BALAOOD–Mindanaw	Balay Alternative Legal Advocates for Development in Mindanaw, Inc.	LGC	Local Government Code
BFAR	Bureau of Fisheries and Aquatic Resources	LGU	local government unit
CADC	Certificate of Ancestral Domain Claim	LTI	Land Tenure Improvement
CADT	Certificate of Ancestral Domain Title	NAPC	National Anti-Poverty Commission
CARL	Comprehensive Agrarian Reform Law	NCIP	National Commission for Indigenous Peoples
CARP	Comprehensive Agrarian Reform Program	NCR	National Capital Region
CBCRM	Community-based Coastal Resource Management	NFR	NGOs for Fisheries Reform
CBFM	Community-based Forest Management	NGO	non-government organization
CFMA	Community Forest Management Agreement	NIPAS	National Integrated Protected Areas System
CHARM	Cordillera Highland Agricultural Resource Management Project	NMCIREMP	Northern Mindanao Community Initiatives and Resource Management Program
CFP	Community Forestry Program	NP/GRBS/ WA	national parks, game refuge and bird sanctuaries, wilderness areas
CI	Conservation International	NSCB	National Statistical Coordination Board
CLOA	Certificate of Land Ownership Award	ODA	Official Development Assistance
CLUP	Comprehensive Land Use Plan	OFWs	Overseas Filipino Workers
CPAR	Congress for a People's Agrarian Reform	PACAP	Philippine Australia Community Assistance Program
CS	Certificate of Stewardship	PAFID	Philippine Association for Intercultural Development
CSOs	civil society organizations	PAL	Private Agricultural Land
CTF	Communal Tree Farming	PAMB	Protected Area Management Board
DA	Department of Agriculture	PARC	Presidential Agrarian Reform Committee
DAO	Department of Agriculture Order	PARCCOM	Provincial Agrarian Reform Coordinating Committee
DAR	Department of Agrarian Reform	PCSD	Philippine Council for Sustainable Development
DENR	Department of Environment and Natural Resources	PESANTech	Paralegal Education Skills Advancement and Networking Technology
DILG	Department of Interior and Local Government	PBD	Program Beneficiary Development
EP	Emancipation Patent	PD	Presidential Decree
FAR	Family Approach to Reforestation	PhilDHRRA	Philippine Partnership for the Development of Human Resources in Rural Areas
FGDs	focused group discussions	PO	people's organization
FLA	Foreshore Lease Agreement	PRRM	Philippine Rural Reconstruction Movement
FMB	Forest Management Bureau	PTFCF	Philippine Tropical Forest Conservation Foundation
FOM	Forest Occupancy Management	RTDs	Round Table Discussions
FPE	Foundation for the Philippine Environment	SAC	Social Action Center
FPIC	Free and Prior Informed Consent	SAFDZs	Strategic Agriculture and Fisheries Development Zones
GAA	General Appropriations Act	SALIGAN	Sentro ng Alternatibong Lingap Panligal
GDP	Gross Domestic Product	SONA	State of the Nation Address
GO	Government Organization	TLA	Timber License Agreement
GPS	Global Positioning System	UDHA	Urban Development Housing Act
Ha	hectare	USAID	United States Agency for International Development
HUDCC	Housing and Urban Development Coordinating Council	VOS	Voluntary Offer to Sell
IEC	Information, Education and Communication	VLT	Voluntary Land Transfer
IFAD	International Fund for Agricultural Development	WMCIP	Western Mindanao Community Initiatives Program
IFMA	Indigenous Forest Management Agreement		



PHILIPPINES



QUICK FACTS

- An archipelago of more than 7,100 islands
- Composed of 79 provinces and 4 districts in the National Capital Region (NCR) grouped into 16 regions and subdivided into 1,623 municipalities, 41,926 barangays and almost 15.3 million households.
- Around 50% of 88.7 million Filipinos (2007 Census) lives in rural *barangays*.

Land

- Total land area=30 million hectares; 45% upland/forests, 47% alienable and disposable lands (A&D) which are open for titling;
- Around 10 million hectares of agricultural land with 4.8 million hectares of agricultural farms;
- Forest cover decreased by 70% or 5.4 million hectares from 21 million hectares in 1900 (Philippine Environment Monitor, 2004)

Waters

- 2.2 million km² or 220 million hectares of marine waters with a coastline of 17,640 kilometers;
- Philippines ranked 11th among top fish producing countries in the world with production of 2.63 million tons of fish, crustaceans, mollusks and aquatic plants. (FAO, 2003)
- Municipal waters consist of the 15-kilometer coastal waters from the shoreline; commercial fishing is not allowed unless approved by local governments

Economy and Employment

- Agriculture contributes an average 20% to the country's Gross Domestic Product (GDP)
- 37% of jobs coming from agriculture and fisheries

Context of Access to Land and Tenorial Security in the Philippines¹

Rural Poverty and Landlessness

The country's rich resources are the source of subsistence and livelihood for majority of the Filipinos. The forest ecosystem directly supports approximately 30% of the population, including indigenous peoples (MTPDP, 2004–2010). Sixty percent of some 80 million Filipinos make their livelihood in some form of forestry or agriculture (Gould, 2002). According to the 2002 Labor Force Survey of the National Statistics Office, the agriculture sector employs one third of the country's total employed per-

sons. On the other hand, fisheries provide employment to 1.37 million Filipinos (BFAR, 2002).

Over 31 million poor Filipinos are found in rural areas (World Bank, 2004). Within agriculture, farm workers in sugarcane, small farmers in coconut, rice and corn, fishermen, and forester households were found to be among the poorest of the poor, accounting for about 70% of all subsistence households in 2000 (NSCB, 2000).

The Philippine agrarian structure is made up of small peasant farms and large plantations. In 1986, before the Comprehensive Agrarian Reform Program (CARP), government estimates indicated that around 20% of Filipino families controlled 80% of the lands.

In 1988, less than 2% of landholders had farms exceeding 24 hectares, but they controlled 36% of all farmland (Quizon, 2007).

According to data from the National Commission on Indigenous Peoples (NCIP), there are more than 110 ethnolinguistic groups in the Philippines with an estimated ethnic population of 12 million, comprising almost 16% of the country's total population as of 2002. They are among the poorest and most disadvantaged social groups in the country. Illiteracy, unemployment and incidence of poverty are much higher among them than the rest of the population. Indigenous Peoples' (IP) settlements are remote, without access to basic services, and are characterized by a high incidence of morbidity, mortality and malnutrition.²

About 80% of the municipal fishing families in the country are estimated to live below the poverty line. These families are entirely dependent on the coastal ecosystem for their livelihoods (PARRC, 2008).

Land Access for Peace and Development

Poverty, inequitable access to land and insurgency have their roots intertwined with the *encomienda* system (Adriano, 1991). Peasant revolts to unjust tenurial relations persisted from the colonial period until today. The Philippine government unsuccessfully tried to address this insurgency through agrarian reform laws, which were insufficient.

The highly inequitable distribution of land has caused social tension and political unrest and inhibited the country's economic growth (Balisacan, et al., 2002). Meanwhile, the experiences of Japan, Korea and Taiwan confirm that land reform is the foundation for mobilizing agrarian societies towards rural, and ultimately urban industrialization (Delos Reyes & Jopillo, 1994 citing Korten, 1990). Land reform promotes higher agricultural productivity and creates purchasing power in rural areas, thus creating capital and markets for industry. Recent studies in the Philippines show that when agrarian reform is implemented properly and integrated support services are provided, farmers have higher incomes, invest in their farms more intensively, and have a more positive outlook (DAR, 2007).

Legal Framework of Access to Land and Tenurial Security in the Philippines³

Roots of Land Ownership Regulation in the Philippines⁴

Private land ownership was first introduced under the Regalian doctrine during the Spanish colonial period. This became the ba-

sis for all land laws in the country under the 1935, 1973 and the 1987 Constitutions. The Regalian doctrine provides that all lands of the public domain and other natural resources belong to the King of Spain. When the republican system was introduced, the State became the rightful heir to the King.

Traditional systems of communal ownership were broken up and not accorded legal recognition, disenfranchising native Filipinos. American occupation later upheld the Spanish system of cadastral laws and introduced the Torrens Title system under the 1902 Land Registration Act.

Earlier policy efforts to broaden access to *public* land consisted mainly of opening up new areas for application of land patents, reforms in land titling and administration systems, and the introduction of systems for recognizing occupancy rights. In terms of *private* agriculture lands, land reform policy was introduced as early as 1963 through the Agricultural Tenancy Act, which sought to improve tenancy systems in agriculture.

Presidential Decree (P.D.) 27 promulgated in 1972 provided for the compulsory acquisition and redistribution of all rice and corn lands. The measure allowed for: (i) the compulsory acquisition of private lands; (ii) lowering of land ownership ceiling from 75 to 7 hectares; and (iii) provision of support services to beneficiaries. Many saw this as a move to quell agrarian unrest in heavily tenanted areas, rather than to institute broader access to land. Large plantations remained untouched and corporate farming for up to 500 hectares was even encouraged in rice.

Poor communities were displaced as lands were taken over by government corporations, large-scale development projects and logging and mining concessions. The introduction of Timber License Agreements (TLAs) allowed privileged individuals to extract forest resources.

When negative impacts of forest destruction emerged, the government tried new policies and programs that involved communities in forest management (e.g., Forest Occupancy Management [FOM] in 1975 and the Family Approach to Reforestation [FAR] in 1976). However, these programs caused upland communities, including the IPs, to be treated as squatters (informal settlers) in their own ancestral lands and became a source of cheap labor for the aforementioned programs (Pulhin and Dizon, 2003). Meanwhile, squatting was made a criminal act by P.D. 772.



