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## LAND GOVERNANCE IN THE 21<sup>ST</sup> CENTURY: FRAMING THE DEBATE SERIES

### Land Governance in Asia

Understanding the debates on land tenure rights and  
land reforms in the Asian context

by **Antonio B. Quizon**



INTERNATIONAL  
LAND  
COALITION

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# Foreword

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This Framing the Debate issue on Asia follows two thought-provoking issues on Africa and on Brazil. As a regional perspective document, it is an introduction to land governance issues and challenges in Asia, a vast and complex region.

The author of this Asia paper, Antonio Quizon, is a veteran land activist, with direct political engagement experience, a history of campaigning for land rights and a record of academic achievement in many Asian countries. He is also one of the handful of civil society leaders who decided, nearly fifteen years ago, to cross the fence and join forces with a number of intergovernmental organisations such as IFAD to establish the Popular Coalition to Eradicate Hunger and Poverty, today known as the International Land Coalition. No one is better equipped than him to untangle the complexity of land reform challenges in Asia, and distil the superfluous from the essential. This issue on Asia directs us to the key elements of land governance in Asia, linking it to its historical roots. It also describes and analyses with unique clarity and accessibility the similarities and differences in land and agrarian reform experiences in Asia.

Let me briefly reflect on one of the key observations made in this paper, namely the multiplicity of approaches to and uneven outcomes of land reform processes from one country to another.

As this paper shows, Asia is a key region for understanding the importance of land reform processes and their associated challenges and dilemmas. No other region illustrates better than Asia the linkages and, as is often the case, the direct causal relationships between land reform processes, the performance of the agricultural sector, and the overall growth of the economy. As shown in this review of many country experiences in Asia, those who initiated appropriate reform processes at the right time reaped the dividends. Those who reformed superficially, ineffectively or not at all, paid a heavy price. The countries that are often cited as successful examples of land reform are Japan, South Korea and Taiwan (all located in Asia), while it is agreed that the miracles of China's and Vietnam's performance in the agriculture sector in recent years are to a large extent attributable to de-collectivisation measures. In all cases, what made the difference is smallholder farmers' access to secure land rights.

Given that tenure reform is so closely associated with agricultural performance, the world needs to closely monitor trends in land and agrarian reform in Asia, where 60 per cent of humanity lives. The answer to the lingering question as to whether the world will be able to feed itself in the next few decades will to a large extent depend on how Asian countries such as China, India, Vietnam, Indonesia, the Philippines, Bangladesh and Pakistan will govern their land, and the extent to which their arable land and smallholder farmers' rights will be protected against the encroachment of urban settlements and the expansion of industrial facilities and infrastructure projects.

We all agree that reform processes are complex, and that the nature of the challenges and debates varies from one country to another. Looking forward, it is therefore important to build on this regional overview, and to carry out country-focused reviews.

For this reason, we are committed to commissioning further issues of the Framing the Debate Series that will look into countries such as China (the next issue), and later India, Vietnam and other countries in Asia.

*Madiodio Niasse, ILC Director*

# Acronyms and abbreviations

ALRD	Association for Land Reform and Development (Bangladesh)	LRAP	Land Reform Action Programme (Bangladesh)
ANGOC	Asian Non-Governmental Organizations Coalition	MALR	Market-assisted land reform
CARP	Comprehensive Agrarian Reform Program (Philippines, 1988)	NGO	Non-governmental organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (1979)	NTFP	Non-timber forest product
CFM	Community forest management	ODA	Official development assistance
CHRAC	Cambodian Human Rights Action Committee	OECD	Organisation for Economic Co-operation and Development
CHT	Chittagong Hill Tracts (Bangladesh)	REDD	Reducing Emissions from Deforestation and Forest Degradation
CPRs	Common property resources	RRI	Rights and Resources Institute
DFID	Department for International Development (United Kingdom)	SAP	Structural adjustment programme
EBSATA	East Bengal State Acquisition and Tenancy Act of 1950	UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples (2007)
ELCs	Economic land concessions	WCARRD	World Conference on Agrarian Reform and Rural Development
EU	European Union	WTO	World Trade Organization
FAO	Food and Agriculture Organization of the United Nations		
FDI	Foreign direct investment		
FPIC	Free, prior and informed consent		
GDP	Gross domestic product		
GMO	Genetically modified organism		
HRS	Household Responsibility System (China)		
ILC	International Land Coalition		
ILO	International Labour Organization		
ICC	Indigenous cultural community		
IPs	Indigenous peoples		
IPCC	Intergovernmental Panel on Climate Change		
IPRA	Indigenous Peoples Rights Act (Philippines)		
JFM	Joint Forest Management (India)		

### About the author



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Tony has spent his past 35 years working directly with rural communities, social movements and civil society organizations (CSOs) in the Philippines and Asia. His research and writings reflect his wide experience and work on agrarian reforms and resource rights, the policy environment for government-CSO relations in Asia, people's empowerment and the reform of multilateral institutions. In 1995, he participated in the founding of the Popular Coalition which later became the International Land Coalition (ILC), and he was its first regional coordinator for Asia.

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In memory of Sanjoy Ghose, Indian activist, and for my past mentors Antonio L. Ledesma, Dioscorro L. Umali and Chandra de Fonseka.

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# Executive summary

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Much of Asia's land tenure systems and legal frameworks on land have been influenced by its colonial past. The Western dominance of Asia started when Vasco da Gama rounded the Cape of Good Hope and opened up a new trading route to Asia, and ended with World War II and the withdrawal of European forces from India and China.

There were three unifying features of this 450-year period. The first was a European naval supremacy that enabled European powers to extend their control of the seas to control over the land masses of Asia. The second was the imposition of a commercial economy on Asian communities whose economic life in the past had been based not on international trade but on agricultural production, local consumption, and internal trade. Geo-political power shifted from the inland kingdoms towards the coasts, where Europeans set up trading centres that later grew into many of Asia's modern-day capitals. The third feature was domination by European powers over the affairs of Asia during its last 100 years of colonisation. This imperialism was driven by the industrial revolution in Europe, starting in the mid-nineteenth century, when Asia was seen not just as a provider of raw materials but increasingly as a destination for capital investments and a market for manufactured European goods.

What started as Western interest in trade with Asia later shifted to interest in land itself. The colonial powers introduced systems of land administration and land-based revenue collection in order to support the costs of colonial expansion. They also needed to keep up with growing demand in Europe for raw materials. Vast lands outside of permanent settlements and permanently cultivated areas were brought under foreign ownership or declared to be "public domains". Landholdings carved out from these domains were then brought under state-controlled cultivation, or else sold or leased for use as private plantations. The introduction of new land registration systems further disenfranchised and marginalised local populations.

The incorporation of many parts of Asia into the world economy brought an increased production of cash crops for export and, with it, a concentration of control over land. Land became a central factor for production, around which labour and capital were arranged. It was only after World War II that most Asian countries gained their independence. The new nation-states continued many colonial policies, and laid claim to foreign-held lands as the legitimate heirs of the colonial state.

After gaining their independence, at least 22 Asian countries attempted to implement land reform programmes in the period between 1945 and the 1980s. Land reforms played an important part in state-building, characterised by inward-looking economic policies. However, in most cases, it was socio-political reasons that provided the critical push for state-led reforms. These included:

- The process of decolonisation, with land reform being included on the agendas of nationalist struggles and emerging nation-states;
- The consolidation of US influence in East Asia, as a reaction to revolutionary reforms in China and to prevent the spread of communism. US occupation forces provided advice and financial support for land reforms in Japan, Taiwan, and South Korea from 1945 to the early 1950s;
- The implementation of socialist reforms by peasant-led revolutionary governments, as in the cases of China and Vietnam;
- The direct response of governments to popular movements and heightened public unrest at different times, as in the Philippines and Thailand;
- Decollectivisation in socialist countries, which started in China and Vietnam in the late 1970s and early 1980s. Central Asian states followed later in the 1990s, after the collapse of the Soviet Union.
- The early successes of land reforms in Japan, South Korea, and Taiwan in the late 1940s were heralded as “models” for reforms elsewhere. However, they were implemented under very particular conditions after World War II, thereby limiting their replicability.

In China and Vietnam, landlords’ property was expropriated and their lands redistributed to farming households. These landholdings were then collectivised through cooperatives and communes. The next phase came decades later, as collectivisation was reversed to create a system of individual peasant farming, often referred to as the “second land reform”. This process of decollectivisation began at just about the same time both in China (1978) and Vietnam (1981).

Countries in South Asia (India, Pakistan, Bangladesh, Sri Lanka) took similar approaches to land reforms, as they had inherited a common set of laws and government bureaucracy from the

British. Reforms focused on the abolition of the zamindar (a type of rent collector) system and the recognition of tillers as owners, together with tenancy reforms, the imposition of land ceilings and redistribution of surplus lands, and the redistribution of state lands. However, the reforms were poorly implemented, as landed interests were firmly entrenched in power. The most successful reforms were implemented in West Bengal and Kerala in India, where socialist parties came to power; less successful were the reforms in Bangladesh and Pakistan, which were governed by a succession of military rulers allied with the landowning class.

The countries of Southeast Asia (with the exception of Thailand) were colonised by six different Western powers, each of which developed different property systems and agrarian structures. Following independence, emergent nation-states sought to consolidate the powers of the state and to establish political stability. Agrarian reforms were first instituted in direct response to social upheavals and agrarian revolts. Faced with the growing threat of communism, many Southeast Asian states came under the rule of military-backed dictatorships in the period from the mid-1960s to the mid-1980s. Some of these governments used their powers to implement land reform programmes (the Philippines, Malaysia) and others to suppress reform (Indonesia). Cambodia was a country in turmoil that underwent four property regimes within a single generation, spanning 40 years.

While land reform dominated development discourse in the 1960s and 1970s, the issue fell from the development priorities and policy agendas of nation-states and international institutions in the 1980s. Over the years, market forces brought about a gradual reconcentration of land in many developing countries in Asia, including those where land redistribution had been implemented.

Starting in the late 1980s, there was a resurgent focus on land reform in development policy discourse. However, much of this new discourse about land policy seemed to highlight considerations of “economic efficiency”, relegating issues of “equality” and “distributive justice” as secondary. Contemporary debates about land policy across Asia might be seen in terms of a number of dominant and inter-related themes:

**The unfinished task of past land reforms**, which were never fully implemented or which became dormant over time due to weak implementation and lack of funding. Many pieces of land reform legislation were the result of compromises between demands from peasants on the one hand and the interests of a modernising landlord class on the other, and they suffered from design deficiencies and a lack of political will. This raises a number of policy issues, including the viability of state-led land reforms and the paradox of the “activist-state”.

**The viability and related issues of improving access for poor people** through more efficient land markets and land titling and administrative systems. In many developing Asian countries, land administration systems remain inefficient, corrupt, over-regulated, and poorly coordinated. The key question is how to make more efficient land markets and administration work in favour of the rural poor, as it can also lead to greater land concentration for those with power and capital.

**The debate on “market-assisted land reform” (MALR)**, which the World Bank initiated in 2001 as a non-coercive alternative or supplement to state-led land reforms. Under the principle of “willing buyer, willing seller”, MALR depends on negotiation between landowners and poor farmers to determine prices in land sales markets. Questions have been raised about the role of markets as equitable allocators of goods and the extent to which development interventions, such as improved access to information and credit, can enable the rural poor to overcome the inherent weaknesses in their bargaining position.

**The issue of women’s access to land**, which continues to be negotiated between traditional law and customary practice on one hand and statutory/individual rights on the other. The importance of equal and independent land rights for rural women has acquired an added dimension in recent decades as Asian agriculture becomes increasingly feminised due to the out-migration of men.

**The longstanding issue of restitution and land rights for Asia’s estimated 260 million indigenous peoples (IPs).** IPs

were largely ignored by past “agrarian” land reforms; in some cases they even became victims of state-led land reforms, through freehold programmes, state-supported migrations, and colonisation schemes. Underlying this debate are conflicting paradigms between “indigenous communalism” and the principles of state sovereignty and modern individualism that underpin property laws and directions of national economic development.

**The issue of tenure reforms for forests and “public domain” lands**, and the choices of different governance and forest tenure systems that have an impact on poverty reduction, environmental protection, and economic development. As forests serve different sectors of the population, the core debate lies between centralised management of forests as a national economic resource and a provider of external services, and community management that views forests as a habitat and a source of livelihoods.

**The recent phenomenon of large-scale foreign land acquisitions**, driven by rising world food prices and the growth of the biofuels industry. The main contention here is between the need to develop foreign private investment and the need to protect small farmers and settlers from land expropriations. It also raises issues about immediate investments that could potentially compromise long-term food security.

**The uncertain future role of Asia’s small farms** in ensuring food security and livelihoods in the context of growing populations, increasing urbanisation, and changes in the food value chain and food industry. Asia is home to 75% of the world’s farming households, 80% of whom are small-scale farmers and producers.

Finally, there is **emerging discussion about the potential direct effects of climate change**, as well as the new commercial pressures on land brought about by global mitigation measures for developing countries, such as the Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD) *initiative*.



# Introduction

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This paper provides a background to current discourses on land rights and land reforms in Asia. More specifically, it outlines some of the key issues and debates related to ensuring land and tenure security for the rural poor in the twenty-first century. It takes a historical perspective on land governance issues to show how Asia's colonial and post-colonial past has helped to shape contemporary land issues and policies. Owing to the wide-ranging scope of the subject matter, it does not attempt a full and systematic analysis of the diversity of perspectives on land governance issues, as this can only be done at the country level.

Part 1 provides an overview of the forces that helped to shape land relations in Asia through key historical periods. Part 2 analyses different contexts and approaches to land reform by highlighting experiences from selected countries. Part 3 discusses key themes relating to current debates on land.

## **The Asian context: land and people**

Asia covers an area of 32 million sq km, or 24% of the world's land area. It accounts for 34% of the world's agricultural area and 15% of its forests. With four billion people, or 60% of the global population, Asia is the world's most densely populated region, with 135 people per square kilometre, four times higher than Europe. Population density per country varies widely, from two people per sq km in Mongolia to more than 1,000 people per sq km in Bangladesh (see Annex 1).

Following a global trend, an increasingly large number of people are moving from rural to urban areas. In 1950, some 231 million Asians lived in urban areas; by 2000 this figure had increased five times to 1.22 billion, while the proportion of urban to total population had increased from 17.1% to 34.9%. Asia's urban population is expected to rise further from 34.9% (2000) to 52.5% (2030). Urban population growth is most rapid in East Asia, followed by Southeast Asia and South Central Asia. Population growth, higher incomes and urbanisation are trends that will continue to accelerate in the region, bringing significant changes in people's lifestyles and consumption patterns.

However, much of Asia's population will remain rural and dependent on agriculture for their livelihoods in the coming decades. Most countries of South and Southeast Asia (including China) may be described as "developing countries" where poverty remains overwhelmingly rural, yet agriculture is no longer the main source of economic growth, and there are increasing disparities in rural and urban incomes.<sup>1</sup>

<sup>1</sup> The World Development Report 2008 describes three types of country, based on their development agendas for agriculture: (i) agriculture-based, (ii) developing countries, and (iii) urbanised countries (World Bank 2008).

Asia is home to two-thirds of the world's poor people. About 1.7 billion people (more than half of the population of developing countries in Asia) live on less than USD 2 a day, the majority of them in rural areas. Asia is also home to 75% of the world's farming households, 80% of whom are small-scale farmers and producers; however, the majority of farmers are resource-poor and lack security of access to productive land.

Asia is a vast region, but it consists of millions of small and diverse communities divided and united along linguistic, religious, caste, and ethnic lines. There are 43 countries in the region, which is classified into five sub-regions: East Asia, South Asia, Southeast Asia, Central Asia, and Western Asia, or the Middle East.<sup>2</sup>

<sup>2</sup> These five sub-regions comprise the following 43 countries: East Asia (five): China (including Taiwan), North Korea, South Korea, Mongolia, and Japan; South Asia (seven): Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka; Southeast Asia (11): Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor Leste, and Vietnam; Central Asia (five): Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan; and Western Asia (15): Afghanistan, Bahrain, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Occupied Palestine Territory, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen. Some sources mention a total of 48 countries, to include Armenia, Azerbaijan, and Georgia as part of Central Asia, and Cyprus and Turkey as part of Western Asia. However, these five countries are considered by other sources to be part of Europe.