The Integrated Social Forestry (ISF) Program of 1982 recognized the people's role in forest management. A Certificate of Stewardship (CS) or a Certificate of Community Forest Stewardship (CCFS) provided tenurial security for the first time for individuals and communities over 25 years. In 1989, the Community Forestry Program (CFP) (Department of Environment and Natural Resources [DENR] Administrative Order No. 123) through Community Forestry Management Agreements (CFMAs) awarded organized upland communities a period of 25 years, renewable for another 25 years, to utilize and sell products from within the residual forest, as well as establish plantations.

There were also presidential issuances and proclamations declaring certain pieces of land as tourism zones or agricultural lands. Presidential Proclamation (PP) 2282 identified and declared certain areas from all the regions of the Philippines for agriculture and settlement. Most of the areas covered by PP 2282 were forest or ancestral lands. Some NGOs allege that PP 2282 is still being used today to justify inclusion of upland areas and ancestral lands in other tenure reform programs or public land concessions.

Constitutional Framework

Philippine lands are either *inalienable* (owned by the State) or *alienable and disposable* (may be privately owned). Various laws govern the nature and utilization of these lands.

The current legal framework for access to land is rooted in the 1987 Constitution. Article II, Declaration of Principles and State Policies, lays down the general principles of access to land: (i) Protection of property [Section 5]; (ii) Promotion of social justice and human rights [Sections 10 and 11]; (iii) Promotion of rural development and agrarian reform [Section 21]; (iv) Promotion of the rights of indigenous communities [Section 22]; (v) Promotion of a self-reliant and independent national economy [Section 19]; and (vi) Protection of the right of the people to a balanced and healthful ecology [Section 12].

Other provisions in the Constitution further underscore these principles.

- **Protection of property.** Property can be taken away, but only with due process, and in certain cases, with just compensation. (Article III, Section 1 and 9)
- **Promotion of social justice and human rights.** The use of property must be regulated in the interest of social justice. (Article XIII, Section 1 and Article XII)
- **Promotion of rural development and agrarian reform.** The State must undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of its fruits. (Article XIII)
- **Promotion of the rights of indigenous communities** establishes the rights of indigenous communities to their ancestral lands. Section 5 of the Article on National Economy and Patrimony requires the State to protect the rights of indigenous cultural communities to their ancestral lands. (Article XIII, Section 6)
- **Promotion of a self-reliant and independent national economy.** The national economy must create a more equitable distribution of opportunities, income, and wealth and refers to agricultural development and agrarian reform as the basis for industrialization and full employment. The State must also protect Filipino enterprises against unfair foreign competition and trade practices. (Article XII, Section 1)
- **Protection of the right to a balanced and healthful ecology.** Ecological considerations were made as bases for the State's prioritization and setting of retention limits in undertaking agrarian reform. Congress must determine the boundaries of forest lands and national parks. Such forest lands and national parks are to be conserved. Congress shall provide measures to prohibit logging in endangered forests and watershed areas. (Article XIII, Section 4). Requirements for conservation, ecology, and development, shall be considered by Congress in the determination of the size of lands of the public domain which may be acquired, developed, held, or leased. (Article XIII, Section 3)

In sum, the 1987 Constitution shows a consistent policy that links land ownership and use to equitable distribution of wealth and to a balanced ecology. Corollary to this main policy are the restrictive policies on the alienation of lands and on the use of alienated and private lands, the policies on the conservation and protection of resources, and the recognition of the rights of farmers, indigenous communities and other marginalized groups. These policies should serve as the yardstick for legislation pertaining to access to land.

Laws on Access to Land

At least five codes and 11 laws—most of these based on the 1987 Philippine Constitution—affect the use and regulation of

Philippine land. These laws are still effective and enforced by various government agencies.

1. Republic Act (R.A.) 6657 or the Comprehensive Agrarian Reform Law (CARL)

- Enacted in 1988 during the Aquino administration (1986–1992);
- Expanded the coverage of the agrarian reform program to all agricultural lands regardless of crop planted;
- Targeted to redistribute around 8.1 million hectares of agricultural land and ISF areas to 3.9 million landless tenant farmers and farmworkers over a 10-year period (1988–1998);⁵
- Provides for different tenurial instruments based on land classification: tenurial security for forestry areas, and tenancy reforms and land redistribution for private and alienable lands. Land redistribution is complemented by the delivery of support services such as extension, credit, infrastructure facilities and assistance in livelihood projects;
- Imposes a five-hectare retention limit for the landowner and provides three hectares for each heir who is actually tilling the land;
- Exempts from distribution: ancestral lands inhabited by indigenous cultural communities; lands with a slope above 18 degrees; reserved lands like national parks, forest reserves, fish sanctuaries, and watersheds; lands for national defense and education and experimental farms, churches and mosques, cemeteries, etc.
- Managed by the Department of Agrarian Reform (DAR), while the DENR takes the lead role in providing tenurial security in forestlands, under the ISF program of the CARP;
- Operationalized by the DAR through two main program components: Land Tenure Improvement (LTI) and Program Beneficiaries Development (PBD). The main strategy for PBD is the establishment of agrarian reform communities (ARCs), through which assistance and integrated development will be undertaken.
- Beneficiaries of the CARP are categorized into three groups based on their tenurial status: (i) owner/cultivators; (ii) leaseholders who were granted permanent use rights over the land; and (iii) farm workers who render service for value as an employee or laborer in an agricultural enterprise or farm;
- Guarantees equal rights to land ownership and equal shares of the farm's produce between women and men beneficiaries.

Some Restrictions on Land Ownership and Land Use

Section 2, Article XII declares that natural resources, other than agricultural lands, shall not be alienated; that the State shall have full control and supervision of any exploration, development, and utilization of natural resources; that there are citizenship limits for the exploration, development, utilization and ownership of natural resources; that any joint venture or partnership which the State enters into should be with groups that are at least 60% Filipino-owned for not more than 25 years and renewable for another 25 years only.

This restrictive policy applies with equal force to alienable lands⁵, as stated in Section 3, which delineates the manner of alienation, the period of the lease, and the size of the land. Alienable lands of the public domain are limited to agricultural lands. Private corporations or associations may not hold such public lands except by lease, for a period not exceeding 25 years, renewable for not more than 25 years, and not to exceed 1,000 hectares in area. Citizens of the Philippines may lease not more than 500 hectares, or acquire not more than 12 hectares by purchase, homestead, or grant.

The provision also cites conservation, ecology and development, and the requirements of agrarian reform as bases for Congress to regulate the size of lands that may be alienated.

The restrictions applicable to alienable lands likewise apply to private lands since Section 7 of the article provides that no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain and through inheritance.

2. R.A. 8371, or the Indigenous Peoples Rights Act of 1997 (IPRA)

- Seeks to recognize, promote, and protect the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs). These include the right to ancestral domain and lands, self-governance, and the right to cultural integrity.
- Recognizes the *prior rights*, including the *pre-conquest* rights of indigenous peoples, thus superseding other land and resource rights;
- Under the principle of self-determination, ICCs/IPs shall formulate their own ancestral domain sustainable development and protection plans (ADSDPs) based on their indigenous knowledge systems and practices. Contracts, licenses, concessions, leases and permits within the ancestral domains shall not be renewed or allowed without the



What is a CADC/CADT?

A Certificate of Ancestral Domain Claim (CADC) is the land tenure instrument issued by the DENR which recognizes the claim of indigenous cultural communities to land, resources and rights thereon within a defined territory. A Certificate of Ancestral Domain Title (CADT), on the other hand, is a title formally recognizing the rights of possession and ownership of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) over their ancestral domains that have been identified and delineated in accordance with the Indigenous Peoples Rights Act (IPRA).

The law provides two modes of securing a CADT: direct application and conversion from CADC to CADT. IPs whose ancestral lands/domains were officially delineated prior to the enactment of IPRA have the right to apply for a CADT over the area without going through the mandated process. This, in effect, converts their CADC to CADT. On the other hand, direct application is the process for IP groups whose ancestral lands were not delineated under any legislation prior to Indigenous Peoples Rights Act (IPRA).

The identification, delineation, and recognition of ancestral domains should be in accordance with the procedures outlined in the IPRA (Section 52) and its accompanying Implementing Rules and Regulations (IRRs). However, there is no clear guideline on how long the process should take.

In the case of direct applicants, a study by PhilDHRRA found that the average time from the start of the application process to the approval of the CADT is 3.4 years. In addition, it will take an average of 6.35 months before the issued CADTs are actually awarded to the tribes.

Free and Prior Informed Consent (FPIC) of the IP community—i.e., “consensus of all members of the IPs/ICCs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference or coercion” (Chapter 2, Section 3g, IPRA);

- IP land rights are recognized through the issuance of a Certificate of Ancestral Domain Claim (CADC) or a Certificate of Ancestral Domain Title (CADT).

3. R.A. 8550, or the Fisheries Code of 1998

- Signaled a change in government fisheries policy from a production and exploitation orientation to stewardship and protection;
- Provides for the establishment of fisherfolk settlement areas. However, it does not grant fisherfolk residents security of land tenure;

- Gives jurisdiction to the municipal or city government over municipal waters. The agencies involved in carrying out the activities for delineation or delimitation are the Department of Agriculture (DA) through the Bureau of Fisheries and Aquatic Resources (BFAR), the National Mapping and Resource Information Agency (NAMRIA) under DENR, and the Local Government Units (LGUs). Delineating the boundaries of a municipality's 15-kilometer municipal waters is essential for sustainable management of fishery resources, fishery law enforcement and granting the preferential rights of municipal fishers within the 15-kilometer zone (Section 18).

4. R.A. 7279, or the Urban Development and Housing Act (UDHA) of 1992

- Aims to address the housing shortage of the country,⁶ laying down the groundwork for a comprehensive and continuing urban development and housing program by prioritizing the provision of decent shelter to the poorest of the poor; providing the framework for the development and use of urban lands; encouraging people and community involvements and initiatives in urban development and shelter construction; improving and maximizing local government participation, especially in socialized housing; and tapping private sector resources for socialized housing.

5. R.A. 7160, or the Local Government Code (LGC) of 1988

- Empowers local government units and promotes people's participation in all stages of local development work—from planning, implementation, monitoring and evaluation;
- Gives Local Government Units (LGUs) the power to approve land conversion. Section 20 of the LGC states that through an ordinance passed by the *Sanggunian* (local council), a city or municipality may reclassify agricultural lands when: (i) the land ceases to be economically feasible; and (ii) where the conversion shall result in appreciation of land values.

6. R.A. 8435, or the Agriculture and Fisheries Modernization Act (AFMA)

- Aims to accelerate the pace of development of agriculture and fisheries for the purposes of poverty alleviation and social security, food security, rational use of resources, global competitiveness, sustainable development, people empowerment, and protection from unfair competition.

7. National Integrated Protected Areas System Act of 1992 (NIPAS)

- Provides for the use and enjoyment of protected areas consistent with the principles of biological diversity and sustainable development. It also supports the establishment and management of protected areas as a key strategy for conservation of the country's biodiversity;
- Introduced the concept of local participation in protected area management at a time when the common practice of most governments in the Asian region was a strict protection zone (conservationist) policy. The NIPAS Act enabled local communities to take part in deciding on how best to manage the forests that are the source of their livelihood.⁷

8. Presidential Decree No. 705, or the Forestry Code of 1975

- Affirms the Regalian Doctrine of state ownership of public domain, including waters, minerals, coal, petroleum and other minerals, all potential sources of energy, fisheries, wildlife and other natural resources. These can be explored, developed or utilized only through license, concession or lease;
- Article 14 further states that no land of the public domain with a slope of 18 degrees or over shall be classified as alienable and disposable (A & D). Only agricultural lands, industrial or commercial, residential and resettlement land of the public domain may be alienated.

Issues Affecting Access to Land and Tenurial Security

Mixed Roles and Policy Reversals among Implementing Agencies

Many laws on access to land require joint implementation or coordination among government agencies either because of complexities in implementation or because different agencies' expertise is required.

Mixed responsibilities among agencies have resulted in backlogs and contradicting implementation, especially where the accountability of the implementing agency is unclear or where the implementing agency does not have enough funds to perform its task. For instance, DAR cannot distribute agricultural lands without the DENR completing its survey. LGUs

face the same problem in the delineation of foreshore lands for fisherfolk settlement, which is the responsibility of DA and DENR. In other instances, the implementing agency does not have the capacity to perform the task assigned to it and has to rely on another agency.

Land Reclassification: Which Agency has the final say?

Some agencies have been granted blanket authority by law to reclassify lands. Under P.D. 705, only DENR has the power to classify public lands as agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, etc. Where public land is not classified, it is automatically considered as forest land. However, the President also has the power to declare land as forest or mineral reservation. Similarly, under NIPAS, the President may designate an area as protected until Congress passes a law declaring it as such⁸.

Where private lands are concerned, the Comprehensive Land Use Plan (CLUP) of the LGU and zoning ordinances hold sway. The LGU also has the duty to designate zones for fishpens, fishcages and other structures within their jurisdiction. However, the President can at any time reclassify land when public interest requires it.

The National Commission on Indigenous Peoples (NCIP) is supposed to govern all affairs concerning IP groups. However, the determination of the coverage of IP groups' ancestral domains is contingent on a survey conducted by DENR.

Competing Authority on Land Conversion

The Agriculture and Fisheries Modernization Act (AFMA) allows the conversion of agricultural lands on a case-to-case basis, but does not specify the reasons for land conversion.

The Comprehensive Agrarian Reform Law (CARL) also allows the conversion of agricultural land to other uses, i.e., when the land ceases to be economically valuable for agricultural purposes, or when the area has become urbanized, thus making the land more economically valuable when put to other uses. This provision only covers awarded land under CARL.

In many cases, the LGU invokes its power to reclassify land on the mistaken notion that it has full authority to do so under the LGC of 1988. Actually, the LGU's power to reclassify land has limitations under this law. Only portions of agricultural lands may be reclassified upon approval of the DA. Lands awarded to



farmer beneficiaries may not be reclassified. In practice, however, this protection is often flouted by LGUs.

The Fisheries Code and Forestry Code provide for the automatic reversion of land to its former classification, conditioned upon the use or non-use of the subject land.

NIPAS requires a law from Congress to convert a certain protected area to a non-protected area or to adjust the boundaries of a protected area. This process makes changes to protected areas harder. On the other hand, the Forestry Code gives blanket authority to the DENR to classify the lands of the public domain.

IPRA requires the IP community's free prior and informed consent before the conversion of ancestral land by an external entity. However, it does not clearly define "free, prior and informed consent."

Overlapping Policies, Conflicting Definitions, Cross-Cutting Purposes

CARL covers private and public lands devoted to or suitable for agriculture. However, the definition of agriculture is broad enough to include forest lands, resettlement sites, and all other government-owned lands suitable for agriculture.

CARL identifies priority categories of agricultural land that would be covered; among them are idle and abandoned agricultural lands; lands foreclosed by government financing institutions; all arable public agricultural lands under agro-forestry, pasture and agricultural leases; lands already cultivated and planted to crops; and all public agricultural lands which are to be opened for new development and resettlement. CARL is not limited to the acquisition and distribution of agricultural lands; it also has provisions for establishing agrarian settlements and for undertaking lease agreements for the use of agricultural lands. CARL, which preceded the enactment of the IPRA, recognizes and protects the right of IPs and forest settlers to exploit the resources within their territory.

A protected area, as delineated by the NIPAS, can cut across all types of land as long as it fits the criteria, i.e. has a high degree of biodiversity or is ecologically fragile.

"Forest" under P.D. 705 has no clear definition, except for a provision that classifies land as forest when it has a slope of 18 degrees and above. P.D. 705 also mandates that land could re-

vert to forest land in two instances: first, when mangrove areas and other swamps that had been turned over to BFAR for fishpond purposes remain unutilized, or have been abandoned for five years from the date of such release; and second, when land with a slope of 18 degrees and above is declared A & D unless covered by titles or approved application.

The reversion of land to its former classification by operation of law creates confusion over the nature of the land and in regard to the jurisdiction of the regulating agency. CARL exempts from coverage lands with 18 degree slopes and higher. However, CARL also provides that where such land is already developed, then it could be put under agrarian reform.

The Fisheries Code mandates the DA to establish and create a fisherfolk settlement within lands in the public domain that are near the seashore. The same law imposes a prohibition on the alienation or disposability of some public lands, like marshes, mangroves and ponds suitable for fishery operations. However, the law grants fishpond leases to fisherfolk organizations, which the DA may revoke where environmental considerations demand it.

Under IPRA, the extent of ancestral domains⁹ is self-delineated by the IP community. Ancestral domains cover not just land but also water and other resources. They are considered as private land owned by the IP community and all the generations thereof, and hence, cannot be sold, disposed of, or destroyed. At the same time, the government can lay claim to lands covered by the ancestral domains of an IP group, especially those with a slope of 18 degrees and above, and classify them as A & D.



The LGU has the power to impose taxes over lands within its jurisdiction. Under the LGC, the classification of real property for valuation and assessment purposes is made on the basis of the land's actual use, regardless of its classification¹⁰. LGUs have been known to reclassify agricultural land covered by CARP in order to convert them to non-agricultural uses, which bring in more revenue.

Conflicts in policies and interpretations, and overlaps in scope create confusion, to the detriment of the basic sectors. Government has tried to harmonize the laws through dialogues and joint agency mechanisms. Though helpful in coordinating the direction of agencies in conflict, these mechanisms have not resolved the differences among the basic sectors involved. For instance, IP claims over their ancestral lands are being contested by agrarian reform beneficiaries, i.e., lowland farmers, (with the support of DAR), resulting in conflicts between these two groups. LGUs represent another group of competitors to IP land claims.

The Philippine Constitution is silent on how to prioritize among such competing interests.

Factors Hindering Agrarian Reform Implementation

Expiration of Law for CARP Funding

R.A. 8532, which provides for funding for the agrarian reform program, expired in June 2008, with no clear indication from the Philippine Congress on how to proceed hence. There are two likely scenarios: (i) there will be no additional funding for CARP (program implementation will be limited to PhP3 billion per year under the General Appropriations Act); and (ii) CARP would be extended, including its funding, but it would proceed much as it had in the last 20 years. A third, less likely, scenario is the enactment of an amended CARP law (with additional funding), which incorporates a number of important reforms that will

hasten land distribution and improve overall implementation. *(Editor's Note: Last 15 December 2008, both Houses of Congress passed Joint Resolution #19 extending CARP for six months but without the compulsory acquisition (CA) scheme. Only pending landholdings under the Voluntary Offer to Sell (VOS) and Voluntary Land Transfer (VLT) are to be processed. Farmers groups and advocates calling for the reform and extension of CARP are taking to the streets to pressure Congress to uphold the CA scheme as mandated by the Constitution and pass House Bill 4077 and Senate Bill 2666 before June 2009. The Catholic Church has also thrown its weight behind the campaign by joining the Congress lobby, the farmers' marches and protest actions.)*

Incomplete Land Acquisition and Distribution, Questionable Data

Agrarian reform advocates agree that CARP implementation over the last 20 years has fallen short of expectations. Land acquisition and distribution (LAD) is still a long way from being completed, with much of the LAD shortfall occurring in private agricultural lands (PAL) where landowner resistance is strong. As of 2007, most of the remaining 1.2 million hectares for distribution under the CARP are privately owned agricultural lands.