# Evolution of land and tenure rights in Asian countries

## Land prior to Western conquest

Prior to the arrival of the European powers, land in many Asian villages was communally owned by tribes, clans, and extended families, and was administered by village chiefs. Especially in areas where land was abundant, individual ownership in the modern sense did not exist, and shifting cultivation was the main source of livelihood. To cultivate land, an individual needed to obtain the consent of the village head; once the land was cultivated, it could be passed on to their children. This system prevailed in Southeast Asia and parts of South Asia; it continues to be practised today among many communities of indigenous peoples (IPs) who have resisted colonial rule and foreign cultures.

In larger farming settlements, including those that practised wet rice cultivation, however, some rudimentary forms of private property existed. Families divided up land amongst themselves, which they could trade or hand down to their heirs. These included rice lands, grasslands, open spaces, marshes, and mangroves. Beyond these individual parcels, however, land lay in common.

Tribal and feudal societies co-existed throughout the continent. Autonomous kingdoms existed in the hinterlands of South Asia and in Sri Lanka, where they kept each other

in check. In Southeast Asia, kingdoms ruled in the mainland (Indochina) and in more densely populated islands such as Java, where villages were already highly stratified on the basis of land (Adas 1998). In China, feudalism was widely practised, with tribute paid to the emperor through a hierarchy of vassals, tribes, and clans. In Japan, the rugged topography made it difficult to unify the country politically. Hence, it consisted of autonomous domains under feudal rulers who controlled land ownership. Under each domain were traditional villages which were largely independent, and practised wet rice cultivation on lands under perpetual lease rights and tenancy arrangements. Japan would be united as a centralised state only much later in the mid-nineteenth century.

## Western domination of Asia: key features

The period of Western dominance in Asia started in 1498 with the arrival in India of the Portuguese explorer Vasco da Gama, and ended after World War II with the withdrawal of British forces from India in 1947 and the retreat of European navies from China in 1949. The Indian historian K.M. Panikkar identifies three unifying features of this 450-year period. The first was the dominance of European maritime power over the land masses of Asia. Naval supremacy enabled European nations to extend their control of the seas from the Atlantic to the Indian Ocean, then further eastwards to the Pacific Rim.

The second feature was the imposition of a commercial economy on Asian communities whose economic life in the past had been based not on international trade but on agricultural production, local consumption, and internal trade. Political and economic power in Asia thus shifted from the inland kingdoms towards the coasts, where the Europeans set up trading centres that over time grew into many of the region's modern-day capitals.<sup>3</sup> The third feature was an eventual domination by European powers over the affairs of Asia during its last 100 years of colonisation. This imperialism was driven by the industrial revolution in Europe, starting in the mid-nineteenth century, when Asia came to be seen not just as a provider of raw materials but increasingly as a locus for capital investments and a market for manufactured European goods.

**Periods of Western colonialism:** Western colonisation of Asia was undertaken in “waves”, initially by five European nations (Spain, Portugal, the Netherlands, Great Britain, and France) and later by the USA and Russia. K.M. Pannikar has identified three main periods of colonisation, driven by changing Western motivations:

- The age of expansion, 1498–1750;
- The age of conquest, 1750–1858;
- The age of empire, 1858–1914.

### Age of expansion

**First wave:** The first wave of Europeans were the Portuguese and Spaniards, who came to Asia in the sixteenth century, seeking a new strategic trading route to the Indies that would outflank the powers of Islam in North Africa and the Middle East. Asian trade with Europe had already been going on for over 2,000 years across the great land masses of Asia, as well as through maritime routes – collectively known as the “Silk Road”; these routes converged on the Mediterranean coasts and were controlled by Arab traders. The discovery of an eastward sea route to Asia by rounding the African continent enabled the Portuguese to gain control of the lucrative spice trade in the Indian Ocean. The first wave of Europeans was also driven by evangelism, and Christian missionaries followed the Portuguese armies and merchants into Goa, Malacca, the Moluccas, Macao, and other areas.

3 Shifts of power from inland kingdoms to coastal settlements due to trade were seen in India (from Delhi to Bombay), China (from Beijing to Shanghai), Indonesia (from Solo and Jogjakarta to Jakarta), and Sri Lanka (from Kandy to Colombo)

The Spaniards found a westward route to Asia across the Pacific, and colonised the Philippines through “the sword and the cross”. However, Spain did not venture any deeper into Asia, as it became preoccupied with colonisation of the Americas. For over 250 years (1565–1821), the Philippines was administered as a Spanish colony through Mexico City, with trade across the Pacific between Manila and Acapulco in Mexico. Thus, agrarian structures in the Philippines came to resemble those of Latin American countries more than those in the rest of Asia. The conquistadores introduced private property under the Regalian doctrine, claiming all lands and natural resources for the Spanish Crown.<sup>4</sup> Traditional systems of communal ownership were broken up and native inhabitants stripped of all their ancestral rights to the land. As the Spaniards consolidated scattered villages into towns, they declared all lands on their fringes, which used to be communal land, to be *realengas* or crown land, thus introducing the concept of public domain. From these lands, large tracts called *encomiendas* were granted to Spaniards as rewards for their campaigns. The Spanish colonisers also co-opted local village leaders, who had the title of *cabezas de barangay*, and gave them the task of collecting taxes and organising forced labour.<sup>5</sup> Village leaders also received land grants, thus shifting their role from “trustees” of communal lands to “owners” of these lands. This marked the beginnings of the large Filipino landowners and haciendas.

Ordinance 139 of 1573, originally referring to Indians in America, was also applied to the Philippines; it declared that “native land and property were their own and might not be taken from them except by fair and willing sale”. But as native landholders had no written documents to prove their possession, they were simply dispossessed. Other modes of land acquisition included lease-purchase (*pacto de retroventa*), where the native seller often failed to buy back the leased property; outright land-grabbing; and usurpation through fraudulent surveys. Priests took land

4 The name “Philippines” was given in honour of King Philip II of Spain. The Regalian doctrine would later become the basis for all the country's land laws, as the Philippine State would be deemed as the “rightful heir” of all Spanish crown lands. This underlying doctrine was later reflected in the Philippine Constitutions of 1935, 1973, and 1987.

5 These were not land taxes, but tributes exacted in gold or in kind. The *cabezas de barangay* collected taxes from males aged 19–60, which were then paid to the *encomendero*. The *encomenderos* received one-quarter of the tributes collected and turned the rest over to the Spanish government and the Church.



donations for the Church in exchange for spiritual blessing and amassed large landholdings, which were cultivated by landless peasants (Serote 2004).

**Second wave:** The second wave consisted of the Dutch and the British, who came to Asia following the Reformation and the rise of Protestantism in Europe. They wrested control of trade from the Portuguese, but had little interest in evangelism. They expanded the spice trade into other commodities: textiles, luxury goods, indigo, and saltpetre (for the manufacture of gunpowder). The British took control of trade in the Indian Ocean and established major trading centres in Bombay, Surat, Madras, Cochin, and Calcutta. The Dutch eventually established their main headquarters in Batavia (Jakarta), from where they traded with Japan, China, and the Far East. For nearly 150 years, from the 1600s to around 1750, the main interest of the Europeans was not in exploitation of resources, but in commerce. They operated from coastal settlements, and drew goods from the interior with the help of a comprador class whose economic interests were bound with foreign merchants, and who derived huge profits from trade. In India, where agriculture was previously geared for local consumption, this growing trade contributed to the rise of a landed class and military aristocracy (the jagirdars), who became effective wielders of power (Pannikar 1953).

### Age of conquest

With the expansion of trade, the colonialists were gradually drawn from the coasts into the hinterlands. Through military force, diplomacy, and trade, Europeans gained access to the interior and widened their spheres of influence. From India, the British expanded to the East Indies, establishing trade settlements in Penang, Singapore, and Malacca. The colonialists had a growing interest in land in the occupied territories – for the collection of land revenue (taxes/rent) and compulsory labour needed for the establishment of self-sufficient colonies, and to control labour and capital for the production of cash crops for export.

In 1765, the British East India Company took over the administration of land revenues in Bengal, Orissa, and Bihar.<sup>6</sup>

<sup>6</sup> For this right, the company paid the Moghul emperor a selami (fee) of 2.6 million rupees annually

To improve tax collection, the British strengthened the powers of an intermediary class of revenue collectors (zamindars) who gradually assumed proprietary rights over land that had belonged to peasants. First, in 1772 the British began to auction the rights of revenue collection to the highest bidder. Then in 1793, the Permanent Settlement Regulation gave the zamindars absolute right of proprietorship to lands with hereditary possession, the right of transfer, and the right to exploit mines and fisheries.<sup>7</sup> The British did not set any legal limit on land rents, and their only condition was that the zamindars pay the company a fixed amount of revenue. Thus, as the zamindars drew more profits from peasants, an elaborate system of sub-leasing developed. Peasants found themselves buried beneath layers of rent-receiving interests who had squeezed themselves between the tiller and the state, each taking a share of what he received from below before passing this on to the layer above him. As many as 50 intermediary interests came to exist between the zamindar at the top and the cultivator at the bottom (Akhtar 1951). The zamindar system was implemented widely across the Indian sub-continent.

In Indonesia, the Dutch operated through their coastal trading centres, from which they gradually built access to the interior. They first introduced a system of land taxes imposed on whole villages in order to finance colonial expansion. In 1830, when the Dutch colonial government in Indonesia was left to fend for itself as a self-sufficient colony, it introduced the Cultivation System (*cultuurstelsel*) in Java – a controlled system of forced cultivation that required farmers to deliver a fixed amount of specified crops such as sugar or coffee. This system utilised a substantial amount of *corvée* (unpaid) labour from villagers. It was managed by a village elite comprised of the village head and other officials, who were exempt from labour themselves. This class, however, did not evolve into an entrepreneurial landlord class, as native chiefs were prevented by the Dutch from engaging in productive enterprises and trade (White and Wiradi 1984). The Cultivation System came at a heavy cost, as

<sup>7</sup> The term zamindar later evolved into a generic title embracing people with different types of landholdings, rights, and responsibilities. This class was also known by different names: wadera (Sindh), thakur, chaudhary, lambadar, and sardar (various Indian states), and malik (Punjab). Zamindars were not considered to be proprietors of their estates, as by tradition the actual rights of land ownership belonged to the cultivators, but such rights were never really asserted or recognised. Instead, zamindars were rent collectors who sometimes also performed certain police, military, and judicial functions. Their state powers made them lords of their domains.

there were serious food shortages in parts of the country and instances of inter-village warfare (*perang desa*). The system was abolished after 1870, when producers were no longer compelled to provide goods in kind for export, and the service tax was replaced by taxes in monetary form.

### Age of empires

The industrial revolution in Europe starting in the second half of the nineteenth century increased demand for raw materials and created new markets. What started as a primary interest in trade in the colonies shifted to a growing economic as well as political interest. Governments in Europe took direct control over their colonies, where they introduced new systems of property, civil law, taxation, and government land administration.<sup>8</sup> In Southeast Asia, land markets developed where none had existed before, and colonial administrations introduced new concepts to land titling that were alien to indigenous populations (Booth 2007). As existing land records were inaccurate or non-existent, colonial administrators initiated land surveys, censuses, and land registration systems.

One key feature of this period was land extensification, where “un-utilised” lands were brought under cultivation. The modes of land acquisition were similar across territories: large blocks of land were carved out from lands declared to be “public domain”, then awarded to private or state companies for the establishment of plantations, through sale, long-term lease, or freehold tenure. In turn, companies used their influence with colonial administrations to gain access to land. Meanwhile, the imposition of colonial land laws and the large-scale alienation of lands meant that many shifting cultivators were deprived of their traditional livelihoods.

The new capitalist plantations were a radical departure from the earlier system, in that they were based on direct production under foreign management and investments with the backing of the colonial state. Roads and railway systems were built to link ports to farms and mines in the interior. In India, British

monopoly interests extended to other parts of the economy – to include shipping, distribution, banking, and manufacturing.

Another feature was the introduction of exotic or “alien” crops and commodities. Tea cultivation spread from China to South and Southeast Asia. Other crops included coffee, cacao, (Peruvian) cinchona, tobacco, maize, cassava, and chilli peppers, which grew well in their new environments. Non-traditional crops like oil palm and (Brazilian) rubber were introduced later, when it became apparent that the economic future of many tropical regions lay in the production of crucial inputs for new and growing industries in Europe. Rubber became an important export for both Malaysia and Indonesia after 1900. From the beginning, it was understood that these new crops would be grown on modern estates that were different from earlier plantations that had produced food exports.

Some crops (tea, coffee) were grown in the cooler uplands, while others (sugar cane, tobacco, cotton) competed directly for land with existing village crops (paddy rice). Some crops were also grown on smallholder farms, as well as large plantations. Over time, in all countries a large-scale cash crop sector for export developed alongside a more traditional food sector oriented to domestic consumption. Ideal growing conditions had to be reproduced for the new crops, and this required skilled resident labour as well as seasonal workers. However, local peasant populations were often reluctant to abandon traditional farming for harsh plantation work, and therefore migrant workers had to be recruited from regions with surplus labour – India and China, Java, or central and northern Vietnam. This resulted in the growth of an agricultural wage labour force, especially in Southeast Asia.

In Sri Lanka, the British enacted the Crown Lands (Encroachment) Ordinance in 1840, which declared all “wastelands” in the country – such as forests and uncultivated and unoccupied lands – to be the property of the British Crown. With this, the state took over all lands on the fringes of settlements and permanently cultivated areas. Local communities lost their traditional rights to common lands used for grazing, forest products, and *chena* (shifting) cultivation. This was followed by a massive sale of crown lands to plantation companies owned by British investors. Landless migrant labourers (*coolies*)

<sup>8</sup> Unlike the Spanish and Portuguese, the Dutch and British administered trade between Asia and Europe through private chartered companies. This later changed when governments in Europe took direct control over administration of the colonial territories. The government of the Netherlands took control in Indonesia in 1800, following the dissolution of the Dutch East India Company (*Vereenigde Oost-Indische Compagnie* or *VOC*, 1602–1800), and the British Crown assumed the administration of India from the British East India Company in 1858.

were brought from Tamil Nadu in Southern India. In 1865, the British built their first railway on the island, linking Colombo to Ambepussa, to transport coffee and tea from the hill country to Colombo for export.

In India, British plantations were established in sparsely populated areas where land could be obtained for ownership or rent at low cost, or else through lease contracts with zamindars. The lives of plantation labourers were characterised by low wages and harsh living and working conditions, sometimes with physical coercion. Recruitment of workers and compulsory labour were enforced through debt servitude – where peasants or workers accumulated debts that were never paid but passed on from generation to generation, keeping them forever bonded to the plantation, factory, or landlord.

In Indonesia, with the end of the Dutch Cultivation System in 1870, individual property was introduced, and the country was opened to private businesses, which set up large plantations by leasing land from the state. The Agrarian Law of 1870 declared all lands that were not cultivated ( “wastelands”) to be state property. This enabled foreign plantation companies to obtain long-term leases for the production of export crops in Java and other islands, especially North Sumatra. From this evolved a dualistic rural structure consisting of a Dutch plantation sector existing side-by-side with an Indonesian adat (customary) system of smallholder agriculture. This dual economy was a deliberate strategy, as it enabled the colonisers to exploit native labour without disturbing traditional community systems. In fact, the Dutch, British, and French colonies came under increasing pressure from their governments and home populations to become financially self-reliant, and this implied the minimum use of force (Booth 2007).

Eventually, the Dutch introduced three main colonial land policies in Indonesia. First, all lands were divided into two categories of ownership through the *domein verklaring* (declaration of domain) principle. In one category, land was recognised as being individually owned, known as *eigendom*, and in the other all land was owned by the state. Second, land was allocated for the development of large plantations, particularly on state-owned land. Third was a policy on the

designation of “state forests” (Bachriadi 2009). These land policies were retained after independence in 1949.

The French arrived in Vietnam in 1858 and by the 1880s had gained control of Indochina. In the kingdom of Cambodia, where the French found it difficult to pursue their economic interests under the customary land system, they introduced the concept of private land ownership under the Land Act of 1884. All “unoccupied” lands became open for sale, enabling the French to build their plantations and rubber estates. The French also invested heavily in land reclamation along the Mekong River at the turn of the twentieth century, resulting in large tracts of land (in Cambodia and South Vietnam) being sold to local residents or expatriates through auctions.

In 1920, the French Civil Code introduced the registration of land, giving priority to those lands with high economic potential. Thus, a formal land registration system co-existed with the traditional Cambodian code based on customary tenure, since much of the country remained unsurveyed. However, sporadic titling proceeded slowly, as people feared that formalising land ownership would mean the introduction of extra taxes (Star Kampuchea 2008). Without legal title, many farmers were increasingly vulnerable to dispossession. Yet the Cambodian elite embraced private ownership and, as urban dwellers expanded to the outskirts of towns and rice-growing areas, they started to accumulate lands. They lent money to farmers at usurious rates until they became heavily indebted and consequently lost their lands (Bravo 2001). However, in the countryside, most Cambodian agriculture, as elsewhere in Asia, remained based primarily on a traditional, smallholder model.