Moreover, the reported "accomplishments" under CARP include lands that are covered by certificate of land ownership awards (CLOAs) but which have not yet been turned over to their intended beneficiaries. Collective CLOAs (i.e., issued to cooperatives and farmers' organizations) are treated differently from the proof of ownership which the individual members of such organizations receive in the process, thus resulting in double counting and inflating DAR's accomplishments.

Insufficient Support Services and Access to Credit

There is a backlog in the delivery of support services for the majority of agrarian reform beneficiaries (ARBs) who have already been awarded lands. A recent NGO survey of 1,851 ARBs in 32

Table 1. Summary of CARP Accomplishment, 2007

Agency	Total Scope* (mil.ha.)	Land distributed (mil. ha.)	Balance (mil.ha.)	Beneficiaries	Balance
DAR	5.163	3.960	1.203	2,296,741 ARBs	700,000+
DENR	3.96	3.183	.65		
Total	9.12	7.143			

Source: DAR Accomplishment Report June and December 2007.



provinces reported that more than half of respondents do not have access to post-harvest facilities (e.g., thresher, drier, hauler, warehouse, etc.) and 44 % of the respondents had access to credit (just seven percent which was provided by the government).

Exemptions from CARP Coverage

The government's original target of 10.3 million hectares in 1988 was severely reduced in 1996 to 8.1 million hectares due to exemptions and massive land conversion. More than 5.3 million hectares of land were exempted outright from CARP in 1996. The reduction in public land covered by CARP was due to the lease of vast tracts of government to cattle ranchers, operators of export crop plantations, and logging concessionaires (SALIGAN, 2007)

Insufficient Political Will

The poor performance of CARP is due to lack of political will, as evidenced by government's deliberate understatement of its targets; its inability to hold DAR accountable for its implementation of CARP; and inadequate funding for the CARP.

DAR's Poor Performance

DAR's poor performance is manifested in: (i) the predominance of VOS and VLT as the primary mode of land acquisition, as opposed to the much more difficult CA; (ii) the department's orientation on quantity, which measures success in terms of number of hectares awarded; (iii) the absence of an effective monitoring system to determine if the intended ARBs have actually been installed in the lands awarded them; and (iv) high incidence of abandonment, sale, or mortgaging of CARP-awarded lands by ARBs to raise money for medical expenses or because of the lack of credit for production.

Market-oriented Tenurial Schemes

DAR's poor performance in the distribution of private agricultural lands is compounded by the promotion of various arrangements to circumvent actual land transfer to farmers. One such scheme is the "leaseback" arrangement whereby ARBs turn over control of the awarded land (via a lease contract) to agribusiness corporations or to the former landowners as a precondition for the release of the ARB's CLOAs (Certificate of Land Ownership Award). Another dubious arrangement is the "corporate" scheme, wherein ARBs are given shares of stock in the agricultural corporation of the landowner in lieu of having the land transferred to them. Conversion of agricultural land to commercial, residential and industrial uses is also prevalent, further reducing the scope of land reform.

Lack of Donor Support for Land Acquisition

The policy of donor agencies to fund support services delivery (rather than the more controversial land acquisition) has also contributed to poor CARP implementation. Also donor funding for NGO activities related to agrarian reform has been reduced and shifted toward government projects.

Landlord Resistance

Landlord resistance is one of the major bottlenecks in CARP implementation. This takes various forms, including not presenting the necessary documents; circumventing the CARP by exploiting legal loopholes; using connections to high-ranking government officials; and harassment of ARBs.

Factors Hindering Indigenous Peoples' Access to their Ancestral Domains

Snail-paced Ancestral Domain Titling

Ten years after the passage of IPRA, only 20% of the targeted area (slightly more than half a million hectares of land) have been awarded to indigenous communities and very limited development activities in support of the Ancestral Domain Management Plans have been undertaken in IP areas. There are 181 ancestral domains, with a combined area of 2.54 million hectares, covered by CADCs.

Mining Operations on IP lands

Since 1992 the Philippine government has been aggressively promoting the revitalization of the mining industry, for which it has opened up 30% of the country's land area to exploitation (Doyle, et al., 2007). In 2006, the DENR received 1,953 mining applications. According to the DENR, there are 1,953 mining applications currently pending.

Weak Implementing Agency

NCIP, the agency mandated to implement IPRA, is ill-equipped, underfunded, staffed with people who are poorly trained and lack field experience and cultural sensitivity to handle land conflicts and issues of resource access. A number of NCIP personnel have been accused of helping mining companies gain entry into IP lands by getting around the FPIC requirement.

Lack of Effective Integration between NCIP and DAR

In 2008, NCIP, which used to be under DAR, became an agency under DENR. This transfer gives cause for concern. DAR may not, as a result, be expected to prioritize or at least give due at-



tention to IP concerns, given that IP communities are fewer than farmers. There has been speculation that by putting NCIP under DENR's supervision, the government can facilitate the approval of applications for mining operations, especially those within ancestral domains.

Limited CSO Support after CADC Award

Civil society support for CADC claims has often been limited to the pre-claim period. Few NGOs are committed to and capable of providing the needed support during the post-claim period, which requires governance, as well as livelihood, technical, and financial assistance to the IP claimant. As a result, many forest dwellers have found life to be more difficult during the post-

CASE STUDY

Sumilao Farmers: Victims of Government's Lack of Political Will and Landlord Defiance of CARP

In 1995, the Sumilao farmers were awarded ownership of the Quisumbing Estate, a 144-hectare prime agricultural land in San Vicente, Sumilao, Bukidnon under the government's Comprehensive Agrarian Reform Program (CARP). Before the farmers could get hold of the land, however, the landowner sought to convert the land to an agro-industrial estate, claiming that the conversion would benefit the community. The Agrarian Reform Secretary at the time disapproved the application for conversion, but then Executive Secretary Ruben Torres approved it.

In protest, the Sumilao farmers went on a hunger strike in 1997 which lasted for 28 days. Then President Fidel Ramos acceded to the farmers' demands, ordering that 100 hectares be awarded to the farmers while allowing the landowner to keep the remaining 44 hectares. The farmers celebrated this "win-win" solution, but their jubilation was short-lived. Shortly after, the Philippine Supreme Court overturned the President's order based on a technicality, namely, that the Sumilao farmers were merely "recommendee farmer beneficiaries".

The estate reverted to its landowner, who was ordered to go ahead with developing the projects the landowner promised was implemented. Furthermore, in 2002, the estate was sold to San Miguel Foods, Inc. (SMFI), a food manufacturer, which plans to use the land as a piggery farm. This violates the terms of the conversion order.

The Sumilao farmers thus lodged a protest with the Department of Agrarian Reform (DAR) but were told that the matter was under the jurisdiction of the Office of the President. Hence, on 9 October 2007, the Sumilao farmers marched from Bukidnon, in Mindanao, to Manila to seek a resolution of the case from President Gloria Arroyo.

The farmers' march drew the attention of many sectors, especially the Roman Catholic Church. No less than Manila Archbishop Gaudencio Rosales blessed and expressed support for the poor landless tillers. This further fuelled the campaign to pressure President Arroyo to act on the case and the SMFI to give up its claim to the land. Prominent media exposure; the strong support of the

Catholic Church and of various NGOs and POs; countless briefings at schools, churches and, with influential individuals, and the farmers' commitment to their cause were critical factors that led to the campaign's success.

In March 2008, five months after the farmers set out for Manila, SMFI yielded and struck a compromise deal with the farmers. The food conglomerate returned 50 out of the original 144-hectares to the Sumilao farmers and agreed to purchase the remaining 94 hectares from the surrounding areas in the province.

On March 30, the Sumilao farmers, with their supporters from the Church and civil society advocates, finally tore down the perimeter fence and set foot once again on the land of their forefathers.

However, the farmers still have to secure their victory. The DAR was tasked to locate the 94-hectare balance, which would be subjected to the long process of CARP coverage. There is no word yet where the said property will come from, much less when it would finally be awarded to the Sumilao farmers.



claim period. The remoteness of many CADC areas likewise hampers the delivery of basic social services.

Crisis in IP Leadership and Threats to IP Culture and Traditions

Within IP communities, there is a rift between traditional (male) elders and younger leaders, who have been educated in low-land schools. This friction, coupled with the ongoing process of integration into the mainstream cash economy, makes IP communities more vulnerable to pressure from external forces (e.g., corporate interests, migrants, etc.) and can bring about community disintegration. Affiliation with various religious or political groups is also dividing IP communities and families, and threatens to destroy their culture. Many IP spiritual leaders have become Christian pastors. In other cases, persons who are not true tribal leaders have been appointed as chieftains.

Issues Affecting Access to Forestry Resources by Forest Dependent Communities

Lack of Tenurial Security Among Upland Communities

Of the over 20 million people residing in upland areas, only those who hold a CADT, or who have entered into a forest stewardship agreement with the government under a community-based forest management (CBFM) program, enjoy security of tenure. Moreover, majority of the 2.7 million people who are supposed to be tenured by virtue of these instruments are still seen as squatters. Meanwhile, large upland areas are covered by timber licenses, or else have been given over to mining operations.

Prevalence of the Regalian Doctrine

In 1995, CBFM was adopted by the Government as the national strategy to achieve sustainable forestry and social justice. This marked a shift from centralized management of resources to a participatory and people-oriented approach. However, this policy

shift has not resulted in greater tenurial security among forest dwellers. The Regalian Doctrine still persists and allows the government to revoke any land use permits and tenure instruments it has extended to communities and individuals. Because it does not guarantee tenurial security, CBFM cannot ensure the judicious use of forest resources.

Confused DENR Mandate

DENR is the primary controller of public lands and resources, including forest lands. The dual mandate of DENR—to protect and conserve the environment and to promote the utilization of natural resources—creates confusion and conflict in the policies and operations of the agency. This “schizophrenia” came about when the Department of Environment and the Department of Natural Resources were merged to form the current DENR. At the same time, the DENR bureaucracy has failed to demonstrate its capacity to shift toward a more participatory and people-oriented approach which underpins the CBFM strategy.

Development Strategy Based on Resource Extraction

The current administration has anchored the economic development of the country on resource extraction, particularly of timber and minerals. This is a marked departure from the social reform and asset reform agenda of previous administrations and has led to increased pressure on the remaining natural resources of the country.

Lowland to Upland Migration

Pressure on limited forest resources is further exacerbated by the continuous migration of lowlanders to the uplands. The upland population, estimated at 25 million people, or 29% of the country’s total population, is growing by 10% per year due to migration (De Vera, 2007). New upland settlers find few livelihood opportunities apart from those that depend on forest resources. IPs also frequently come into conflict with farmers due to claims over the same piece of land.

Table 2. Summary of CADTs/CALTs Issued, Area Coverage, and Number of Beneficiaries, 2007

Instrument	Number issued	Tenured area (ha)	Beneficiaries
CADT	57	1,116,439.4	242,356
CALT	172	4,855.7	2,792

Source: National Commission on Indigenous Peoples List of CADT/CALT as of June 2007.

Table 3. Forest Land-use Instruments

Instrument	Number issued	Tenured area (ha)
Community Based Forestry Management (CBFM)	1,781	1,622,129
Timber License Agreement (TLA)	14	684,524
Integrated Forest Management Agreement (IFMA)	169	674,000
Industrial Tree Plantation Agreement (ITPLA)	9	39,749
Tree Farms	142	17,469
Agroforestry Areas	80	89,725
SIFMA (Socialized Industrial Forest Management Agreement)	1,837	40,265
PFDA (Private Forest Development Agreement)	91	4,992
FLGMA (Forest Land Grazing Management Agreement)	395	109,415
Total		3,282,268

Source: Philippine Forestry Statistics, Forest Management Bureau. 2005

Issues Affecting Access to Fisheries Resources by Small Fisherfolk

No Land Allocated by Government for Small Fishers

The experience of municipal fishers in Luzon, Visayas and Mindanao shows that government agencies, both local and national, do not prioritize access to land and tenurial security of small or municipal fishers.

Lack of Funds and Capacity to Implement the Fisheries Code

Ten years after its passage, the Fisheries Code has not been fully implemented because it is unfunded, among other reasons. There are also no implementing rules and regulations (IRRs) in regard for its key social reform provisions, such as the establishment of fisherfolk settlements, delineation of municipal waters, etc. Moreover, DA and LGUs lack the capacity to implement it.

Tenurial Instruments Beyond the Reach of Small Fishers

Fishpond and Foreshore Lease Agreements (FLAs) provide tenurial security to qualified applicants and allow them to develop, utilize, and manage foreshore lands, fishponds, and other water bodies. Unfortunately, FLAs are too expensive for most small fisherfolk.

Resort owners and real estate developers are the usual beneficiaries of FLAs. The application of these groups for FLAs is pri-

oritized by the local government because they can be counted on to finance economic activities, and thereby bring tax revenues to LGUs. Small fisherfolk, on the other hand, are regarded as a burden by LGUs because they require assistance in managing the resources entrusted to them.

Threats to Coastal Settlements

The tenurial security of small fishers is threatened by the following: (i) private land claims over public areas where fishers have settled and lived in; (ii) private land claims over foreshore land and salvage/ easement zones; (iii) sale by small fishers of their lands or their occupancy rights to private investors and resort/ real estate developers; (iv) the promotion of aquaculture for fisheries development; (v) establishment of resorts and other tourism facilities; (vi) port development and other public coastal infrastructure development; and (vii) setting up of factories, industrial estates, export processing zones and other industrial facilities.

Land Titling Complications

Small fishers' tenurial security is also threatened by problems in land titling which usually arise from: (i) complicated laws on land titling; (ii) unclear jurisdiction of various agencies and institutions; and, (iii) differing systems, processes of land measurement, mapping, valuation and titling of various agencies and institutions.

Issues Related to Land Use Planning

Other threats to small fishers' tenurial security are related to land use planning, including: (i) conflicts over differing land uses among stakeholders; (ii) environmental degradation due to lack of enforcement of environmental laws and standards; (iii) lack of appropriate knowledge and skills in coastal area management, especially among local governments; (iv) lack of genuine participation of municipal fishers and other sectors in the process of land use planning; (v) lack of resources (especially funds) to enforce and monitor CLUP implementation of; (vi) unclear jurisdiction over municipal waters, foreshore areas, and coastal zones; and (vii) the need to integrate land use planning with the preparation of the Annual Investment Plan.

Displacement and Relocation Issues

Small fishers who are displaced or relocated to other areas are faced with the following concerns: (i) relocation sites that are far from the sea, their livelihood source; (ii) limited consultation with the affected families in planning the relocation/resettlement process; (iii) problems in the process of selecting beneficiaries; (iv) limited compensation for destroyed properties and limited/ no assistance in rebuilding their houses; (v) inadequate social services, transportation/communication facilities and public utilities in the relocation sites; and (vi) inadequate health, education and social services, as well as livelihood and employment opportunities.

Weak, Fragmented Fisherfolk Groups

Only 10% of Philippine fisherfolk are organized. Fisherfolk organizations are generally weak and fragmented because they are vulnerable to the machinations of local politicians. In some cases, political differences among NGO support groups contribute to the division among fisherfolk groups. Civil society and government support for the fisherfolk sector is generally less than for other sectors.



Actors Facilitating or Impeding Access to Land and Tenurial Security

Government

Government faces formidable challenges in the enforcement of access to land laws and implementation of related programs. Foremost among these challenges is the lack of political will to implement the laws, manifested in inadequate budgets and inefficient or inept bureaucracies.

Market forces have also influenced government implementation of access to land laws and programs. This is illustrated by government's enthusiastic promotion of commercial mining, despite the latter's negative impact on other sectors, particularly IPs.

A third challenge comes from existing laws that go against social justice principles yet remain unrepealed and, therefore, continue to be in force. One such law is Presidential Proclamation (PP) 2282, which gives the President blanket authority to convert forest lands and ancestral domain areas into agricultural and resettlement lands.

Donor Agencies and International Institutions

The three major Philippine donors—Japan, Asia Development Bank (ADB) and the World Bank—have provided significant funding to access to land programs. However, donor funding has been uneven across the four sectors (i.e., lands subject to CARP, forestry, fisheries, IPs), with agrarian reform receiving the largest share and fisherfolk, receiving the least. There are also gaps in donor support. For example, few donors provide financing for land acquisition.

Donor support is also provided indirectly through civil society groups sub-contracted for projects funded by Official Development Assistance (ODA).

Agrarian Reform

To date, the total ODA contribution for CARP stands at PhP35.3 billion, or 32% of the PhP110.2-billion (as of 2004) released by the Philippine government for CARP. ODA funds that have gone to CARP have been spent largely on the delivery of support services (mostly infrastructure); only a little part, of this ODA money has been earmarked for land acquisition. This donor reluctance to fund land acquisition has contributed to the slow progress of CARP. Pending the passage of a CARP extension bill,

donor agencies are holding back from making new commitments to fund agrarian reform.

Forestry

One recent major donor initiative in the forestry sector is the Philippine Tropical Forest Conservation Foundation (PTFCF), which was established through a United States Agency for International Development (USAID)-sponsored debt swap. The foundation is managed by a board of trustees whose members include representatives from government, NGOs and USAID. The foundation provides support to NGOs and POs (in partnership with LGUs) that are engaged in reforestation activities.

Many donors have likewise provided support for reforestation activities, among them, the World Bank, the European Union (EU), the ADB, Japan Bank for International Cooperation (JBIC), and the International Fund for Agricultural Development (IFAD).

Indigenous Peoples

Due to capacity gaps within NCIP, donors have stepped back from earlier commitments to support the agency's operational projects, and instead, have chosen to focus on capacity building of the NCIP, that is, website development, education, and resource management planning. Most donor funding for field projects has been coursed through the DAR.

There has been renewed interest in IP issues due to the passage of the UN Declaration of the Rights of Indigenous Peoples in September 2007. This opens up opportunities to lobby the Philippine government for more effective implementation of IPRA.

Fisheries

There has been minimal donor support for fisherfolk settlement. In 2003, DENR, the WB and AusAID started implementing a pilot project to introduce reforms in land administration and public land management in six municipalities of Leyte. As of July 2007, the project registered 2,019 patents and of these, 1,531 have already been distributed. Three of the municipalities covered by the project—Palo, Tanauan and Barugo—are coastal municipalities.

A key contributor to the fisheries sector, particularly the promotion of land access by small fisherfolk, is Oxfam (Great Britain and Hong Kong), which has supported the advocacy work and other activities of the NGOs for Fisheries Reform (NFR). Oxfam was also a major sponsor of the National Conference on Fisherfolk Settlement in November 2006.