In China, Western powers could not penetrate deep into the mainland, but all along the coast ports were forcibly opened to foreigners for trade. By the latter half of the nineteenth century, the British, French, Germans, and Russians had established their own spheres of influence within China, and had built settlements upstream along the Yangtze, Canton (Pearl), and other river systems.

***The third wave from the Pacific:*** By 1900, an estimated 84% of the world’s surface was under the control of European countries and the United States. Colonialism in Asia, Africa,

and the Americas meant that only 35 independent and free states existed at the time, mostly in the Americas. In Asia, five colonial powers were active in the South, Southeast, and East Asia regions. Three were European: the British controlled the whole Indian sub-continent to Burma and most of the Malayan Peninsula; the Dutch governed Indonesia, from Sumatra to New Guinea; and the French controlled the contiguous territories of Vietnam, Laos, and Cambodia. The two others were Pacific powers: the United States, which became active in the affairs of Asia, and Japan, which began to rise as a home-grown colonial power in the second half of the 1800s.

The US first reached Asian shores in 1844, and later bought the Philippines from Spain in 1898 following the Spanish-American War. In 1903, the US introduced the Torrens Title and land registration system to the Philippines, followed by the 1905 Public Land Act, which declared all unregistered land without Torrens title to be “public lands” under the control of the state, regardless of prior occupancy.<sup>9</sup> These land titling acts disenfranchised many smallholders who could not meet the requirements for land registration and who became vulnerable to land grabs by the rich and powerful. Moreover, as the laws allowed only individuals and corporations to register, they excluded the indigenous peoples who subscribed to the traditions of ancestral and communal land ownership. US companies later developed plantations on lands acquired by purchase or lease from the state. The American period also marked the colonisation of Mindanao in the Southern Philippines and tribal areas that had earlier resisted Spanish rule.

By the second half of the nineteenth century, Japan had awakened into a modern imperial power, and took control of Korea, Taiwan, and parts of China. Japan sought the assimilation of these new territories as a source of inexpensive rice and other commodities. In Taiwan, the Japanese undertook legal reforms to align the island’s laws with their own, restructuring the indigenous property system to pave the way for capitalist investments and enterprise in agriculture. In Korea, private land ownership was already well developed, with large areas around urban centres already producing for a market economy, and controlled by a few wealthy landlords

(Gragert 1994). Hence, the Japanese strategy for Korea was to control the existing market distribution, rice brokering, and shipping systems, while dealing with the large Korean landlords; this enabled Japanese capital and colonists to gradually penetrate the countryside.

**Forests and mines:** In all the colonies, demand for timber came with the steady growth of towns and shipbuilding industries, while interest in mining came later with increasing demand from European and US companies for petroleum, tin, and other minerals.<sup>10</sup> In the 1860s, for instance, the British colonial government began to take an interest in the forested lands of the Chittagong Hill Tracts (CHT) in eastern Bangladesh, creating Reserve Forests (under state control) and District Forests. The Regulation of 1900 (or “CHT Manual”) recognised the CHT region as a “special” tribally dominated area with restrictions on permanent settlement and the acquisition of land by outsiders. However, beginning in the 1900s, people and companies began to enter the area with private rights of freehold or leasehold, including timber plantation companies.

In the Philippines, the Spanish government first introduced a system of logging permits in 1867, and later established a more comprehensive timber classification system for revenue collection. It is estimated that around half of the Philippines’ forest cover disappeared during the 350 years of Spanish rule (Bankoff and Boomgaard 2007). In the later period of US rule, the Mining Act of 1905 opened up public lands and ancestral lands of indigenous peoples to American prospector companies, as concessionaries. The second Mining Act of 1935 prohibited small-scale gold panning and native mining. The Americans also brought large tracts of forest land inhabited by IPs under the state as forest reserves.

### Growing discontent and change

Western colonisation extended the global capitalist system to Asian societies that were previously oriented to subsistence production and internal trade. The booming export economy in Asia raised average per capita incomes and created fortunes for an indigenous group of landowners, office holders, and money-lenders. But while market mechanisms and contractual

9 The Torrens system of land titling was developed in Australia in 1858 to give Europeans a secure title to their farms. It was later introduced into Southeast Asia, particularly the Philippines and British Malaya (Booth 2007).

10 During the early part of the colonial period, European nations drew much of their gold, precious metals, and minerals from mining in the Americas.

relationships may have benefited a small indigenous minority, they created new challenges for the majority of peasants, who lived on the margins of subsistence.

The security and stability of peasant households were undermined by wildly fluctuating prices that were beyond their control or comprehension (Adas 1998; Scott 1976). In many instances, landlords evicted tenants or smallholders in order to cultivate crops for an expanding world market, leading to the introduction or extension of the plantation system in some countries. The transformation of land and labour into commodities for sale had the most profound impact on peasants. Many cultivators lost free usufruct rights to land and became tenants or waged workers, with the value of their produce determined by market fluctuations. Moreover, as colonial officials rigidly enforced revenue demands, extracting taxes even during bad harvests, the state itself (along with the money-lenders) was seen as a claimant to peasant resources. From a peasant perspective, these radical changes undermined community insurance systems and violated their principles of a “moral economy” and a “subsistence ethic” (Scott 1976).

Peasant grievances gave rise to agrarian conflicts in many Asian countries. Popular resistance took different forms – cultural and indigenous religious movements, peasant rebellions, communist movements, and Gandhian non-violent resistance – contributing over time to the growth of nationalism. Along with growing unrest, it was with the emergence of an enlightened middle class that independence movements emerged in the first half of the twentieth century. International trade brought the educated class into contact with liberal ideas from Europe. Also, the legal system was among the abiding influences of Europe in Asia, turning frustrated demands for “equality before the law” into later demands for independence (Pannikar 1953).

Where agrarian conflicts or uprisings emerged, colonial governments responded by force as well as by remedial measures through policy and institutional reforms. In India, the focus of reforms during this period was on tenancy rights. The Bengal Tenancy Act of 1885 recognised the rights of tenants for the first time; the Act was amended six times, though it kept intact the power and prerogatives of the zamindars. Other

provincial tenancy acts were passed, including the Punjab Tenancy Act in 1887.<sup>11</sup> In Sri Lanka, the focus of reforms was on ensuring security for small peasant landholdings, as villages and farms were being hemmed in by the growth of plantation estates. The first Land Commission was established in 1927, and the Land Development Ordinance of 1935 gave limited protective tenure to peasant holdings. In the Philippines, the American colonial government enacted the Friar Lands Act of 1902, which initiated the purchase and sale of Spanish friar lands.<sup>12</sup> However, most of the friar lands ended up as haciendas owned by upper-class Filipinos. The Americans meanwhile did little to break up the other land monopolies created under Spanish colonisation; instead, the Philippine Bill of 1902 upheld the Spanish system of cadastral laws (Serote 2004).

In Indonesia, peasant revolts erupted in Java, starting in the nineteenth century, as the colonial economy with its *particuliere lunderijen* (privately owned landed estates) upset traditional systems and created social discontent. Hence the focus of colonial reforms was on “improving native welfare”, although the real concern of the Dutch was that a poverty-stricken colony could become a serious economic liability for the home country (Booth 2007). In the early 1900s, the Dutch colonial government conducted an enquiry known as the “Declining Welfare Survey” to examine the well-being of people in the islands of Java and Madura. On the basis of this enquiry, the colonial government instituted the “Ethical Policy”, which was the official rhetoric for expansion in irrigation, education, and emigration (*i.e.* moving people) from overcrowded areas.

**Effects:** Through Western colonisation, many countries and communities of Asia were incorporated into the world economy between the sixteenth and twentieth centuries. Vast lands were brought under the ownership of different crowns or declared to be “public domain” through processes that disenfranchised entire communities and local peoples. Landholdings were then carved out from these public domain areas and brought under state-controlled cultivation, or else

11 The Bengal region had developed highly complex and elaborate land tenure and tenancy systems. The usual system was *batai* or crop sharing on a 50/50 basis, where the tenant carried the entire cost of production from his share. The situation was worse for tenant-cultivators in Sindh and Punjab provinces (Pakistan), where the share of the tenant was often less than half of the crop

12 A survey at the time showed that friar estates covered 166,000 hectares, with an estimated 60,000 resident tenant population.

were sold or leased out as state concessions to private entities. Colonial administrations also had another interest in land – as a source of revenues, which were collected through land sales, land rents, taxes, and concession fees. The full costs of colonial administration and expansion could not be afforded by the nations of Europe, and these costs had to be passed on to “self-sustaining colonies”. Thus, the expansion of the colonies also brought a widening of the tax base.

The incorporation of many parts of Asia into the world economy brought an increased production of cash crops for export and, with it, a concentration of control over land. Land became a central factor for production, around which labour and capital were arranged (White and Wiradi 1984). Westerners and local elites acquired control over land, either directly in the form of ownership or indirectly through state control over production, or in the form of middlemen traders who controlled the flow of agricultural produce.

Colonisation brought most lands and resources under the ownership or control of the state. It also defined the boundaries and territories of Asia’s modern nation-states. Following independence, these new states became the largest landowners as they laid claim to crown lands, being the “legitimate heirs” of the colonial states. It was only after World War II that most Asian countries gained their independence. By the end of the 1950s, the United Nations had 99 self-governing member-states, 18 of which were in Asia.

# Review of land reform programmes in Asian countries

## The push for land reforms

After gaining their independence, some 22 Asian countries attempted to implement land reform programmes in the period between 1945 and the 1980s. Land reforms played an important part in state building, which was characterised by inward-looking economic policies. The reasons for pursuing land reforms were both economic and socio-political.

**Economic:** Unlike in the colonial era, when trade was the basis of the economy, agricultural production became the economic base of the new republics. Most Asian countries adopted a development approach of “import substitution”, based on the assumption that the terms of trade of primary export products would decline, and that Western countries would erect protectionist barriers preventing the import of manufactured products from developing Asian countries.

Thus the overall economic framework for land reform was to address rural poverty, social exclusion, and economic stagnation by achieving greater integration of the economy. Land redistribution and tenure reforms would liberate tenants and farm workers from debt servitude, excessive rent, and

landlessness, and thereby provide them with the incentives for improved productivity, leading to greater efficiency in the use of land. Compensation given to landlords for their expropriated lands could serve as capital for reinvestment in industry and other sectors of the economy. Consequent improvements in the well-being and prosperity of rural people would, in turn, create a domestic market for locally produced goods, and this would help propel the national economy. As part of this framework, land reform became an integral component of trade protectionism, import substitution, and self-sufficiency policies which Asian countries implemented until the 1980s.

Types of land reform, however, were divided by prevailing ideological perspectives. The capitalist view, as in the above approach, was to strengthen private property rights mainly in the form of individual family farms. The socialist view, on the other hand, was to liquidate private property in favour of socialist development driven by the state, taking the form of cooperative and collective farms. These contending views would dominate public discourse between 1945 and the 1980s, as Asia became a battlefield in the Cold War.



**Socio-political:** While economic reasons provided the long-term objectives for land reform, in most cases socio-political reasons provided the critical push for state-led reforms. Insurgencies had broken out in most of Southeast Asia and in parts of South Asia. The political push for land reforms was of five types:

- The process of decolonisation, where land reform was included in the agendas of nationalist struggles and emerging governments. In Indonesia, the Basic Agrarian Law of 1960 came with the rise of a nationalist government. In the Indian sub-continent, the British system of zamindar revenue collectors was abolished soon after independence;
- The consolidation of US influence in the East Asian region, as a reaction to revolutionary reforms in China and to prevent the spread of communism. Following its involvement in World War II, the US had gained a foothold at the doorstep of the Chinese mainland. The US occupation force provided advice and financial support for land reforms in Japan, Taiwan, and South Korea from 1945 until the early 1950s;
- The implementation of socialist reforms by peasant-led revolutionary governments, as in the cases of China and Vietnam;
- The direct response of governments to popular movements and heightened public unrest at different points. In the Philippines, alongside state repression, several land reform and tenancy acts were passed in the 1950s and 1960s in direct response to the peasant-led Huk rebellion. In Thailand, the 1975 Agricultural Land Reform Act was passed in the wake of a student uprising that toppled the military government in 1973 and rice farmers, supported by students, were able to force land reforms and minimum wage legislation;
- Decollectivisation, which started in the late 1970s and early 1980s and was brought about either by changes in internal state policy, as in China and Vietnam, or by the collapse of a centralised state system, as happened in Cambodia (the Central Asian republics would follow later in the late 1990s, following the collapse of the Soviet Union.)

**Country experiences in land reforms:** This section briefly describes distributive land reforms in 12 Asian countries. Although the main focus is on state-led redistributive reforms

from 1945 to the 1980s, it also includes selected reforms that emerged in the 1990s. The countries are grouped in five regional clusters, most of which (with the exception of Southeast Asia) are linked by a common history:

- East Asia (Japan, South Korea, Taiwan);
- Socialist countries (China, Vietnam);
- South Asia (India, Pakistan, Bangladesh, Sri Lanka);
- Southeast Asia (Philippines, Indonesia, Thailand, Cambodia);
- Central Asian republics.

**Early successes:** In the period after World War II, five Asian countries implemented successful land reforms that resulted in widespread land redistribution – Japan, Taiwan, South Korea, China, and Vietnam. These countries followed two different paths based on opposing capitalist and socialist ideologies. Japan, South Korea, and Taiwan redistributed land to households on a policy of “land to the tiller”, while China and Vietnam undertook radical land reforms after expropriating landowners.

### The East Asian “miracles”

The early successes of land reforms in Japan, South Korea, and Taiwan in the late 1940s made them models for reform elsewhere. However, their contexts were highly specific, thereby limiting replicability (Hayami, Quisumbing, and Adriano 1990). In Japan, land reform was pushed by a foreign occupation force (the US) to break down the power base of the feudal elite and militaristic class. In Korea, land reform was implemented in response to a communist threat from the North. In Taiwan, land reform was implemented by an outside force – the Kuomintang party, which had fled from the Communists in mainland China.

However, there were similar circumstances in the three countries:

- As reforms were instituted immediately after the war, the landlord class in each country was not in a position of power. In Taiwan, the reins of government were taken over by a non-indigenous bureaucracy that was alienated from local landlords.
- Both Taiwan and Korea served as food production colonies for Japan leading up to the war. The seizure of Japanese properties after the war brought considerable lands under



the control of the state (as much as 20% of all cultivated land), and the distribution of these public lands played a vital role in the reforms.

- In all three countries, agriculture was dominated by small tenanted farms. Thus, land redistribution involved a transfer of titles that did not displace those who actually tilled the soil.
- All three countries maintained accurate and complete land records, and land redistribution was completed within a few years.

**Japan:** With its defeat in World War II, Japan lost its colonies in Taiwan and Korea, which were sources of grains and food crops. With land reform, the Japanese government's objective was to address worsening domestic food shortages. However, the US Occupation Forces supported land reform in Japan more for its political objective – to break down the power of the large landowners, who were the pillars of the country's militaristic class.

Land reform was promulgated through two major laws: amendments to the earlier Agricultural Land Adjustment Law of 1938 and enactment of the Owner Cultivator Establishment Special Measures Law. Under the latter, all lands leased out by absentee landlords, as well as any cultivated land exceeding one hectare (four hectares in Hokkaido) leased out by resident landlords, would be compulsorily bought up by the government. These lands would then be sold to tenants.

Within four years (1946–1950), about 1.7 million hectares were purchased from 2.1 million landowners and transferred to 4.5 million tenants. Large landlords were not dominant in Japan: of the 2.1 million landowners, only about 1,000 had more than 50 hectares (Ogura 1967). In addition, the government opened up 1.8 million hectares of pasture land, forests, and uncultivated areas for resale or redistribution. A decade after land reform, Japan emerged as an industrial power, and industrialisation put an end to feudalism.

**Taiwan:** By 1945, the Chinese Nationalist forces who were driven out of the mainland by the Communists had taken control of Taiwan (Formosa). The new government took over all public farm lands, plus private lands held by Japanese

nationals. At the time, more than 21% of all farm land in Taiwan (176,000 hectares) was public land. Faced with growing unrest and instability, and with fear of the Communists on the mainland, the Taiwanese government implemented a three-step land reform programme based on the concept of “land to the tiller”:

- The first step was to reduce the rent paid by tenant farmers to a maximum 37.5% of the annual yield of the crop. As part of its rent reduction policy, the government offered public lands for lease at reduced costs. By 1949, some 130,000 tenant families, or 22% of all farming families in Taiwan, had leased public lands.
- Second was the sale of public lands to incumbent tenants. The amount of land that a single family could purchase was based on the category of the land, ranging from half a hectare of superior paddy land to four hectares of inferior quality land.
- Third was the institution of the Land to the Tiller Act of 1953 to deal with tenanted private lands. Surplus land above a three-hectare land ceiling was purchased by the government and then sold to tenants. One innovation was the partial compensation of landlords with shares in public enterprises, which helped in the development of industry.

Overall, the programme acquired 139,250 hectares of land from 106,049 landlord families and transferred these to 194,823 tenant families. Each beneficiary family acquired an average of just 0.71 hectare.

**South Korea:** At the end of World War II, the Korean peninsula found itself divided at the 38th parallel between the communist North and the capitalist South. With the support of US occupation forces, South Korea implemented the Land Reform Act of 1949 in order to address internal unrest and to halt the advance of communism from the North. It had three main guidelines: (i) a farmland ceiling of three hectares, with lands above this ceiling to be redistributed to tenant farmers; (ii) only actual tillers could own farmlands; and (iii) prohibition of the tenancy system. By 1959, some 583,000 hectares accounting for 28.2% of total farmland had been distributed to 1.6 million farmers, accounting for 66.5% of total farming households (Kim 1986). The low land ceiling enabled nearly 76% of all agricultural households to own land for the first time.

Korea's land reform was launched as a step towards industrialisation. Many former landlords shifted their capital from land to business and industry. As industry grew, young people began to move out of farming. From 1960 to 1985, the number of farms decreased by 18%, while the proportion of rural to total population declined from 58% in 1960 to 21% by 1985.

Meanwhile, the shortage of family-based labour in rural areas brought about an increase in rented farmland. By 1985, some 65% of all farms came under full or partial tenancy, despite the prohibition on tenancy under the Land Reform Act of 1949. However, the nature of this tenancy arrangement was very different from earlier landlord-tenant relations.

### *The socialist revolutions*

Agrarian reforms in China and Vietnam came in three major phases. First, landlords were expropriated and their lands redistributed to farming households. Second, landholdings were collectivised through cooperatives and communes. While agrarian reform was completed in China within nine years, it took much longer in Vietnam, which became embroiled in a 20-year conflict between North and South. The third phase came decades later, when collectivisation was reversed to create a system of individual peasant farming, in a process often referred to as the "second land reform". This process of decollectivisation began at just about the same time in China (1978) as it did in Vietnam (1981).

**China:** Upon assuming power in 1949, the Communists confiscated the lands of landlords and rich peasants and redistributed about 46.6 million hectares among 300 million landless and poor peasants. Each family received an average plot of 0.15 hectare. Land redistribution was quick and was completed within three years, by 1952.

- As redistribution resulted in small, fragmented farms, collectivisation in the 1950s proceeded in four stages:
- Mutual aid teams: This type of voluntary grouping of 6–10 households enabled peasants to pool their labour, farm animals, and implements, as was traditionally done in the past.
- Agricultural cooperatives: Cultivators pooled their land for joint cultivation. Farmers retained ownership of their individual landholdings and each was compensated on the basis of "work points", with additional points given

for other inputs, such as carts, oxen, and tools. By 1955, about one-third of all peasant households had joined a cooperative.

- Advanced cooperatives: This stage introduced two significant changes: a larger scale of operations, bringing together 10–20 smaller cooperatives, and a shift from private to collective ownership of land. As all production capital was collectivised, families lost their ownership to individual landholdings.
- People's Communes: In 1958, China's 700,000 advanced cooperatives were amalgamated into 26,000 communes, and later into 50,000 communes by 1975.<sup>13</sup> This enabled communes to undertake larger projects such as land reclamation, water conservation, and irrigation. They also served other economic, administrative, and social functions such as military training, controlling population movement, and collecting government taxes.

However, the expected benefits of collectivisation and of economies of scale did not materialise. The country suffered a severe famine in 1960–1963 when millions of people died, and food shortages were common throughout the country. During the 1970s, one-third of the rural population lacked a stable food supply (Bruce and Li 2009).

The decollectivisation of farmlands was initiated in 1978, following a successful initiative in Anhui province, where land was secretly distributed to households in order to stave off famine. By 1983, some 94% of rural households in China were farming under the new Household Responsibility System (HRS), which gave peasants 15-year land use rights. Government procurement systems were also reformed to allow peasants to sell non-quota products directly to the market.

With these reforms, the national output of grains rose from 300 million tons in 1978 to 407 million tons in 1984. From

<sup>13</sup> An average commune was composed of about 5,000 households covering an area of between 800 and 4,000 hectares. Communes consisted of several production brigades, further divided into production teams of 20–40 households. Annual production quotas were assigned to the brigades, with the state as the sole buyer of all produce at controlled prices. Private family plots were allowed up to a maximum of 5% of the total land, compared with 10% before 1958.

1978 to 1983, the per capita incomes of rural people doubled,<sup>14</sup> and food calorie intake increased (Bruce and Li 2009). There were an estimated 167 million fewer people living in poverty in the 1980s, and much of this was attributed to the success of the HRS. The transformation of agriculture also led to structural changes in the wider economy. As surplus labour was released from agriculture under the commune system, many people took up new work in townships through village enterprises. From 1978 to 1994, the number of such firms rose from 1.5 million to nearly 25 million (Bruce and Li 2009)<sup>15</sup>.

In 2002, a new Rural Land Contracting Law was enacted, providing for a lengthened period of 30 years for land rights; an expanded scope of land rights, including the right to transfer land (to other village households), the right to lease land (to non-village households), and the right to receive state compensation (for land taken away by the state or collective); and the issuance of land rights certificates by county-level governments.

**Vietnam:** Vietnam won its independence from the French in 1954, but the 1954 Geneva Accords divided the country into the communist North and the anti-communist South, a move supported by the United States. The two states had very different agrarian structures. Agriculture in North Vietnam was dominated by small and fragmented landholdings that were later collectivised, while in South Vietnam agriculture was export-oriented and highly commercialised, with larger farms based on sharecropping and tenancy arrangements. The country remained divided until 1975, with the end of the Vietnam War and the withdrawal of US forces.

In the 1950s, both the socialist North and the capitalist South conducted land reforms to redistribute the large landholdings

of French plantation owners. North Vietnam followed the Chinese model, and brought 90% of farmers under collectives by the mid-1960s. South Vietnam, however, failed to implement any serious reforms. Its first attempt was the sale of French-owned lands, which covered a third of all tenanted lands, but land prices were beyond the reach of peasants. The second attempt was Ordinance 57, which established very high land ceilings of 100 hectares when the average landholding was just 2.5 hectares.<sup>16</sup>

As the war progressed, South Vietnam enacted the Land-to-the Tiller Law in 1970 in a desperate bid to halt the advance of communism. The law brought the land ceiling down from 100 hectares to 15 hectares and abolished absentee landlordism. However, little was accomplished because of the war and widespread corruption.

Following the reunification of Vietnam in 1976, the Communist Party sought to strengthen the system of central planning and collectivisation. By 1979, almost 97% of rural households in North Vietnam belonged to over 4,000 cooperatives which also provided social services. However, in the South less than a quarter of all rural households were members of cooperatives by 1980. The Communist Party initiated a new system of incentives in 1981. Through Directive No. 100, the responsibility for meeting production quotas was shifted from production brigades down to households. After meeting their quotas, peasant households were allowed to keep or sell surpluses to private markets or to the state. This experiment brought positive economic results, resulting in moderate agricultural growth in 1981–1984. This marked the beginning of the country's shift towards decollectivisation.

In 1986, the Party instituted sweeping economic reforms under the policy of Doi Moi (or Renovation) to address a growing economic crisis. The country shifted towards a market-oriented economy within a communist party state. In the agriculture sector, Resolution 10 of 1988 gave peasant households usufruct rights to land for up to 15 years for annual crops and 40 years for

14 While official statistics report a sudden increase in incomes for China's rural population for the period, some studies suggest that the available data may overstate the improvements because of statistical biases and the finding that income gains were distributed unequally. See Martin, M. (1990) "Bias and Inequality in Rural Incomes in Post-Reform China".

15 Decollectivisation also had some negative effects. Rural-to-urban migration affected village cohesion, and in some areas common services such as medical care and schooling were affected. Overall investment in agricultural infrastructure also declined. As men took on jobs and migrated into the towns, more and more women were left behind to take care of agricultural production. Under the HRS, families were given possession and user rights to land, which were heritable, although such lands could not be bought or sold. Also, families lost their rights to the land in cases of abandonment or non-use, as in the case of migration.

16 Prior to reunification, the South Vietnam government did not appear to be serious about land redistribution, and seemed protective of large-scale commercial farms. Some writers also observed that US advisers in Japan, Taiwan, and Korea at the time had proposed far more radical land reforms than those actually implemented in South Vietnam.

perennial crops. Farmland was allocated on the basis of family size; peasants were allowed to select their crops and inputs and to buy and sell animals, machinery, and equipment.

The Land Law of 1993 extended land tenure to 20 years for annual crops and 50 years for perennial crops, and established limits on farm sizes. While land remained the property of the state, peasants were given the right to inherit, transfer, lease, and mortgage their land use rights. By 1999, more than 10 million households had received their land-use certificates, representing 87% of households and 78% of agricultural land in Vietnam.

### Post-colonial reforms and nation-building in South Asia

Soon after independence, South Asian governments implemented land reforms to remove the vestiges of colonialism. They took similar approaches to land reform, mainly because all South Asian countries (and Burma) had inherited a common set of laws and government bureaucracy from the British. Reforms implemented in the 1950s to the early 1970s focused on the abolition of the zamindar system and the recognition of tillers as legal owners; on tenancy reforms; on the imposition of land ceilings and redistribution of private surplus lands; and the redistribution of state lands.

However, the implementation and impact of reforms were highly uneven, as landed interests were more firmly entrenched in power in some countries and states. The more successful reforms were implemented in the states of West Bengal and Kerala in India, where socialist parties came into power; less successful were Bangladesh and Pakistan, which were governed by a succession of military rulers allied with the landowning class.

**India:** Under India's federal system of government, land reforms were legislated and implemented by each of the 15 states with guidance from the central government. Starting in the 1950s, the states enacted legislation aimed at abolishing intermediary interests in land; regulating tenancy; setting land ceilings and distributing surplus lands above the ceilings; and redistributing public lands for agriculture and homesteads. The most notable land reform programmes were implemented in the states of West Bengal and Kerala, especially during the rule of leftist parties, and in Uttar Pradesh immediately after independence in 1947.

The first set of state laws involved the abolition of the zamindar (intermediary rent-collector) and the parallel ryotwari (direct collection) systems, which were vestiges of British colonial rule and which at that time governed 95% of the country. State legislation gave these intermediaries proprietary rights only to that portion of the land under their cultivation and divested them of the remainder, albeit often with high levels of compensation. Under these acts, 20–25 million tenants were given proprietary rights over their cultivated lands and became landowners.

The next set of laws sought to protect tenant farmers, who constituted more than one-third of all rural households and who worked under landlords without security of tenure. Almost all states passed tenancy laws that granted permanent rights to tenants and prohibited or regulated new tenancy arrangements. As a result, some 12.4 million tenants, or about 8% of India's rural households, gained land rights. However, tenancy reforms also led to large-scale evictions of tenants by landlords.

All Indian states passed legislation on land ceilings that limited the amount of agricultural land that a family or individual could own. The laws authorised the government to take possession of lands in excess of the ceiling for redistribution to landless or land-poor farmers. The laws on land ceilings differed between states in terms of where the ceilings were set (from 10 to 50 acres), the amount of land awarded to beneficiaries, and restrictions on beneficiaries transferring or selling the lands awarded to them. By the end of 2005, about 6.5 million acres of surplus land had been redistributed to 5.6 million households. This represented 1% of India's agricultural lands and 4% of rural households.

Finally, some states allocated government land to land-poor families. These consisted of agricultural plots and homesteads, or housing plots. It is estimated that about 4 million people received home lots. Other land-related reforms followed in the 1980s: e.g. reforms ensuring women's land rights, legal aid and legal education, land purchase programmes for home lots and gardens, and tenure reforms related to social and community forestry.

**Pakistan:** At the time of independence, land ownership in Pakistan was highly skewed; fewer than 1% of farm

owners controlled over a quarter of all agricultural land. Many landowners were absentee landlords and half of all land was cultivated by tenants with little security and few rights. However, agrarian reforms never really succeeded in restructuring social and property relations. High land ceilings, based on individual rather than family holdings, resulted in the transfer of land to family members and relatives. Moreover, the succession of military juntas and military-backed governments from 1951 onwards depended on the support of feudal lords to stay in power.

There were three failed attempts at land reform in Pakistan:

- In 1959, Martial Law Regulation 64 set very high land ceilings (200 hectares for irrigated land and 400 hectares for non-irrigated land). This benefited only about 8% of subsistence farmers.
- In 1972, Martial Law Regulation 114 lowered the ceiling for individual landholdings to about 60 hectares for irrigated land and 120 hectares for non-irrigated land. But implementation was weak, and many landlords retained their lands by transferring them to family members and sometimes registering them under false names. Less than 360,000 hectares of land was acquired for distribution.
- In 1977, the Land Reforms Act further reduced the ceiling to 40 hectares for irrigated land and 80 hectares for non-irrigated land.

Other policies have proved inconsistent with redistributive reforms. Since the 1950s, the Pakistani military has continued to acquire and distribute land to active and retired military personnel, who now control about 4.86 million hectares, constituting about 12% of total state land. About 2.83 million hectares of this is agricultural land. Only 40,000 hectares are directly controlled by the armed forces and their subsidiary companies; the rest has been given (at subsidised rates) to army personnel as reward for their service.

**Bangladesh:** The East Bengal State Acquisition and Tenancy Act (EBSATA) of 1950 abolished the zamindar system established under British rule, and gave control of land back to the tillers. However, as land reforms came in the wake of Indian partition, the departure of Hindu zamindars allowed wealthy Muslim peasants to take up a new role as moneylenders and to illegally

hold on to abandoned lands.<sup>17</sup> The 1950 Act also established a land ceiling of 13 hectares per family, but this was increased to 50 hectares in 1961 by the Karachi-based government.

Following independence from Pakistan in 1971, the Bangladesh government instituted the Land Reform Policy of 1972, which brought the land ceiling back down to 13 hectares. It also declared that all new diluvial and accreted lands would be regarded as khas (public) land<sup>18</sup> (ALRD 2008). However, a military coup in August 1975 put a stop to the policy of land redistribution.

The Land Reform Policy of 1984 further reduced the land ceiling to 8.1 hectares, but failed to recover the expected additional 1 million hectares of surplus land. The law prohibited benami, the practice of transferring land in another name to circumvent land ceilings. It provided tenure security for the bargadar (sharecroppers), established a minimum daily wage for agricultural labour, and set out sharecropping arrangements between landowner and tenants. In 1987, the Land Reform Action Programme (LRAP) was passed, further defining those eligible for khas lands.

Land reforms in Bangladesh remained as unfinished business. The total area of khas lands (1.34 million hectares, some 10% of the country's total area) was less than expected. The government was accused of lacking the political will to recover all ceiling surplus lands, and many landowners circumvented the law through illegal transactions and corruption.

Official statistics also showed that only 24% of the collected khas lands were agricultural lands; the rest were inland water bodies (52%) and non-agricultural lands in the Chittagong Hill Tracts (24%). Furthermore, less than half of the valuable

17 The partition of India in 1947 resulted in a massive population migration involving an estimated 3.3 million people moving in both directions on the eastern border between India and Bangladesh, then known as East Pakistan. Bangladesh instituted several laws, called Vested Property Acts, against non-Muslims, allowing the government to confiscate the property of individuals it deemed to be enemies of the state, especially the lands of fleeing Hindu families. Nearly 750,000 families were dispossessed of agricultural lands (Barkat 2000: 37-38). The 1974 Act was repealed by the Supreme Court of Bangladesh in 2001, which ruled that it violated provisions of the Bangladesh Constitution.

18 "Diluvial and accreted lands" refer to riverine lands created by silt deposits due to floods and the annual monsoon. This phenomenon is unique to Bangladesh. Riverine lands are common sources of resource conflict.

agricultural khas lands were distributed, and then this often involved the payment of bribes. Much of the khas lands supposedly under government custody have been illegally occupied by rich peasants (Barkat and Roy 2004). Land-related conflicts are common, and land cases continue to clog the judicial courts.