Private Sector

In general, private commercial interests have been a major obstacle in the struggle of the basic sectors to gain access to land or tenurial security.

Agrarian Reform

Landlord resistance is one of the major bottlenecks in the implementation of agrarian reform. This takes various forms, including: (i) not presenting the necessary documents; (ii) circumventing CARP by exploiting legal loopholes; (iii) using connections to high-ranking government officials; and (iv) harassment of ARBs, leading in most cases to violence. Since 1998, as many as 18,872 farmers and rural organizers have fallen victim to human rights violations. (PARRDS, 2007)

Forestry

Logging concessionaires take advantage of their Integrated Forest Management Agreements (IFMAs) to clear-cut forests. Only 10% of the area covered by Timber License Agreements (TLAs) are being reforested, and mostly with fast-growing species that will also be cut down. Other replanting efforts involving the private sector consist of tree-planting activities by company employees along national highways rather than in denuded forest areas.

Mining interests have targeted some 80,000 hectares for mining exploration, most of these in forest areas. A recent Philippines–China agreement has earmarked some two million hectares for agribusiness plantations. These plantations are likely to cut across the country's few remaining forest areas.

Indigenous Peoples

As a result of the National Minerals Policy, private investments—in mining, IFMAs, pasture lease agreements, palm oil plantations and orchards, and similar large-scale commercial enterprises—are being implemented in the ancestral lands of indigenous communities.

Fisheries

The establishment of industrial estates, power plants, ports, beach resorts, recreation facilities, etc. on foreshore lands and coastal areas has displaced communities of small fisherfolk. A number of small fisherfolk are enticed to sell their occupancy rights, or are forcibly removed. They usually no resistance because the lands they occupy state-owned lands.



Civil Society and Social Movements

Civil society and social movements continue to be involved in the struggle of the basic sectors to gain access to land and tenurial security. Civil society engagement is uneven, with agrarian reform receiving the largest share of support, in comparison with other rural issues. The recent trend towards downsizing of NGO activity in the Philippines has affected civil society support for land access and tenure security.

Agrarian Reform

Civil society has traditionally been involved in the advocacy for agrarian reform, starting from the peasant rebellions in the pre-independence period, continuing throughout the 1950s and 1960s in protest of tenancy, and persisting to this day, to hold governments to their commitment to land redistribution.

Civil society action reached a high point in the late 1980s, with the formation of the Congress for a People's Agrarian Reform (CPAR), a broad federation of peasant groups whose lobbying efforts were instrumental in the passage of CARL.

Tracing a general downward trend in the activities of NGOs in the Philippines, civil society support of agrarian reform is also declining. Among other reasons, this probably came about when NGOs began to specialize in their chosen fields, and thereby reduced their involvement in broader political and economic issues.

Forestry

A number of civil society groups are working in the forestry sector. However, most of their efforts are uncoordinated and, as a result, fail to achieve their intended impact. An underlying reason for this is their failure to focus on inclusive themes that could serve as a rallying point for collaboration. For example, the more inclusive theme of "sustainable land use" (as opposed to "forest protection") would elicit support from a broader range of stakeholders, including the academe and the private sector (which has a stake in ensuring the continued supply of marketable forest products).

The lack of coordination among NGOs involved in the forestry sector is also due to the absence of a credible personality who can mobilize the various groups. Perhaps this is a role that the bigger conservation groups, such as the Foundation for the Philippine Environment (FPE), Haribon, etc., could consider taking. At the local level, the experience of Social Action Center–

Quezon (and SACs in other areas) demonstrates the potential of the church to catalyze broad support to address forestry issues.

Indigenous Peoples

A promising initiative is the "Forging Partnerships Conference," which has brought NGOs and other resource providers in dialogue with IP leaders and communities. The Conference has enabled IP groups to define development assistance within their own context, formulated protocols for NGO support to IP communities, and established mechanisms to share information (through IP coalitions) and provide assistance (by matching IP needs with NGO capabilities). A permanent steering committee facilitates the sharing of resources.

This development represents a positive shift in NGO attitudes away from paternalism (which had fostered IP dependency in the past), a softening of formerly inflexible ideological positions, and a willingness to engage with other stakeholders.

The government's mining policy has forged a strong link between environmental concerns and IP rights. The "Alyansa Tigil Mina"—a multi-sectoral civil society alliance—has been established for sustained advocacy against mining abuses.

Civil society support for CADC claims has often been limited to the pre-claim period. Few NGOs are committed to and capable of providing the needed support during the post-claim period of resource utilization, which requires governance, livelihood, technical and financial assistance to the IP claimant. As a result, many forest dwellers have found life more difficult during the post-claim period. The remoteness of many CADC areas likewise hampers the delivery of basic social services.

Fisheries

Civil society support for the fisherfolk sector is less than for other sectors. Such support includes awareness raising on fisherfolk rights, legal assistance and case handling, paralegal training, research on fisherfolk issues, and engagement with local governments. The small number of volunteer lawyers can hardly service this sector's huge demand for legal assistance. NGOs in the fisherfolk sector are likewise strapped for funding, and this has forced a number of them to focus on Mindanao, where much donor support is concentrated.

Apart from NGOs, the church has been a key ally in providing information and other types of support toward the resolution of

cases involving fisherfolk. Media, both local and national, have also been supportive of fisherfolk issues.

A noteworthy initiative is Gawad Kalinga (GK), which employs a simple strategy of providing land for the landless, homes for the homeless, food for the hungry and as a result providing dignity and peace for every Filipino. While not focused exclusively on small fisherfolk, a number of Gawad Kalinga projects in Bato, Leyte, Ozamiz, Misamis Occidental and Balangkayan, and Eastern Samar have successfully addressed the settlement needs of municipal fishers in these areas. It may be appropriate to establish a more formal collaboration between GK and fisherfolk groups.

Fisherfolk have not been as fortunate with LGUs. In general, cooperation between them has not been productive. However, there are notable exceptions, e.g., in Quezon, Davao Oriental and Zambales, where mechanisms for consultation and dialogue have facilitated the identification of fisherfolk settlement sites for inclusion in the municipal CLUP.

In 2006, NFR, together with fisherfolk representatives from Luzon, Visayas and Mindanao, reviewed the Fisheries Code. The review identified seven themes in fisheries, one of them being Fisherfolk Rights and Settlements. This was in response to the increasing number of reports from fishers of court-decreed displacement and eviction. To address this concern, NFR came out with three documents declaring its support for fisherfolk settlements. The first is a Joint Administrative Order (JAO) outlining the process for identification and selection of fishers-beneficiaries and disposability of lands through different modes. The second document is a draft special order for DENR to identify lands of the public domain near the sea that are suitable for settlements (this has been adopted by DENR as a Special Order entitled "*Identification of Public Lands Suitable For Fisherfolk Settlements in Coastal Municipalities and Cities.*") The third NFR document is a proposed municipal ordinance ordering coastal cities and municipalities to identify, acquire, and distribute areas for fisherfolk settlement.

Innovations in Promoting Access to Land and Tenurial Security

Approaches to access/tenurial security that hold the most promise are those that integrate the concerns of tenurial security, live-

lihood, resource management and community empowerment. To some extent, integrated, tenure-based resource management is already embodied in progressive legislation such as IPRA and the Fisheries Code. In part, these community-based, integrated approaches evolved from experiments by NGOs, people's organizations (POs), and reformers in government.

Agrarian Reform

TriPARRD

The Tripartite Partnership in Agrarian Reform and Rural Development (TriPARRD) program of the Philippine Partnership for the Development of Human Resources in Rural Areas (PhiDHARRA), a rural development NGO network, utilized a tripartite approach (cooperation among government, NGO, and farmer's organizations) to promote land tenure improvement, social infrastructure building and agricultural productivity enhancement. The "tripartite approach" as well as many TriPARRD technologies (for instance, on land distribution tracking) have since been institutionalized at the DAR (Delos Reyes & Jopillo, 1994).

Agrarian Reform Communities Development Project (ARCDP)¹¹

The government, through DAR, launched the ARC approach to beneficiary development in 1993. The ARC approach involves the provision of support services, specifically basic social infrastructure, like water, power supply, education and health, for ARB communities living in the same or adjacent barangays, rather than attempting to service all areas covered by CARP.

The second phase of the ARCDP, implemented from 2003–2007, focused on the following interventions: (i) community development and capacity building; (ii) rural infrastructure development; (iii) agriculture and enterprise development; and (iv) financing support.

Farmer Paralegalism

Paralegalism involves educating farmers on the laws that affect their rights. It also includes training on handling legal cases and networking with other advocates. One such paralegal program is Paralegal Education, Skills Advancement and Networking Technology (PESANTech). The project aims to improve the resource tenure of communities through empowered community based legal resource institutions. PESANTech was implemented by SALIGAN, KAISAHAN and BALAOD–Mindanao. From 1993 to 2006, the program covered 21 provinces nationwide.



Forestry

Community Based Forest Management Agreement (CBFMA)

The CBFM Program was instituted by the government in 1995. Its underlying principle is that "equity refers not only to the sharing of benefits but [also] the responsibility of sustainable development." Through the issuance of CBFMAs, the CBFM program provides land tenure to organized upland groups (POs), and entitles them to utilize a designated forest land for a period of 25 years, renewable for another 25 years subject to certain conditions.

Indigenous Peoples

3-Dimensional Mapping of Ancestral Domains

Unlike conventional maps, a 3-dimensional (3-D) map includes 3-D representations of significant natural features (such as mountains, bodies of water, etc.) as well as sites with social, cultural and spiritual significance. A 3-D map thus reflects residents' knowledge and use of a particular area.