**Sri Lanka:** Sri Lanka's social achievements – in health, education, and social welfare – stood out in the 1950s and 1960s due to a succession of socialist-oriented governments. At independence, Sri Lanka inherited a dualist rural economy consisting of a traditional subsistence sector with village-based agriculture of paddy rice and food crops for domestic consumption and a colonial plantation sector oriented towards the world market. The plantation sector covered only 6% of the total land area, but accounted for nearly 93% of total export earnings and one-third of national income. The country embarked on reforms that sought to relieve its heavy dependence on plantation agriculture and to achieve integration of the economy. Structural changes included the expansion of agricultural lands, nationalisation of colonial estates, land and tenancy reforms for paddy farms, and land redistribution with an emphasis on peasant agriculture.

**Tenancy reforms:** The Paddy Land Act of 1958 sought to provide security of tenure of heritable nature to tenants, regulate rents, fix wage rates for agricultural labourers, and ensure the participation of tenants in village-level institutions to promote paddy cultivation. Though the Act was amended five times, however, it failed to ensure security of tenure or to stabilise land rents.

**Land redistribution:** A second set of land reform measures was introduced in response to a major insurrection in 1971 that forced the government to focus on land redistribution. The Land Reform Law of 1972 imposed ceilings of 50 acres of plantation land and 25 acres of paddy (rice) land for each family member above 18 years old. Within four years (1972–1976), a total of 563,411 acres of land had been acquired and redistributed to landless farmers or their cooperatives. The Amendment Law of 1975 nationalised all estate lands (395 estates covering 417,977 acres) that were owned or held by public companies,

including foreign ones, and vested these in the Land Reform Commission. The nationalisation of estates did not result in the redistribution of land to estate workers, but it did transform their legal status to that of employees and thus entitled them to benefit from government welfare programmes.

The land reform schemes of the 1970s gave land to peasants under long-term leaseholds, with restrictions against selling or sub-dividing the land for other uses. This was to prevent peasants from losing their land due to poverty, indebtedness, and other emergencies. These land restrictions also helped to stem the tide of rural-urban migration. Meanwhile, a net effect of colonial policies and land reforms in the 1970s was to create a state monopoly of land ownership. By 1990, about 82% of the total land area in Sri Lanka was owned by the state, with the remainder owned by private parties.

**Privatisation:** Government planners saw these leaseholds, along with various customary tenure arrangements, as restricting investments in the context of a free market economy. In 1985, a Land Commission was formed to integrate the 39 major land laws that existed and later recommended the introduction of a system of title registration, along with converting leasehold state lands to freehold title. The Registration of Title Act was enacted in 1998, providing for the conversion of the various land tenure systems into a single freehold system with a certificate of title registration. In 2001, the World Bank financed a pilot project to register some 22,000 properties under the new titling system.

### *State-led land reforms in Southeast Asia*

All the countries of Southeast Asia (except Thailand) were colonised by Western powers, which evolved different property systems and agrarian structures. In Indonesia, the Dutch exploited tropical rainforests, thus creating a division between small-scale peasant rice producers and large plantations growing crops for export based on hired labour. A similar approach in the Philippines by Spanish and US colonialists resulted in widespread landlessness among rural populations. By contrast, a landowning class continued to dominate in Thailand, where the delta plains were largely suitable only for rice production.



Following independence in the 1950s, the region's emergent nation-states continued to follow colonial policies as they sought to consolidate the powers of the state and to establish political stability. Agrarian reforms were at first instituted in direct response to social upheavals and agrarian revolts, and later became an important part of national agendas. In response to the growing threat of communism, many Southeast Asian states came under the rule of military-backed dictatorships in the period from the mid-1960s to the mid-1980s. With a stated agenda of nation-building, some used their powers to implement land reform programmes (the Philippines, Malaysia) and others to suppress reform (Indonesia). A new cycle of land reforms was instituted in the Philippines following the 1986 People's Power Revolution, which ousted the Marcos dictatorship.

Among all the countries of Asia, Cambodia stands out as a unique case, as a country that has seen four different property regimes within a single generation, spanning about 40 years. Here the breakdown of state central planning that led to an open market economy has resulted in increased land concentration in the hands of a few.

**Philippines:** After four centuries under Spanish and then American rule, the agrarian system in the Philippines in the 1950s bore a closer resemblance to the Latin American model than to that of other Asian countries. There was a high concentration of land under feudal-style haciendas and modern capitalist plantations, with widespread landlessness among the rest of the population.

Peasant revolts in the 1950s were met with both land reforms and state repression. Land reforms focused on creating access to public lands through the opening of new settlements, reforms in land titling and administration systems, and the recognition of existing settlers on public lands. Tenancy reforms followed in 1963 and 1971 but were never really enforced, and even led to the eviction of tenants from their lands.

In 1972, the martial law regime instituted a nationwide programme of land reform, but this was limited to tenanted farms planted to rice and corn, which were the hotbeds of agrarian unrest. Rice and corn lands above a seven-

hectare retention limit for landowners were acquired by the government and resold to tenants. By the end of the Marcos regime in 1986, some 766,630 hectares had been redistributed to 444,277 families. However, large plantations in other crops remained untouched and nearly 70% of people engaged in agriculture remained landless or under tenancy arrangements.

Following the 1986 revolution and a new constitution in 1987, two land reform programmes were instituted, focused on different sectors. The 1988 Comprehensive Agrarian Reform Program (CARP) aimed to reform tenure of 8.1 million hectares of land by granting 25-year user rights for occupants of inalienable forest lands (4.3 million hectares) and through redistribution of ownership of agricultural lands (3.8 million hectares). For private agricultural lands, the law set a ceiling of five hectares; all surplus lands above this ceiling were to be purchased and redistributed or sold to land-poor beneficiaries. Meanwhile, sharecropping was outlawed in favour of leasehold (fixed rental) arrangements.

Implementation of CARP has been slow and cumbersome; the initial ten-year implementation period has already been extended twice. Most of the redistributed land has been public land and private lands offered for sale voluntarily. This has left most of the large private landholdings intact, where owners are resistant to reforms. Critics suggest that reform targets have shifted and that statistics are inaccurate.

Since 1996, the World Bank has lobbied for a market-led approach to land reform, which has been met with significant protest from civil society and officials in government. A Land Administration and Management Project (LAMP) was launched in 2000 to address inefficiencies and corruption in land titling and administration.

The 1997 Indigenous Peoples Rights Act (IPRA) was a landmark piece of legislation that formalised the rights of indigenous peoples (IPs) to their ancestral domains and to self-governance. As IPs comprise about 13% of the population, it is projected that 5–7 million hectares will eventually be covered under ancestral domain titles or claims. As of 2008, about 2 million hectares of land had come under ancestral domain titles. Under the principle of self-determination, IP communities formulate their

own management plans for the land and natural resources within their domains. All contracts, licenses, concessions, leases, and permits within these domains are subject to the free, prior and informed consent (FPIC) of the IP community. One major issue has been the overlapping boundaries between IP lands and other claimants, who include poor farmers and settlers, as well as large timber and mining concessionaires.

**Indonesia:** After independence in 1949, most of the colonial land and agrarian policies of the Dutch continued under the Indonesian state in a new form. The state inherited forestry lands that covered nearly 70% of the country's total land area, as the highly centralised system of the Dutch colonial government was carried over to the new republic. The government became Indonesia's largest landowner after 1958, when Dutch and Japanese colonial plantations were nationalised, but many foreign private companies retained their land-lease rights. Some time later, the government also resumed the Dutch policy of "colonisation", which involved the planned resettlement of farmers from Java to less populated islands (under the new name of the Transmigration Programme).

A nationalist government then came into power which instituted two agrarian reform policies – the 1960 Basic Agrarian Law and the 1962 Land Reform Programme. The 1962 law established land ceilings based on the availability of irrigation and on regional population densities. Land in excess of these limits would be acquired and redistributed by the government. However, the Land Reform Programme was implemented for only five years and was reversed when the military took power in 1966. The programme was branded as a "provocative action by the communists", and people's movements, along with many rural households who obtained land under the programme, were labelled communist supporters. All rural organising activities were stopped, freedoms were curtailed, thousands of people were killed, and a large part of the state lands that had been distributed to peasants were taken back by local elites.

The increasing commercialisation of agriculture, supported by government policies, has brought an increased concentration of land ownership in Indonesia. However, there have been no reforms in the forest sector. Since independence, policy-

makers have viewed the country's vast forest resources as the exclusive responsibility of central government. The approach of government in managing the forests has been to award large concessions to private sector firms for agribusiness and industrial development. Meanwhile, a 2004 study estimated that a quarter of the country's population live in classified forest lands without any security of tenure (Bachriadi and Sardjono 2005).

**Thailand:** Land reform was instituted in the wake of a student uprising that toppled the military government in 1973. The Agricultural Land Reform Act of 1975 was passed to provide land to tenants and landless workers by expropriating private lands that were unused or above set limits, to provide tenure or ownership to squatters on public land, and to ensure a fair division between tenants and owners. The law allowed up to 50 rai (eight hectares) of land per beneficiary family for cultivation or up to 100 rai (16 hectares) for pasturing livestock. In the case of private lands, owners would be compensated in the form of cash (25%) and government bonds (75%). However, the strength of the farmers' movement began to wane after 1975, and the provisions of the law were weakened by tough political bargaining.

Although the land reform programme had a strong start, by 1978 there was a shift in focus towards settlers on public lands. By 1995, the programme had benefited some 369,000 families. Only 18% of the target land area was distributed. Some 94% of these lands were public (and included denuded forest reserves occupied by settlers) and only 6% were privately owned lands. Thus the reforms had only a minimal impact on tenants and landless workers on private lands.

**Cambodia:** The case of Cambodia is unique, as the country experienced four major property regimes within a single generation due to periods of civil war and foreign occupation. The first of these was French colonisation and a return to monarchical rule (1953–1975), followed by land collectivisation under the Khmer Rouge (1975–1979), then decollectivisation under Vietnamese occupation (1979–1989), and finally full privatisation under a liberalised market economy (after 1989).

Despite French colonisation, Cambodian agriculture was still based on smallholder farming. In 1950, 94% of farmers had



landholdings of less than five hectares, and most land was unregistered. In 1953, Cambodia won independence from France, and years later became entangled in the US war in Vietnam.

When the Khmer Rouge took control of the country in 1975, they completely destroyed the legal and institutional framework set up by the French colonial administration. They abolished private ownership of land and undertook one of the most extensive ever state appropriations of property (Williams 1999). Within four years (1975–1979), the Khmer Rouge destroyed cadastral maps and land records and wiped out the entire administrative and institutional infrastructure of the land system. They also emptied Phnom Penh and other large towns and forced nearly three million people to live in rural areas, where they were conscripted into agricultural communes.

In 1979 the Khmer Rouge regime was overthrown by Vietnamese forces, triggering a period of civil war. The Vietnamese-backed government dismantled collectivised agriculture but maintained partial collectivisation as the ideal of the new regime. It created cooperative work groups called *krom samaki* (“solidarity groups”) consisting of 12–15 families with an allocation of 15–25 hectares each. But collective agriculture gradually disintegrated, as most farmers returned to subsistence family agriculture.

After the Vietnamese departed in 1989, the policy of the ruling party was to officially shift Cambodia from a socialist to a free market economy. Instruction No. 3 introduced ownership and possession rights for land, stating that residential land could be owned but that agricultural land could only be “possessed”. Agricultural land had to be constantly cultivated or rights would revert to the state. Any plot larger than five hectares could be awarded only as a concession right, under a time-bound lease agreement. (CHRA 2009).

While many peasants managed to get back their original landholdings, disputes arose in reclaiming lands cultivated under the *krom samaki* system, which were aggravated by the absence of clear land laws. In just two years (1989–1991), the government received as many as 4.5 million applications for temporary possession rights to cultivated land (Williams 1999). Meanwhile, a massive land grab had already begun, especially in

urban centres like Phnom Penh, as some officials took over state land and vacant property or vacated other property by force.

More changes came after the 1991 Paris Peace Accord. The Basic Land Law of 1992 sought to strengthen private entitlement to land and to create an active land market. It established private land ownership, along with systems for registration and the adjudication of competing claims. While the 1992 law enabled many farmers to seek legal protection of their properties through registration, it also helped to legitimise past expropriations.

In 2001, a comprehensive Land Law was instituted, which introduced a cadastral system, a central registry of titles, and a land classification system.<sup>19</sup>

However, implementation was accompanied by massive land grabbing. In 1999, the top 5% of landowners already owned 59% of all privately held land, but by 2003 the top 5% owned as much as 70% of private land – a rise in land concentration of 2% each year (Star Kampuchea 2008). There has been a case of reverse land reforms, with rural landlessness increasing from 13% in 1997 to 20% in 2004 (IFAD 2011). Land conflicts have also increased<sup>20</sup>.

The 2001 Land Law provided for two types of land concession: economic land concessions (ELCs) and social land concessions (SLCs). Within three years (by 2004), some 2.4 million hectares of land had been allocated as ELCs, and many of these covered areas in excess of the ceiling of 10,000 hectares (ANGOC 2009). Some ELCs – including those given for plantations, mining, and timber – led to forced evictions and violence against existing occupants. Even SLCs, originally intended for projects that benefited the poorer sectors, were used to evict whole neighbourhoods to make way for roads and commercial

19 The 2001 Land Law, drafted by the Ministry of Land Management with a grant from the Asian Development Bank, classified all land under five categories of property: private (individuals or corporations), monastery, indigenous community, state public (rivers, lakes, roads, public schools), and state private property. State public lands were inalienable lands, while state private lands were loosely defined as “all the land that is neither state public land, nor legally privately or collectively owned or possessed under the Land Law of 2001”. However, without any mapping or registration of the two types of state land, it was almost impossible to determine what was, and what was not, state public property.

20 For 2008 alone, the NGO Forum on Cambodia collected 173 land dispute cases from reports in local media. Almost all cases involved farmers or indigenous people as complainants, while the defendants were mostly companies with land concessions (30%) or government entities i.e. local and national authorities, the military, or the police (45%).

housing projects. Forest concessions have also been blamed for the destruction of Cambodia's forests. About three-quarters of the country was forested in 1970 but only about half of that remained 25 years later, as the government is said to have awarded several forest concessions covering 1 million hectares.

Since 1980, there has been little fundamental political change as real executive power has remained firmly in the hands of the ruling Cambodian People's Party, which has left little room for a strong opposition. Thus the same political leaders who used to run a centrally planned economy came to "reinvent" private property under the new rules of a free market economy.

### Decollectivisation in Central Asian states

Land collectivisation under the Soviet Union started in 1939 and took a long time to evolve. The creation of large state farms was driven mainly by the demands of the central state for cheap food for urban consumers, rather than by the needs of rural producers (in contrast with the experience of China, which saw a peasant-led revolution, and where peasants participated in the revolutionary transformation of power relations).

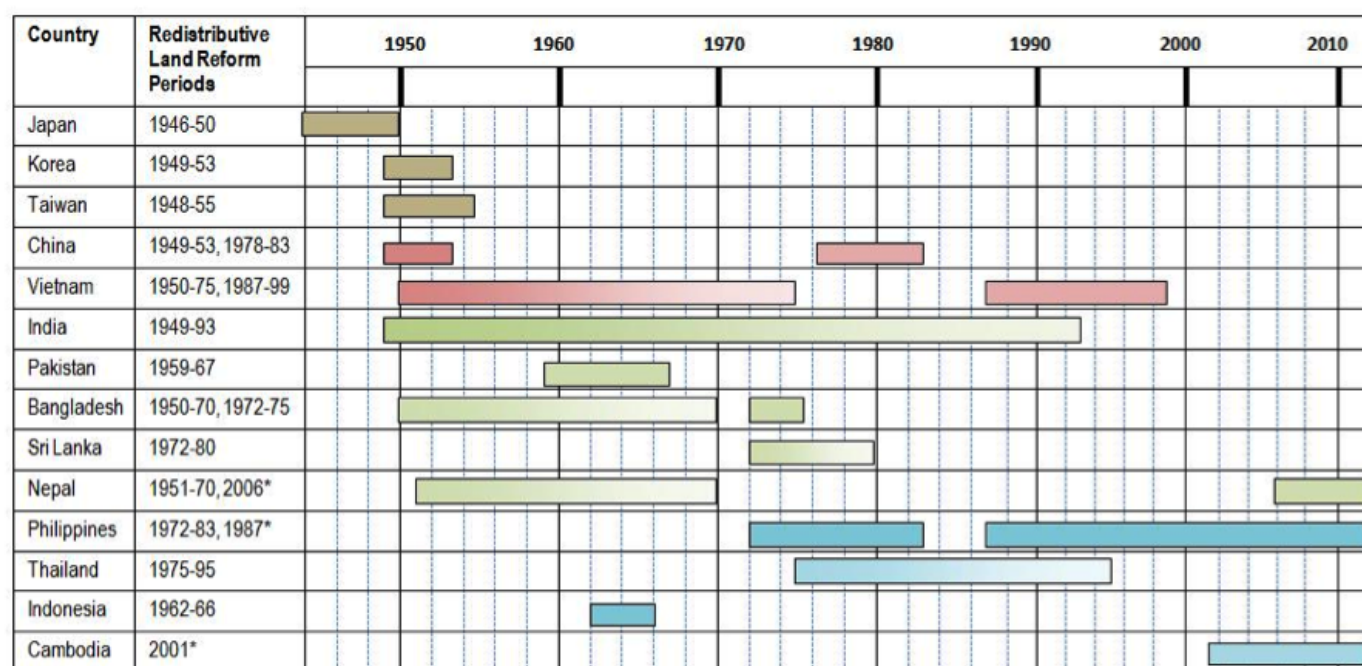
Following the break-up of the Soviet Union in 1989, five republics emerged in Central Asia. These have since initiated the decollectivisation and privatisation of farmlands, with an active role played by international institutions. To varying degrees, governments in Central Asia have implemented two initiatives: to redistribute land and assets from state-owned

to private entities, and to provide citizens with some form of tenure security and private rights to land. There have been three different modalities, depending on the country: restitution, or land returned to its former owners; land distributed in workers' shares; and land distributed in individual farms (de Janvry and Sadoulet 2001).