Supplemented by Global Positioning Satellite (GPS) technology for accuracy, a 3-D map was used by the Tagbanwa clan in Calamian, Palawan to bolster its application for a CADC over an area which had been earlier appropriated by the local government.

Thus, on 12 June, 1998, six years after the Tagbanwas filed their claim, and despite strong opposition, DENR approved the Tagbanwa's CADC application covering 22,400 hectares of land and waters.

Fisheries

Community-Based Marine Protected Areas

NGOs are promoting the CBMPA approach within the context of the community-based coastal resource management (CBCRM) strategy already adopted by the government. The CBMPA strategy involves the setting up of a fish sanctuary (where absolutely no fishing is allowed) and a fishing area where the small fisherfolk will have preferential access as well as direct management responsibility. These CBMPAs are established in cooperation with local governments. A locally organized committee or council manages the CBMPA (Haribon, 2004).

Lessons from Interventions and Initiatives to Promote Access to Land and Tenurial Security

1. Government is a key factor in the struggle of the basic sectors to gain access to land and tenurial security. LGUs are



particularly important because of their local presence and their regulatory powers over land and natural resources.

2. The issue of land access and tenurial security for the basic sectors cannot be divorced from the country's mainstream economic development strategy. This development paradigm is characterized by subservience to the demands of globalization and a strategy of resource extraction as the major engine of economic growth.
3. The demise of the Congress for People's Agrarian Reform (CPAR) notwithstanding, collaboration (perhaps even unity) among the farming sector at the national level is still possible as long as this is issue-based and the parameters of collaboration are clear and agreed upon by all parties.
4. Studies indicate a trend toward the abandonment, sale, or mortgaging of CARP awarded lands. The sale of such lands has been more pronounced in progressive or urbanized areas where land prices are higher. This phenomenon requires a careful re-thinking of agrarian reform.
5. Information dissemination and education on land access and tenurial security rights remain important tasks. Only a small number of the basic sectors are aware of their rights.
6. Granting IP communities rights over their ancestral domain is highly controversial because the latter are richly endowed with much coveted natural resources. This effort can succeed only by building a supportive broad, multi-sectoral coalition. The inclusive theme of environmental protection—forest

protection in the rural areas—is a good rallying point for collaboration among a broad range of sectors, including LGUs.

7. Building multi-sectoral alliances will require the resolution of internal conflicts among the basic sectors. Conflict resolution will entail more than an acceptable legal framework (Section 59 of IPRA has the beginnings of a legal solution). More important is the creation of a cadre of facilitators who will help sustain the dialogue between competing parties to resolve conflicting claims.

Opportunities and Strategies to Advance Access to Land and Tenurial Security

Opportunities and Challenges

The Philippines has some of the most progressive laws on tenure reform in the region, if not the world. Nevertheless, the Philippines also has one of the most skewed property regimes in the world.

A major challenge is the capacity of government agencies to implement key legislation. Implementing agencies, such as DAR, NCIP, BFAR/DA and DENR, are generally perceived as lacking the resources, expertise and political will to implement decisive tenurial reform. The question of political will reaches the highest levels of government, which continue to be dominated by elite interests.

Globalization and modernization are also threatening national sovereignty, compromising ecological integrity, and imposing varied and new demands on the nation, its people and natural resources. For example, the government policy favoring large-scale, commercial mining has affected all social justice and ecological programs, threatening the integrity of the lands and waters used by farmers, fishers and IPs.

Clearly, the issue of land and water access and tenurial security for the basic sectors cannot be divorced from the dominant development paradigm and the mainstream economic development strategy.

Progress in tenurial security for marginalized sectors is the result of painstaking advocacy and social innovation by NGOs, POs and reformers in government. Despite divisions among the

poor and the groups that support them, collaboration (even unity) of pro-poor forces at the national and local levels is possible as long as this is issue-based and all parties agree on the parameters of collaboration.

Response

In response to the above challenges, a number of Philippine civil society organizations—representing a broad spectrum of NGO networks and support groups, agrarian reform advocates, environmental conservation organizations, federations of peasants, fisherfolk, indigenous communities and forest dwellers—convened in January 2008 to commit to an advocacy program and cross-sectoral actions intended to promote access and control of the basic sectors to land, water and other natural resources.

The convergence of these civil society groups is based on two basic principles that they hold in common:

1. Access and control to land and water resources are crucial to the survival and dignity of the basic sectors. For this reason, their rights to land and water must be prioritized over those of other users.
2. The respective concerns of the basic sectors on access and control over land and water are not in contradiction to each other, nor to the goal of conservation and development of national resources. Rather, security of tenure over land and water resources by the basic sectors is a major prerequisite for national development and the conservation of land and water. The participation of the basic sectors in the determination, planning and execution of land and water use is therefore of paramount importance.

Advocacy Program

The advocacy program, aimed at promoting access to land and water and tenure security, and which will be implemented over the next five years, is expected to achieve the following results:

1. Passage of a National Land Use Act.

The National Land Use Act shall articulate the national policy that will regulate the interests of the different stakeholders (and particularly, the basic sectors). Specifically, the National Land Use Act shall: (1) address conflicting provisions on land use found in different laws like CARP, IPRA, UDHA, NIPAS, Fisheries Code, etc.; (2) provide for a rational land use policy, taking into consideration the lands to be protected, the lands to be used for productive purposes, settlements development, and infrastructure development;

and (3) be participatory in nature. Congress should ensure adequate funding for the National Land Use Act, particularly for the resolution of disputes and delineation of lands.

Agrarian Reform

2. National Debate on the Role of Agrarian Reform.

The cessation of funding for the CARP in June 2008 has re-focused national attention on agrarian reform. This is an opportunity to launch a national debate on agrarian reform as a prerequisite for industrialization, local market development, and broad-based sustainable national development.

3. Amended CARP Law

The advocacy for an extension of CARP funding is likewise an opportunity to organize the critical mass of peasant groups and agrarian reform advocates (including the Church and reformists in government) to lobby Congress for an amended CARP law with adequate funding and incorporating the important reforms to hasten land distribution and improve the overall implementation of agrarian reform. A proposal to this end is pending before the Lower House of Congress as House Bill 1257.

Forestry

4. Clear Primary Mandate of DENR.

DENR, the controller-agency for public lands and natural resources, has a dual (at times, conflicting) mandate: (1) to protect and conserve the environment; and (2) to promote the utilization of natural resources. This dual mandate creates confusion and conflict in the policies and operations of the department, resulting in conflicting land uses. The primary mandate of DENR should be clarified in order to resolve this confusion and conflicts.

5. Co-Management.

Collaborative management and strong people's participation should be the guiding principle in forest management. This shall enable LGUs and other sectors to actively participate in forest management. This will also facilitate the infusion of additional resources and the decentralization of responsibilities and accountability such that benefits accrue to local communities.

6. Forest Tenurial Instruments that are Community-Based.

Community-based forest tenurial instruments should recognize the link between forest protection and a security of tenure among forest dwelling communities. They should be flexible and be based on existing community practices and

traditions, integrity of ecosystems and appropriate management units.

7. Mapping of Forest Lands.

Estimates of Philippine forest cover are questionable because of the dearth of reliable maps and the decision of DENR to include tree plantations and orchards as part of forest lands. Mapping should be undertaken to determine the extent and location of forest areas and to document the overlapping claims in these areas.

8. Environmental and Natural Resource Accounting.

An environment and natural resources accounting system should be adopted in the preparation of national income accounts in order to internalize environmental costs and benefits.

Indigenous Peoples

9. Strict Enforcement of the IPRA.

The capacities of NCIP should be strengthened and held accountable as IPRA's implementing agency, and funding should be assured for the implementation of Ancestral Domain Management Plans.

10. Revised FPIC Procedures.

The procedures of the current revised FPIC process should be reviewed and changed to conform to the traditional decision-making processes of the tribe(s) concerned. Tribal decisions based on the new FPIC process should be implemented strictly, particularly with regard to decisions involving mining and other extractive activities within the ancestral domain.

11. Established Conflict Resolution Mechanisms.

The competing claims of IPs and other basic sectors on the same land have resulted in an extremely polarized situation that is difficult to resolve. The IPRA should serve as the legal framework for the resolution of these competing claims and the Ancestral Domain Management Plan adopted as the overall development framework to which the plans of other stakeholders can be incorporated. A cadre of facilitators should also be formed to ensure the peaceful resolution of these claims at the local level.

12. Sustained Information Dissemination.

There should be continuing Information, Education and Communication (IEC) on the IPRA, as many are still unaware of the law's specific provisions. The IEC campaign should also aim at building broad support for the implementation of the IPRA.

*Fisherfolk***13. Speedy Implementation of the Fisheries Code.**

This involves: (1) allocation of General Appropriations Act (GAA) funds; (2) delineation of municipal waters using the framework of DENR Department Administrative Order (DAO) 17; and (3) the immediate issuance of the IRRs for Section 108 to guide the establishment of fisherfolk settlements. The IRR should be prepared jointly by BFAR/DA, DILG, DENR, HUDCC and other concerned agencies.

14. Amendment of Section 108 of the Fisheries Code.

Section 108 of the Fisheries Code (RA 8550) should be amended such that in place of the DA, HUDCC should take on the task of providing for the establishment and creation of fisherfolk settlements, and provisions for land ownership by municipal fishers (which are absent in the Fisheries Code) are included.

15. Revise FLA Guidelines.

Guidelines on FLAs should be revised to prioritize the FLA applications of small fisherfolk, and to make the FLA more affordable.