Kyrgyzstan was the first of the Central Asian republics to implement land privatisation. In 1995 all land use rights were extended to a period of 99 years, and in 1998 a constitutional amendment was passed through a public referendum which converted all land-use certificates into ownership documents. The new Land Code of 1999 permitted the purchase and sale of (non-agricultural) lands; the Agricultural Land Regulation of 2001 later allowed the state and Kyrgyz citizens to own agricultural land.

Other states have proceeded more cautiously. In Uzbekistan the state retains ownership of land but allows households to obtain usufruct rights. There are underlying social tensions related to land, which are often cited as potential flashpoints for conflict. These include ethnic, regional, and religious tensions and competition for arable land and scarce water resources, which could grow more volatile as these resources dwindle.

Figure 1: Key periods of redistributive land reforms in selected Asian countries, 1946–2011



# Understanding current debates on land

## The changing context

The changing context of land tenure and reforms since the 1990s can be broadly described in terms of trends that have provided the platform for much of the emerging discourse on land in recent decades: trade liberalisation and the rising dominance of markets, and the emergence of new peasant movements and civil society organisations (CSOs).

***Trade liberalisation and the rising dominance of markets:*** In the 1970s and 1980s, the developing economies of Asia grew faster than the economies of any region of the world, and some countries (South Korea, Thailand, Malaysia) acquired the status of newly industrialised economies. Yet despite significant growth in agricultural production and employment, rural poverty continued to pose a challenge in many developing countries (Quibria 1996).

With the end of the Cold War, the 1990s heralded the increased dominance of “markets” along with the rise of new liberal thinking from the West. Countries around Asia began to devote greater attention to market reforms, especially after structural adjustment programmes (SAPs) had been introduced in the 1980s by the World Bank and the International Monetary Fund in a number of heavily indebted countries. SAPs were a new kind of loan programme that was designed to support

not just one project but to restructure the whole economy, and despite important differences in developing economies, their policy prescriptions included the same basic elements: deregulation and opening of domestic markets, reducing or eliminating state subsidies, privatising state-run enterprises, cutting back on government spending, and allowing national currencies to float. The World Bank and donor institutions also continued to push for export-led industrialisation, with the view that such a strategy had the potential for alleviating poverty through economic growth.

As part of the process, many countries determined that property rights could have an impact on investments and on development (Sida 2007). In some Asian countries, governments began to enact policies that eliminated restrictions on the accumulation of land (*i.e.* land ceilings), thereby allowing a gradual reconcentration of land through market forces.

Land policies were also being redefined. Socialist countries (China, Vietnam) began to embrace more market-led reforms and policies; China expanded its Household Responsibility System, while Vietnam built upon its *doi moi* reforms of 1986. With the dissolution of the Soviet Union, the new Central Asia republics began to privatise and redistribute state-run

enterprises, hesitantly embracing a new ideology. Meanwhile the World Bank introduced a new approach of “market-assisted land reforms” and, along with other donors, pushed for new land titling and land administration projects, including in several Asian countries, as a means of opening up and liberalising land markets consistent with market liberalisation policies.

As countries across Asia have increasingly opened up to global trade and investment, this has seen some general trends in terms of land use, tenure, and demographics, including:

- Increasing conversions in land use, such as the conversion of agricultural lands for urban expansion and the conversion of natural forests into industrial plantations and commercial forests. In China, some 4.1 million hectares of cultivated land areas were converted for urban residential, commercial, and industrial development between 1996 and 2002. In other words, the cultivated land area fell from 130 million to 125.9 million hectares, or a net loss of 3.16%, in just seven years (Bello 2010);
- Increasing commercialisation and privatisation of the commons, as in the granting of forest concessions to private companies for logging, mining, and commercial plantations, and releasing mangroves for conversion to shrimp farming (Bangladesh), aquaculture, and tourism;
- An increasing pace of rural-urban migration, as farmers seek better opportunities elsewhere and are pushed out by the increasing risks and vulnerability they face due to volatile market prices of agricultural commodities, the abolition of state subsidies, and the decline in state support for agriculture;
- Finally, a more recent but growing trend whereby governments and corporations from rich countries are acquiring lands for agriculture in developing countries of Asia.

#### ***Emergent democratic processes and the rise of civil society:***

The fall of totalitarian martial law regimes and the restoration of formal democratic processes in several Asian countries from the mid-1980s opened up new political space for pursuing social reforms. The fall of the Marcos regime in 1986 brought about a new constitution and two major land reform

legislations in the Philippines.<sup>21</sup> A new Land Law was instituted in Cambodia in 2001, and in Indonesia there were heightened calls for agrarian reform in the post-Sukarno era after 1998.

Asia has a long history of agrarian and liberation movements dating back to the colonial period. But starting in the 1970s, new civil society formations took shape. One was the growth of new farmers’ movements, which were slightly different from agrarian movements of the past. These new movements seemed driven by new agendas and political discourses that highlighted more “sectoral” rather than “class” issues – e.g. growing vulnerability to price fluctuations with regards to both inputs and outputs, the deteriorating terms of trade between agriculture and industry, and bureaucratic corruption – brought about by increasing market liberalisation that affected both the profits of rich peasants and the deficits of poor peasants.

A second development was the growth and spread of community-based environmental activism, inspired by the Chipko movement of the 1970s in India, which highlighted community forest rights and concerns for the environment. In the words of its leader, the Chipko movement highlighted the fact that “the main products of the forest are soil, water and oxygen and not the timber, as conventionally understood by foresters” (Bahuguna 1985). There was also the growth of IP movements, such as those of Baba Amte and ecological allies opposing the Narmada dam in India, which highlighted local struggles against the central government’s plans to build a dam complex. These and other struggles helped to raise the “local” demands of indigenous peoples for land rights and cultural and political sovereignty to matters of national and global concern. Women’s movements also emerged, with a community activism that distinguished them from feminist movements in the West.

The many United Nations summits of the 1990s also helped draw public attention to major development themes – environmental protection and management, IPs’ rights, women’s rights, human rights, social development, the right to housing and habitat, and food security. There were other annual events such as the G7 summit meetings. At the start

21 The 1987 Comprehensive Agrarian Reform Law (CARL) and the 1995 Indigenous Peoples Rights Act (IPRA).

of the new millennium, poverty reduction returned to the top of the global agenda and, with it, a resurgent donor interest in agriculture, agrarian reform, and land issues. All these global events and processes were used by CSOs and NGOs as “organising spaces” in which to conduct discourse and to build networks and alliances amongst themselves and with other sectors. New regional and global formations were created among civil society groups, supported by newly available information technology.

Although much has changed in terms of global development agendas, poverty continues to characterise much of Asia’s rural areas – with landlessness, degraded environments, and continued marginalisation, especially among rural women and IPs, and sometimes growing restlessness and social/ethnic tensions. In this context, CSOs have seen themselves as a countervailing force to the excesses of both the state and the market.

### Box 1: Decentralisation and devolution

Since the 1990s, there has been some rethinking of the role and functions of the central state, moving towards greater decentralisation of structures and the devolution of powers and responsibilities. This may be described in terms of three general trends.

**Government decentralisation, or the shift from national to local:** This is the process by which powers, resources, and responsibilities are transferred from national state bodies to local government units. In some Asian countries, local bodies have been given greater decision-making powers over land and natural resources (forests, water bodies) within their jurisdictions. The devolved powers may include local taxation and revenue collection, powers to determine land and resource use classification, and the allocation of harvesting rights. Sometimes, devolution occurs only within a single line agency of government, e.g. from central to field offices, such as those of forest departments. Overall, decentralisation aims “to bring government closer to the people” and to improve its programmes, services, and systems of accountability. However, government decentralisation can also have negative effects if it merely serves to entrench the powers and privileged position of local elites.

**Shift from state to private sector:** This is the process by which state assets, programmes, and services are increasingly privatised or contracted to private corporations, under the broader framework of market liberalisation and economic growth. This includes the sale/lease of government assets, the granting of long-term leases or harvesting rights over public lands to private concessionaires, the privatisation of public services or utilities (such as the management of dams/power and water), and the inclusion of the business sector in government planning and consultative bodies. The working assumption is that market mechanisms will increase overall growth, increase efficiency, and reduce the costs of services. However, privatisation initiatives can also have far-reaching (and adverse) impacts on local communities, as they tend to externalise the benefits/profits and costs of managing the land and resource.

**Shift from state to civil society:** This refers to the process by which civil society directly participates in land and resource governance, as characterised by a focus on self-organised sectors of civil society (e.g. farmers’ associations, user groups, etc.), the setting up of participatory mechanisms, such as local water councils and dispute mechanisms, and participation in policy and planning bodies (at local, state, and national levels). The intention here is to address issues of equity and distribution for disadvantaged sectors and to increase direct participation in democratic governance. In Asia, recent reforms in community forestry (in India, the Philippines, Nepal) and on IP rights (India, the Philippines) have given greater access and management rights to forest dwellers and users. However, civil society is not a homogenous group, and mechanisms must ensure the rights of poorer and marginalised sectors.

## Overview of the land debates

The new debates on land tenure and reform in Asia have emerged following different lines of thinking. Many of the new debates about land reform differ significantly from earlier national liberation projects of the twentieth century. Policy discussions now highlight considerations of “economic efficiency”, relegating issues of “equality” and “distributive justice” to secondary status, if they consider them at all. Many of the new debates for and against land reform since the Cold War have been concerned with economic questions (Courville and Patel 2006).

In recent years, these land debates across Asia can be seen in terms of nine broad and inter-related themes:

- The unfinished agenda of land reforms for agricultural lands, along with the various policy issues of reform;
- Continuing questions about the viability of state-led land redistribution and reform;
- The viability of, and issues involved in, improving access for poor people through efficient land rental markets and land titling and administrative systems;
- The pros and cons of World Bank proposals for market-assisted land reforms;
- The continued neglect and marginalisation of various sectors – in particular, rural women, IPs, and sectors of the poor – due to lack of access to land;
- The neglected area of land reforms for forests and lands of the “public domain”, and the choices of different tenure systems that have an impact on both poverty reduction and natural resource management;
- Rising commercial pressures on land, which are leading to a new form of land colonialism in Asia;
- The efficiency of small versus large farms in ensuring Asia’s food security in the context of growing populations, increasing urbanisation, and changes in the food value chain and food industry;
- Dealing with the effects of climate change, and the new pressures on land tenure that this brings.

## Unfinished task of land reforms, and emerging policy issues

Land reform programmes were reversed in some countries (Indonesia, Pakistan), while in most (Thailand, India, Bangladesh, Sri Lanka) they became dormant over time due to weak

implementation and a lack of funding. Redistributive land reform is still actively being implemented in the Philippines, although it remains doubtful whether the programme will reach its target of redistributing the remaining 1.2 million hectares of large private lands between 2010 and 2013, when government land acquisition is due to be completed.

The problem with many land reform programmes was that often they were not based on rational government interventions, but rather on the response of governments to specific pressures. In many developing countries, legislation was often the result of compromises between demands from peasants on the one hand and the interests of a modernising landlord class on the other; this meant that the implementation of reforms suffered from deficiencies in design and a lack of political will. In fact, with some exceptions, landless people were often not included as beneficiaries in the earlier “land-to-the-tiller” reforms, as this was considered contrary to the demands of “productive efficiency” (White and Wiradi 1984).

Land reform programmes were instituted for different objectives (social, political, economic), yet in recent years increasing emphasis has been put on economic objectives, with questions about the contribution of reforms to productivity, economic growth, and efficiency. Policy-related questions continue to be raised concerning the design and implementation of land reform programmes; they include the following.

***Transferring ownership vs creating access to land:*** “Transferring ownership” is the basic objective of distributive land reforms under a rights-based approach, consistent with the principle of “land to the tiller”. On the other hand, the objective of “creating access to land” considers land more as an economic resource and a factor of production. “Access” does not necessarily imply ownership, as land may also be accessed via other means, *e.g.* through purchase, rental, or the granting of usufruct rights.

***Land parcelisation and fragmentation<sup>22</sup> and the issue of “viable farm size”:*** Many parts of Asia have high population densities, with too many people trying to survive on too little

22 Parcelisation is the process of dividing land into smaller “parcels”, i.e. the basic spatial unit in a cadastre. Fragmentation is the division of a farmer’s land into a number of scattered plots.



land. As land reform contributes to land parcelisation and the increasing fragmentation of farms, critics have raised questions about the impact of reforms on the economic viability of family farms. There has been an overall trend of declining farm sizes, especially in South Asia.

The advocates of reform point to the experience of China, where farm size decreased from 0.56 hectares in 1980 to 0.4 hectares in 1999, but where family farms continue to sustain the country's self-sufficiency in grains and food. The issue is not just farm size, but access to support services, infrastructure, and markets needed to make the land productive and farming profitable. In India, earlier government land distribution programmes were expected to provide families with at least two acres each. Yet new land reforms have evolved involving smaller plots being given to farm-worker families. Karnataka state's land reform in the 1980s provided rural families with housing plots that averaged only 5,880 square feet (546 square metres).

#### ***Compensation for landowners and affordability for farmers:***

Reform programmes involving redistribution of private lands have often faced questions about compensation for landowners and affordability for farmers and landless workers. There have been discussions about what factors should be used as the basis for land valuations (*i.e.* existing market prices vs property assessments based on tax declarations, or whether to use factors such as land fertility and productivity). The common view is that compensation to landowners must be below existing market rates, and that the land must be passed on at minimum or affordable rates to farmer beneficiaries.

***Restrictions imposed on awarded lands:*** In order to prevent a return to feudal practices, many land reform legislations have imposed long-term restrictions on the use and disposition of awarded lands. These include limits (ceilings) on the amount of land that an individual is allowed to own, rules and restrictions on the disposition of awarded lands, and prohibitions against leasing out such lands to new tenants. Moreover, policies on tenancy reform often stipulate a fixed amount (or percentage of produce) that can be collected as land rent under sharecropping or fixed-lease arrangements.

Pro-market proponents claim that all these restrictions create unnecessary distortions in land rental markets, and hinder other farmers from accessing lands to till under rental arrangements. Some further argue that strict tenancy regulations limit the opportunities for poor agricultural labourers to climb up the agricultural ladder. They contend that putting a good land tax system in place could be more effective as a tool to control the use and disposition of lands.

***Questions about the role of the state as "reformer":*** Agrarian reform is a political process, as it involves changing wealth and power relations. The common assumption has been that the state should take the lead role in instituting such reform, for three basic reasons: the state is the only institution that is legally vested with "coercive" powers, particularly police powers and the right of eminent domain; it is the only institution that has the potential administrative capacity and resources required to implement widespread reforms; and it has a duty to pursue the "greater good" as mandated by constitutions (Quizon 2005).

Yet, when the state takes on the role of "reformer", questions often arise. For instance, can a government truly take on an "activist role" in land redistribution when its functionaries are identified with the landed class? Experience has shown that many past agrarian reform legislations were never fully implemented due to a lack of political will, and that priorities tend to shift with each change in government administration, as political elites tend to reverse the reform gains made by their predecessors.

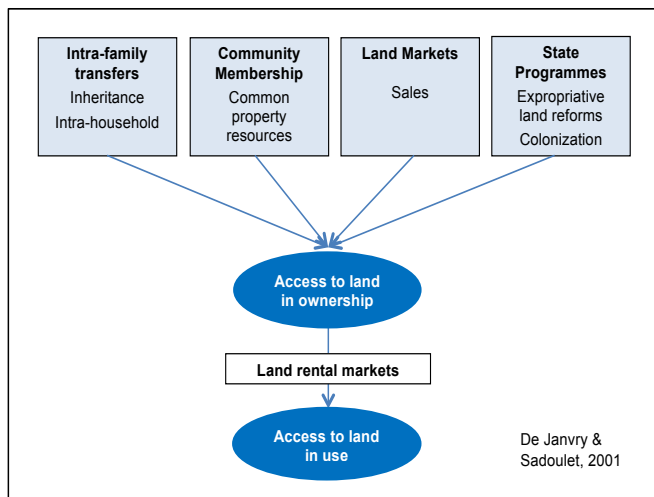
#### ***Different paths to land access for the poor***

State-led land redistribution programmes are just one of several systems by which poor people gain access to land. Others (see Figure 2) are:

- Intra-family transfers: Women's land rights are most affected by social practices of inheritance and the distribution of property within the family; often, women's rights are most threatened by changes in the family structure as a result of marriage, divorce, or death.
- Access through community or group membership: This may include access to communal or traditional lands and to common property resources such as forests and pastures.

- Land markets and land sales: Acquiring land or land rights through direct market purchase.
- Land rental markets: The wide range of possible lease arrangements includes sharecropping and leasehold rights.

Figure 2: Paths of access to land for poor people



**Land sales and rental markets:** As an alternative to state-led land reforms, in the late 1990s the World Bank introduced a new “free market” approach. The main criticism of state-led land reforms was that they were often hostile and involved coercion and expropriation. Reforms were rarely peaceful, as they were often the outcome of wars and revolutions. Moreover, each reform programme was designed to address specific conditions, and even the commonly cited successful models (Japan, Taiwan, South Korea) were due largely to unique historical conditions. The high political and social costs of past state-led land reforms meant that they were no longer feasible, and so there was a need for new approaches.

**Three stages: land titling, land markets, and credit with land as collateral:** The basic assumption in this approach is that secure property rights are a critical condition for increased productivity and economic growth, as they provide the incentives for investment. Hence property rights (to own, use, and transfer) must be legally protected, and efficient institutions must be able to register these rights (land titles) within a reasonable time and at a reasonable cost, enforce and adjudicate rights, and manage conflicts and resolve

disputes that may arise. Yet in many developing countries, land administration systems that evolved from a colonial past were inefficient, corrupt, over-regulated, and poorly coordinated. In the Philippines, for example, at one point 19 different agencies had some role in the administration of land. The very system undermines the value and authority of titles or certificates of ownership, increasing the insecurity of property rights. Inefficiency in land administration increases the time and costs of transactions, which works mostly against the poor.

Beginning in the 1990s, the World Bank and a host of donor institutions initiated land titling and administration projects in a number of Asian countries (the Philippines, India, Lao PDR, Indonesia, Sri Lanka, and Thailand). These projects – which aimed to ensure property rights – were the first stage in attempts to bring land systems into an increasingly global marketplace, which requires formal and written systems, legal instruments, privatised property, and land markets.

The second stage involved the development of formalised land markets in which land could easily be leased, purchased, sold, or gifted to achieve more efficient land use. But in order to get land markets to work for the poor, there was a need to reform policy distortions of land markets, agriculture trade policies, and poor people’s access to credit and output markets (Childress 2004). The World Bank supported a number of projects in market-assisted land reforms (see below). The third stage was the use of land and property as collateral for accessing credit. Efficient land administration allows the use of land documents to collateralise loans.

**Market-assisted or negotiated land reforms (MALR):** Starting in 2001, the World Bank supported a number of initiatives on market-assisted land reforms based on the broad principle of “willing buyer, willing seller”. The suggestion was that, under some circumstances, state-led land redistribution could be replaced or supplemented by non-coercive market mechanisms that would increase land access for the poor. In certain situations, MALR sought to overcome elite resistance to land reforms by offering credit to landless or land-poor farmers to buy land from wealthy landowners at market rates, with some level of participation by the state in mediation and credit programmes. World Bank pilot projects in South Africa, Colombia, Brazil, and



Guatemala aimed to improve poor people's access to land through market transactions, which often involved channelling credit from "land banks" and improving access to information.

In Asia, a number of government programmes have operated in a similar way to these market schemes. In the agrarian reform programme of the Philippines, under a mechanism called "Voluntary Offer to Sell" (VOS), the state negotiates a settlement with the landowner rather than resorting to expropriation, even where expropriation is feasible. The incentive is a 5% increase in the upfront cash payment and a corresponding 5% decrease in payment in bonds. It is claimed that, since 1972, some 494,133 hectares have been acquired through VOS, or 1.7 times the amount of land acquired through compulsory acquisition. Of course, expropriation was used as the "stick" in these negotiations (Binswanger and Deininger 2009).

In India, state governments in Andhra Pradesh, Karnataka, and West Bengal have initiated programmes to transfer micro-plots to landless labourers through land purchase programmes. The state purchases the land in large parcels and divides it into house and garden plots for purchase by beneficiaries, ranging in size from 0.1 acre to 1 acre per family (Hanstad et al. 2009).

**Criticism of MALR approaches:** Critics point out that markets are not equitable allocators of goods and yet MALR relies on negotiation between rich landowners and poor farmers to determine prices. Even with improved access to information and credit provided under MALR programmes, poor peasants and landless workers are unlikely to overcome the inherent weaknesses in their bargaining position.

As the MALR approach relies on persuading large farmers to release land for sale, for which they are paid the full market (negotiated) value, this approach directly contradicts the core objectives of anti-feudalism and distributive (social) justice of land reform (Alden Wily et al. 2008). And where countries have existing land reform programmes, MALR approaches could adversely affect them. In the Philippines, a market-assisted scheme would have resulted in land prices higher than the government's own land valuation system, increasing the costs for poor and landless farmers.

In countries where it has been implemented, MALR has achieved limited coverage and success. Match-making between buyers and sellers has proved difficult and expensive, and attempts to decentralise programmes have opened the door for connivance between landowners and local officials. Large farmers have also used such programmes to unload marginal lands (Alden Wily et al. 2008). Hence, in recent years, the World Bank has toned down its advocacy for MALR, and now presents it as one option to be considered.

***Critical views on land titling and land administration projects:***

It has been pointed out that reforming land administration systems per se is not land reform, as the core objective of this is not to bring about land redistribution; nor should land administration be designed to replace agrarian reform. Good land administration may indeed ensure the efficiency of the land titling system, and a technically sound cadastral system will establish the territorial boundaries between two plots of land; however, the system itself will not (and should not) determine ownership or proprietary rights.

In fact, the history of colonialism in many Asian countries has shown how the introduction of new land registries was used as a tool to seize land and thereby disenfranchise entire peoples and communities. A similar risk exists today, especially in countries (e.g. Cambodia) where overall governance is poor, conflict resolution mechanisms are weak and inaccessible, and the rural poor are often left uninformed. New land titling and land administration initiatives may provide a fertile ground for corruption – for new land-grabbing and for legitimising historical injustices, leading to further disenfranchisement and eviction of tenants and unregistered occupants.

However, the main criticism of land titling and land administration projects concerns their core objective of opening up and expanding land markets – where, as experience shows, poor farmers are more likely to end up as "willing sellers" than "willing buyers". And where land is promoted as credit collateral for agricultural and emergency loans, poor farmers are likely to find themselves at greater risk of losing their lands altogether.

Critics have also pointed out that land titles are not the only precondition for securing land rights, as customary land systems have long existed and have proven to be resilient in many parts of Asia. On the other hand, land cadastres and titling systems are big business. They are a huge potential source of new consultancy and procurement contracts as well as financing, as governments are likely to depend on foreign loans. A comprehensive cadastral and registration system could require several decades of continuous work and investment to put in place.

### Women's land rights

Past land reform programmes often failed to recognise the importance of the way in which control of assets, in particular land, is assigned within the household. This resulted in the relative neglect of women's rights to land. Underlying many earlier land reforms was the assumption that "women's interests were subsumed within those of the household and could adequately be represented by men" (Agarwal 1994).

Under traditional law and customary practice in many Asian countries, women's access to land has been mediated through men, and women acquire land through their husbands or male relatives. Traditional systems of inheritance and property, especially of agricultural land, have been predominantly patrilineal. As men are traditionally seen as the breadwinners in the family, inheritance of farmlands is often construed as a father-to-son affair. Especially in South Asia, cultural norms often dictate that women "voluntarily" forego their shares in parental land in favour of brothers or uncles. In some cases, male relatives with strong entrenched interests in land file court cases, forge wills, and even use threats to discourage women from pursuing claims. Local government functionaries sometimes compound this problem by obstructing the implementation of laws in women's favour, or by failing to record daughters' inheritance shares.

Existing land laws and regulations continue to discriminate against women. In Bangladesh, the application procedures for the distribution of khas (government-owned) land prohibit single women or widows from applying for it; a woman can only apply jointly as a wife or as a widow along with her son (Halim 2010). In many Asian countries, women's access to land

is mediated by conflicting frameworks – by claims to minority/customary rights and religious freedoms, or by upholding individual rights of women as defined by national constitutions and the Universal Declaration on Human Rights.

The other dimension is power relations. Even where property laws provide for equal land rights between women and men, implementation has been a problem. Women still do not have their names on land titles, certificates, leases, or contracts. In most countries, the man is considered to be the head of the family, and this status gives him authority over decisions on property and land. In Vietnam, women rarely have their names on land use certificates, making it difficult for them to use those certificates to apply for mortgages. Under the agrarian reform programme in the Philippines, over half of the land certificates issued still do not include the name of the wife, despite a longstanding order to include the names of both spouses.

A growing amount of literature shows that productive assets (especially land), when placed in women's hands, can make a big difference. Households where women control greater shares of assets and land at marriage have been shown to spend more on basic household needs, such as food, and on children's welfare and education (Deininger 2003; Agarwal 1994).

In this context, the legal recognition of independent land rights for women is a necessary first step towards increasing women's control of assets. In the past two decades, legal changes undertaken in Asia have made land legislation more gender-balanced. Legal reforms have been instituted not just in land and agrarian laws, but also in civil and personal laws related to family and property.

Furthermore, most Asian countries already have constitutions and legislation that guarantee equal civil and political rights for women. In addition, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, provides a potential legal basis for contesting discriminatory laws and practices. To date 187 states, including all Asian governments, have ratified this convention, Article 14 of which highlights women's rights to equal access to resources and basic social services.

**Increasing feminisation of agriculture:** The importance of ensuring equal and independent land rights for women has taken on an added dimension in recent decades. In rural India and South Asia, young males increasingly migrate to cities in search of work, leaving agricultural tasks to women. As agriculture becomes increasingly feminised, more rural women and female-headed households are left with the prime responsibility for farming and household incomes, but without titles to the lands they cultivate. Ensuring women's access to land will be increasingly crucial not just for welfare, but also to improve the overall efficiency of farming.

Women with land would also have greater bargaining power, which would enable them to negotiate more equal allocations in the family and higher wages in the labour market. Formal land titles would contribute to improving women's access to production credit. Titles would also empower women to assert themselves better with external agencies that provide inputs and extension services. In addition, land rights would improve the treatment women receive from other villagers, by increasing their access to rural decision-making bodies and farmers' institutions.

Yet many extension service providers still do not recognise women as farmers. In the developing world, female farmers receive just 5% of all agricultural extension services, and only 15% of extension agents are women (Thapa and Gaiha 2011). Legal and social barriers, along with the disadvantaged status of women (on nutrition, education, access to information) continue to curtail their equal rights to land.

The more difficult task, however, will be to "reform" existing customary practices and social norms that discriminate against women's access to land. In Bangladesh, there has been little interference with the compulsory inheritance rules of Muslim women, whereby they are entitled only to half of what their brothers inherit from their parents' estate. Also, the Dhayabhaga school of Hindu law, which governs the system of inheritance in Bangladesh, gives women only "life interest" in the property, with no rights to dispose of land or to pass it on to their heirs (Halim 2010).

Even in cases where women gain formal ownership of land, social restrictions affect their mobility and public engagement. In Bangladesh and Pakistan, women are expected to avoid spaces where men congregate, and this territorial gendering of space limits their ability to seek new opportunities outside the home – in seeking work, new technologies, and inputs, or in selling products.

The reality is that religious and customary practices cannot be legislated, and wide gaps often exist between law and actual practice. Hence there is a need for a central approach that focuses on the empowerment of rural women in both their spheres of public and personal (family) life. This may require a wide range of direct, on-site intervention activities (education, counselling and facilitation, support services, advocacy and mobilisation).

#### **Indigenous peoples: land, territory, and culture**

Asia is home to about 70% of the world's estimated 370 million indigenous people. IPs comprise as much as 30% of the populations in Lao PDR and Burma and 14% in the Philippines (but as little as 1% in Cambodia and Thailand). Actual numbers range from 30–40 million in Indonesia to 200,000 in Cambodia. Indigenous people rank among the poorest in terms of incomes and access to justice. They have higher poverty incidence rates than the rest of the population (Vietnam), and constitute a large proportion of internally displaced populations (India) (IFAD 2002).

IPs continue to be largely "invisible" in official statistics, and available data on populations is based mainly on estimates. There is a tendency to underestimate not only their numbers and level of poverty, but also their significance as a sector and their important contributions to society.

IPs in Asia are known by different names: e.g. ethnic minorities, hill people, uplanders, orang asal, masyarakat adat, cultural communities, and religious minorities. Some terms distinguishing them from the national majority are culturally loaded: hill tribes (Thailand), aboriginal tribes (Taiwan), minority nationalities (China), cultural minorities (Philippines), natives (Borneo), aborigines (peninsular Malaysia),

isolated and alien peoples (Indonesia), and scheduled tribes and adivasis (India). Although there is no universal definition of “indigenous peoples”, official documents cite certain common characteristics – self-ascription or self-identification, a definable territory, historical resistance to colonisation, and continuing cultures and traditions that have historically been differentiated from the majority.

To Asia’s indigenous peoples, land is more than just an economic asset or commodity. Land is life itself, rooted to a territory and history. Land provides the foundation for self-identity, personal security, faith, culture, livelihood, and self-governance. Over generations, indigenous communities have lived sustainably with their environments and have evolved their own customary property regimes, with multiple resource-use systems and corresponding rights and responsibilities over farming, foraging, mining, and grazing. These cover rangelands, plains, river systems, coastlines, traditional waters, and fishing grounds.

Western colonisation in Asia drove native communities from arable lands, then started the extended process of state intrusion into forest areas. Such encounters between expansionary states and self-governing peoples took place in different forms all across the region. This resulted either in the subjugation of peoples or in their flight away from state centres, resulting in a “peopling of the hills”.

With independence, many countries retained policies regarding colonial lands brought under the “public domain”. Emergent nation-states began to assert sovereignty over their territories by building armed outposts, roads, and communication networks, clearing lands for agriculture, and moving populations. With the notion of sovereignty came a realisation that apparently useless territories contained valuable resources (such as minerals, timber, and hydro resources) for capitalist exploitation. Thus conflicting claims over IPs’ lands were left largely unresolved – an issue made more difficult as the state itself became a party interested in these lands. Neither did Asian IPs benefit from the land reforms starting in the 1950s, which were largely “agrarian”. In many cases they even became victims of state-led land reforms – through freehold programmes, state-supported migrations, and colonisation schemes. “Indigenous

communalism” clashed with the principles of state sovereignty and modern individualism that underpinned property laws and directions of national economic development (Nathan, Kelkar, and Walter (*eds.*) 2004). With their monopoly over coercive power, states could invoke their right of “eminent domain” to take private or communal land, with or without the consent of its owners or users.

In the decades since the 1950s, the struggle of IPs in Asia to regain control over their traditional domains and cultural spaces gradually grew from localised, community-specific struggles into issues of wider public awareness and debate. This was brought about by two related processes, especially from the mid-1980s onwards. The first was the arrival of global capital in ways that affected the lives and traditional livelihoods of IPs while externalising the costs, *i.e.* the expansion of plantation agriculture and forestry, extractive industries such as logging and mining, development projects (transport and energy/dams), and tourism. In many cases, the state and military apparatus was used to legitimise the entry and takeover of lands by state projects and private investors.