Cross-Sectoral Actions

In addition to the above advocacy program, participating civil society organizations also agreed to undertake the following cross-sectoral actions:

16. Inter-sectoral Dialogues and Collaboration.

In order to build consensus and learn from each other, the groups shall convene regular inter-sectoral dialogues and collaboration. They shall advocate and build internal capacities to help form and strengthen coalitions of people's organizations.

17. Electoral Education and Reform.

The groups shall pursue and participate as a coalition in massive electoral education and in the pursuit of electoral and political reforms to enable the basic sectors to put in place political leaders who will implement laws that promote social development and the protection of the welfare of the masses.

18. Budget Monitoring.

The groups shall participate in the formulation of budgets, and monitor the budget utilization of government agencies implementing the major land and water tenure programs (i.e., DAR, NCIP, DENR, and BFAR-DA).

19. Monitoring of Human Rights Violations.

The groups shall monitor, document and disseminate cases

of human rights violations in relation to land and water tenure issues.

20. Alternative Reports on Tenure Reform.

The groups shall document, consolidate and disseminate alternative reports assessing the implementation and effectiveness of land and water tenure reform legislations and programs.

Endnotes

- ¹ Based on the summary prepared by Mr. Joel Pagsanghan and Jennifer Javier for the Philippine Partnership for the Development of Human Resources in Rural Areas (PhilDHRRA) with input from summaries of the Round-table discussions of the farmers, IPs, forestry and fisherfolk sectors, Quezon City, August to November 2007.
- ² As cited by the International Fund for Agricultural Development (IFAD) in their Rural Poverty Report on the Philippines, www.ruralpovertyportal.org/english/regions/asia/ph/index.htm, 2007.
- ³ Based on the paper prepared by Atty. Aison S. Garcia and Atty. Marlon J. Manuel, Peasant Unit of SALIGAN for the Country Paper of ANGO on Access to Land and Tenurial Security, Quezon City, 2007.
- ⁴ Excerpted from Antonio B. Quizon, Meynardo Mendoza, Gregorio Quitangon, Maricel Tolentino, Land Partnerships in the Philippines, Quezon City, ANGO, 2004.
- ⁵ Department of Agrarian Reform states in its June 2007 Accomplishment Report that the total CARP Scope is 9.12 million hectares, of which 5.16 million hectares are assigned to DAR and 3.96 million hectares to DENR.
- ⁶ The Philippines has one of the highest annual rates of urban growth among developing countries—averaging 5.1% from 1960–1995. The estimated housing shortage from 1993 to 1998 was placed at 3.72 million housing units. (Also see Annex B, Notes on Urbanization and Housing Issues in the Philippines)
- ⁷ Working with People section, www.haribon.org.ph
- ⁸ See section 5 of RA 7586
- ⁹ RA 6657, Section 40, (3) Sparsely Occupied Public Agricultural Lands—Sparsely occupied agricultural lands of the public domain shall be surveyed, proclaimed and developed as farm settlements for qualified landless people based on an organized program to ensure their orderly and early development.
Agricultural land allocations shall be made for ideal family-size farms as determined by the Presidential Agrarian Reform Committee (PARC). Pioneers and other settlers shall be treated equally in every respect.



¹⁰ RA 6657, Section 40 (2) Subject to the requirement of a balanced ecology and conservation of water resources, suitable areas, as determined by the Department of Environment and Natural Resources (DENR), in logging, mining and pasture areas, shall be opened up for agrarian settlements whose beneficiaries shall be required to undertake reforestation and conservation production methods. Subject to existing laws, rules and regulations, settlers and members of tribal communities shall be allowed to enjoy and exploit the products of the forest other than timber within the logging concessions.

¹¹ Contributed by the John Carrol Institute for Church and Social Issues citing from Balisacan, Arsenio M. May 2007. Agrarian Reform and Poverty Reduction in the Philippines. Policy Dialogue on Agrarian Reform Issues in Rural Development and Poverty Alleviation. Traders Hotel, Manila, www.dar.gov.ph/faps_arcddp2.html, www.davaonorte.gov.ph/profile/sep_4_6_5.htm

References

- Adriano, L. (1991). *A general assessment of the comprehensive agrarian reform program* (Series No. 91-13). (Working paper). Makati: Philippine Institute for Development Studies.
- Balisacan, A. & Pernia, E. (2002). What Else Besides Growth Matters to Poverty Reduction?. In *Asian Development Bank Economics and Research Department Policy Brief*. (Series No. 5). Mandaluyong City: Asian Development Bank.
- Bureau of Fisheries and Aquatic Resources. (2002) *Philippine Fisheries Profile*. Quezon City: Bureau of Fisheries and Aquatic Resources.
- De Vera, D. (2007). *Indigenous peoples in the Philippines: A Discussion Paper*. Paper presented at the round table discussion for the Farmers Sector for Land Watch Philippines. Quezon City: Philippine Association for Intercultural Dialogue.
- Delos Reyes, R. & Jopillo, S. (1994). *Waging Agrarian Reform: NGO Initiative for a Tripartite Program in the Province of Antique*. Quezon City: Institute of Philippine Culture, Ateneo de Manila University.
- Department of Agrarian Reform. (2007). *CARP Impact Assessment Studies II*. (Draft paper). Quezon City.
- Doyle, C., Wicks, C., & Nally, F. (2007). *Mining in the Philippines, Concerns and Conflicts: Fact finding mission to the Philippines report*. UK. Society of St. Columban.
- Forest Management Bureau. (2005). *Philippine forestry statistics*. Quezon City: Forest Management Bureau, Department of Environment and Natural Resources.
- Gabasan, R. (2007). *A discussion paper on land security for municipal fishers*. Paper presented at the round table discussion for the fisheries sector for Land Watch Philippines. Quezon City: Sentro ng Alternatibong Lingap Panligal.
- Garcia, A. and Manuel, M.. (2007). *The Legal Frameworks of Access to Land and Tenurial Security in the Philippines*. Paper prepared for the Land Watch Philippines country paper. Quezon City: Sentro ng Alternatibong Lingap Panligal-PESANTech.
- Gould, D. (2002). *The evolution of land tenure in forestry management in the Philippines*. <http://www.spatial.maine.edu/~onsrud/Landtenure/CountryReport/Philippines>.
- Haribon Foundation. (2005). *Atlas of community-based marine protected areas in the Philippines*. Quezon City: Haribon Foundation for the Conservation of Natural Resources, & Cebu City: Pamana Ka Sa Pilipinas.
- _____. (2007) *A discussion paper on forest tenure security*. Paper presented at the round table discussion for the Forestry Sector for Land Watch Philippines. Quezon City: Haribon Foundation. <http://www.nscb.gov.ph/technotes/poverty>. (2000).
- Israel, R. and Roque, M. (2001). *Toward the sustainable development of the fisheries sector: An analysis of the Philippine fisheries code and agriculture and fisheries modernization act, discussion paper*. (Series No. 99-01). Quezon City: Philippine Institute for Development Studies.
- La Viña, A. (2002). *Community-based approaches to marine and coastal resources management in the Philippines: a policy perspective*. Penang: WorldFish Center.
- Lim Jr., E.. (2007). *Discussion paper on CARP 2008 and beyond*. Paper presented at the round table discussion for the Farmers Sector for Land Watch Philippines. Quezon City: The People's Campaign for Agrarian Reform Network.
- National Economic Development Authority. (2004). *Medium-term Philippine development plan 2004-2010*. Pasig City.
- National Commission on the Indigenous Peoples. (2006). Annual Report. Quezon City: NCIP.
- Partnership for Agrarian Reform and Rural Development Services, Inc. (2007). *Shades of Amos: Expositions on Social Justice, Agrarian Reform and Human Rights*. Quezon City. PARRDS.
- Philippine Partnership for the Development of Human Resources in Rural Areas. (2008). *Philippine Asset Reform Report Card*. Quezon City: PhilDHRRA.
- Pulhin, J. and Dizon, J. (2003). *Politics of tenure reform in the Philippine forest land*. Paper presented at the convention on "Politics of the Commons: Articulating Development and Strengthening Local Practices", Chiang Mai, Thailand.
- Quizon, A.. (2005). *ANGOC policy discussion paper: Asian NGO perspectives on agrarian reform & access to land*. Quezon City: Asian NGO Coalition for Agrarian Reform and Rural Development.
- Quizon, A.. Mendoza, M.. Quitangon, G.. Almojuela-Tolentino, M.. (2007). *Bridging issues on access to land through land partnerships in the Philippines*. Quezon City: Asian NGO Coalition for Agrarian Reform and Rural Development.
- World Bank. (2004). *Philippines environmental monitor: Environmental health*. Manila: World Bank and the Department of Environment and Natural Resources.

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The International Land Coalition is a global alliance of civil society and inter-governmental organizations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue and capacity building.



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Ekta Parishad



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CSRC



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SALIGAN

Land Watch Asia (LWA) is a regional campaign to ensure that access to land, agrarian reform and sustainable development for the rural poor are addressed in national and regional development agenda. The campaign involves civil society organizations in six countries—Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines. It aims to take stock of significant changes in land policy; undertake strategic national and regional advocacy activities on access to land; jointly develop approaches and tools; and encourage the sharing of experiences of coalition-building and actions on land rights issues.

This book presents regional and country perspectives on access to land for the rural poor from the six countries mentioned above. It makes assessments of land reforms and their implementation, and the legal frameworks and conditions necessary to advance land rights. The publication also examines the changing roles of government, the private sector, NGOs and civil society in influencing agrarian reform and sustainable development for the rural poor. Finally, it puts forward an agenda for actors and activists in pursuit of more equitable access to land in the Asian region