The second process, which happened in parallel, was the formation and growth of IP movements and support networks that began to transcend national boundaries and to link up at the regional and international levels (Nathan, Kelkar, and Walter (*eds.*) 2004). IP movements were forced to bring their cause to the international arena in response to globalised market forces and to seek recognition and protection for their collective rights to land and livelihoods. Their actions moved from protest to proactive demands for recognition of economic, environmental, cultural, and land rights. Visibility for their actions was aided by the growth of CSOs, and by better access to new information technology.

**International context:** The first international attempt to recognise the rights of indigenous peoples was the International Labour Organization (ILO) Convention 107 of 1957. This applied to economically and culturally distinct groups living within the borders of independent states, with the purpose of incorporating them into the wider society. This policy of “assimilation”, however, became a topic of debate among IPs and the states where they lived, which culminated

in the revision of ILO Convention 107 and the introduction of ILO Convention 169 in 1989. Unlike the earlier document, ILO Convention 169 recognised the distinctive cultural traditions of indigenous peoples and their different ways of seeing the world, and the importance of their full participation in decision-making to enable them to set their own priorities and safeguard their interests and rights.

The evolution of international human rights instruments focused on protecting IPs, however, grew largely out of global discussions on the environment. The UN Conference on Environment and Development (the Earth Summit) in Rio de Janeiro in 1992 marked a turning point in the promotion of IPs' rights, with a number of legal instruments being adopted – such as the Rio Declaration, Agenda 21, and the Convention on Biological Diversity, which established international legal standards to protect IPs' rights to traditional knowledge and practices regarding their environment and its conservation. The Rio declarations established an international legal framework that recognised the unique relationship IPs have with their traditional land or territory (Perera 2009). In international law, three key sets of rights came to be well established regarding the relationship between sustainable development and environmental justice: “the right to life, including the right to a healthy environment”; “the traditional and customary property rights of indigenous and other local communities”; and “participatory and procedural rights”, such as the right to be informed and the right to know (Perera 2009).

International recognition of IPs' rights was consolidated under the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the creation of the UN Permanent Forum on Indigenous Issues. Most Asian countries, with a few exceptions (including Burma and Malaysia) have ratified UNDRIP. Also, many international multilateral agencies have instituted policies to guide their strategies and operations on IPs.

***National policy contexts and legal reforms for IPs:*** Most Asian countries still continue with state policies of “assimilation” in dealing with indigenous peoples. With a few exceptions such as the Philippines and India (constitutions) and Cambodia (land law), existing laws in most countries do not give special recognition to IPs' land rights. Instead, indigenous peoples

tend to be treated as part of the general “landscape” (forestry laws, land laws, and agriculture policies) or as subjects of welfare programmes that further marginalise them. IPs often have to apply for access or user rights to their forests, and land registration systems may recognise individual and corporate property, but not communal lands.

There is still limited appreciation and understanding of traditional practices. Swidden (shifting) farming, for instance, is considered by most states to be “backward” and destructive of forests, and thus is prohibited and even criminalised. Traditional lands under swidden cultivation are often treated as “barren” or “marginal” lands and are leased to corporations, including lands that indigenous communities cultivate and leave during the fallow period. Indigenous farming practices are considered to be low-technology and unproductive, with too much “idle time” among rural labourers. In Vietnam and in Sarawak, Malaysia there are state programmes to move IPs into new settlements, in order to appropriate their lands for other purposes.

Nevertheless, there have been limited efforts to promote the inclusion of IPs and their concerns within existing systems of governance. These involve efforts such as incorporating local forms of self-governance and authority under decentralisation or forms of regional autonomy; recognition of some elements of customary law through national legislations; and peace-building efforts, including combating various forms of racism and discrimination.

An increasing number of Asian states have instituted progressive policies that recognise IPs' land rights. India's constitution guarantees some rights to tribal people and has listed more than 200 tribal groups as “scheduled tribes”. India has enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006, which recognises the environmental and human rights of tribal people in domestic law. The 1997 Indigenous People's Rights Act (IPRA) of the Philippines perhaps gives the strongest legal recognition to ancestral land rights. It entitles IPs to secure legal titles of land ownership over their traditional lands and territories and provides for the self-delineation of traditional lands, the right of IPs and indigenous cultural communities

(ICCs) to self-governance, and their right to FPIC. In the first ten years of IPRA's implementation, to 2008, some 45 Certificates of Ancestral Domain Titles (CADTs) were issued, covering over 874,000 hectares.

**Global public goods:** In an effort to mitigate the impact of global market forces, new arguments have been raised for negotiating IPs' land rights – highlighting their positive contributions to global public goods and national development. These include:

- Conserving the forests, which are crucial especially for the absorption of greenhouse gases and for regulating hydrological flows;
- Providing environmental services that protect the global commons; these “services” result in clean and safe water, improved air quality, and protection from extreme weather conditions, including soil erosion;
- Maintaining biodiversity and indigenous knowledge systems, which have grown in public importance in view of genetic engineering and the emergence of new disease strains;
- Maintaining peace and social harmony;
- Providing a range of forest products as well as eco- and ethno-tourism services.

It is argued that this is a necessary step in changing the way in which natural resources are used and how IPs are treated. Recognition of the services that IPs provide would move them up in the “value chain” – from resource-based to knowledge-based contributions, and not just for products but also services (Nathan, Kelkar, and Walter (*eds.*) 2004). The objective is neither their isolation nor their assimilation, but rather changing the terms of interaction between indigenous communities and wider society. It is important to clarify not just property rights to land and resources, but also the rights to ecosystem services that forest lands and well managed habitats provide. The local people who provide such environmental services should not be forced to continue bearing costs that are “externalised” to mainstream economies.

### **Forests and public domains: facing growing competition**

In the history of many Asian countries, the colonial state took over all lands outside of permanent settlements and brought

these lands under the “public domain”. These included lands that local people had previously regarded as “communal lands”. In most cases, systems of land registration were imposed, and all lands outside of registries were considered as belonging to the public domain regardless of whether they were possessed, occupied, or used. These acts not only deprived communities of their lands and livelihoods (for shifting/chena cultivation, grazing, or foraging), but also undermined local and community institutions that used to manage forest lands, and brought considerable lands under the direct control of the state. The new classification of lands also created a system of privileged access to forest resources for colonial governments and for favoured members of military establishments.

After independence, national governments continued to control such lands as “state territory” and managed them as an important source of state revenues and environmental services. However, large and valuable lands under state control have proved conducive to mismanagement, poor resource utilisation, and corruption.

Today, forest areas account for half or more of the total land area of a number of Southeast Asian countries (Cambodia, Indonesia, Lao PDR, Malaysia, and Myanmar). On the other hand, forests account for less than 10% of the land area of the five Central Asian republics, as well as of Pakistan and Bangladesh (see Annex 3). Existing estimates of forest lands tend to vary widely even for the same country, as the term “forest” has different meanings – as a category of land use based on actual tree cover, as a system of land classification, or as a category of legal ownership.

Different legal definitions are also used for forests. In the Philippines, forest lands are legally defined as all lands with a slope of 18% or more, with no regard for actual vegetative cover. Today, only a small fraction of the country's designated 15 million hectares retains any real forest. In Indonesia, “forests” are all areas designated as such by central government, under the Forestry Law of 1999. In Vietnam, forests are defined as an ecological system (with flora, fauna, and environmental factors) and with a forest canopy of 10% or more (Fay 2007).

The legal definition of “forest” has little to do with what actually exists on the ground in terms of tree cover, or the potential of the land for forestry. At times, the term has been used as a catch-all legal category that includes virtually all land that is not privately occupied (Lindsay 2004). In India, 20% of reserved forest, or at least 100,000 square kilometers, is without trees (Chomitz 2006). In Indonesia, some 33 million hectares of the total of 120 million hectares classified as State Forest Zone (Kawasan Hutan) have no trees at all, as these lands were classified as “forest” by default when they were not registered as agricultural land. Conversely, some 8 million hectares of actual forests are not included as part of the forest zone (Contreras-Hermosilla and Fay 2005).

Forests provide important resources for the rural poor, with over 800 million people living in forests and woodlands in the tropics alone. Forests provide these people with food, homes, fuel, and livelihoods, and serve as safety-nets in times of difficulty. In India, poorer households derive up to 29% of their incomes from community forests. Yet since most of Asia’s forests remain under the direct control of central governments, their tenorial status is often left unclear, with weak or no legal protection given to existing customary norms concerning local access and control.

In recent decades, forest communities have faced even greater threats to their lands and livelihoods due to the intrusion of commercial interests, the expansion of commercial agriculture and forestry, extractive industries such as logging and mining, and the appropriation of land for development projects (especially dams) and tourism. In Pakistan, Laos, Cambodia, Indonesia, and Papua New Guinea, new agreements are being forged between corporations and central governments for the diversion of large tracts of land into “production areas” for food and biofuels that are geared for markets abroad. At times, the state and military apparatus has been used to legitimise the takeover of lands by outside investors.

Central governments assume the ownership and control of forests, yet they are often too remote and ill equipped, or lack motivation, to effectively manage and regulate forest use. Where tenure is poorly defined, this brings about the gradual

erosion of forests and of the communities that depend on them. Often, forest resources end up as “open-access regimes” where they become degraded through unregulated use.

**Property and forest tenure:** The concept of forests as property involves an expectation or right of flow of benefit and a responsibility, which some higher body such as the state will protect. “Property” is not an object, but a relationship that defines the property holder with respect to a benefit (stream) against all other people. Property rights define who has access, how much can be harvested, who can manage it, and how rights can be transferred (Bromley 1992). “Forest tenure” is a broad concept that includes ownership, tenancy, and other arrangements for the use of forests. It is a combination of legally or customarily defined forest ownership and of rights and arrangements to manage and use forest resources (FAO 2003).

There are four main ways in which rights over common resources such as forests are categorised: as state property or state-owned, as private property, as common property, and as open access. In this formulation, “common property” represents a separate category of rights that is distinct from both private property and open access. Common property regimes are defined primarily as collective rights; they give a range of rights to individuals and groups for access, withdrawal, management, exclusion, and alienation. Under common property rights, an identified set of stakeholders has exclusive rights to exploit the resource, rules regulate the exploitation of the resource, and certain bodies are responsible for enforcing these rules (Bromley 1992).

Today, an estimated 67.8% of Asia’s forest lands are owned by the state and about 23.6% are owned by communities and IPs (or are common property). The rest are owned by individuals and private companies (5.7%) or designated for use by communities (2.9%) (RRI 2009).

Indonesia provides a prime example of large-scale concessions awarded to the private sector, while India provides many examples of community-based resource management approaches. On the other hand, Papua New Guinea (PNG) is a country where forest people are constitutionally endowed



with property rights over the forests they live in<sup>23</sup> (see Annex 4b). Since forests serve a number of purposes for different sectors of the population, the continuing debate over forest tenure often focuses on the imperatives of poverty reduction, economic development, and environmental protection.

**State control over forests:** The first justification for exclusive state control over forests is that forests represent a huge economic resource that needs to be managed more efficiently and profitably. This view tends to value forests for the resources they offer. The state grants forest concessions for a stated purpose, a stipulated period of time, and for revenues that may be shared between the central state and local bodies. Private concessions are granted for logging, mining, exploration, extraction of oil and gas, and agricultural production. Other types of concession recognise forests as a habitat, noting that secure tenure to forest resources may contribute to alleviation of poverty among people who rely directly or indirectly on the forest resource for their livelihoods. Hence, community concessions may include harvesting of non-timber forest products (NTFPs), social forestry and leasehold rights, and even small-scale logging and mining.

The second justification cited for exclusive government control of forests is the claim that these resources generate externalities or services that may be desirable by society but may not be of interest to private owners, as they are not compensated for producing externalities. Such services include biodiversity and wildlife conservation, carbon sequestration, and protection of soil and watersheds.

However, conflicts arise when private concessions have little respect for existing community rights and customary systems of forest management. Large-scale mining may create serious conflicts because mineral rights are often vested in

the state, even if land (surface) rights have been granted to communities who manage the lands through customary law. Governments also often create national parks and protected area regimes, which remove large tracts of common land from users, and vest total control and ownership in state agencies. Yet by removing land from the management of communities, governments undermine the efforts of local users to create effective management regimes.

**The case of Indonesia:** Indonesia is a classic case of where the state has chosen the intensive use of forests to drive economic growth. Forest lands are classified into timber production forests, conversion areas, and conservation or protected areas. In production forests, the government awards timber concessions to private companies, while in conversion areas planned deforestation is allowed to free up areas for other uses.

The legally designated Forest Zone under state control extends to 120 million hectares, covering 62% of the country's total land surface. As of 2004, logging concessions covered 27.8 million hectares and forest estate companies had 5.4 million hectares in awarded concessions. In sharp contrast, only 115,000–250,000 hectares were legally recognised community-administered forest areas. Based on 2004 estimates by the Center for International Forestry Research (CIFOR), some 50 million people, or nearly a quarter of the total Indonesian population, live in forest areas, and 20 million more are found in villages around the forests and are dependent on forest resources (Bachriadi and Sardjono 2005).

Dutch colonial policy had left much of the “outer islands” of Indonesia, outside Java, under adat (customary) land tenure. However, today adat communities are unsure of their status and their tenure over forests, as these are often subject to overlapping claims and legal confusion. The country's legal framework is complicated by over 2,000 pieces of legislation, regulations, and norms concerning land. These have an impact on the way that the different layers of government and communities manage forest resources and clarify rights (Contreras-Hermosilla and Fay 2005).

23 While customary land rights are constitutionally recognised in PNG, it has been observed that property rights remain insecure, as forest people have become victims of industrial tree harvesting and human rights violations, and there has been frequent failure to obtain informed consent from communities before logging, or else promised benefits from logging have not been delivered or have fallen short of the promises made (RRI 2009).



In Indonesia, CSOs categorise four main government schemes by which land has been “legally” taken away from indigenous/forest communities and transferred to private entities:

- Transmigration: the state resettles people into IP areas to gain control over the land;
- Certification: the state awards the legal rights of ownership over land;
- Concession: the state awards user rights and permits to mining, logging, plantation, and exploration companies;
- Spatial reconstruction: the state takes over IP lands for designated national parks and development projects.

#### ***The slow shift towards community and common property:***

Since the 1980s, there has been a slow devolution from direct state control towards community management of forests in Asia. This shift has been driven by a growing recognition of the limitations of direct state management, continuing forest degradation, pressures from affected local communities and civil society, decentralisation trends, market transactions and new revenue opportunities from forest resources, and the push for more participatory approaches from development agencies and international agreements (SEARCA 2007). Moreover, governments have begun to recognise the fact that large parts of their populations actually occupy and depend on classified forestlands, but with tenures that are often insecure and even “illegal”, Hence the notion of “empty forests” no longer holds true for most of Asia.

Across the region, community forest management arrangements cover a wide range of practices – from recognition of access rights (harvesting and using resources) to more substantive rights and responsibilities (engaging in management decisions involving forest use), to usufruct rights over the land (engaging in agroforestry), to direct community control or ownership of forest lands (state recognition of customary lands).

Nepal’s 1993 Forest Act provides for portions of national forest to be turned over to local user groups, who agree to manage the areas in accordance with an agreed plan. Nepal’s forest leasehold approach provides more secure access to common forest land via 40-year community leases. India’s Joint Forest Management (JFM) programme, instituted in 1990, provides for

joint forest management involving state forest departments and local communities. Although the rules differ by state, the programme gives communities access to forests for fuel wood, fodder, and other extractive products and grants them a proportion of revenue from commercial timber sales. By 2005, India’s JFM programme covered 27% of the national forest area across 27 states (17.3 million hectares) and included more than 8 million families – half belonging to scheduled castes and tribes. However, the more degraded, less commercially viable forests are the most likely to be put under the programme.

Other more recent forest laws that provide mechanisms for communities to formally secure some form of forest management agreement with governments include the Philippines’ Executive Order on Community-Based Forest Management (2005), Vietnam’s Law on Forest Protection and Development (2004), and Cambodia’s Sub-Decree on Community Forestry (2003). In Thailand, the 2007 Community Forest Bill upholds the legal right of forest communities to manage forest lands surrounding their communities (RRI 2010). However, overall implementation in the field remains weak in comparison with the robust legal declarations from which these programmes emanate. In Indonesia, community forest management (CFM) refers to an arrangement that varies enormously in nature – from providing information to communities about government programmes, to various types of consultation, to interactive participation. As with other countries, CFM arrangements in Indonesia involve usufruct, but do not include the transfer of land ownership rights.

#### ***Community management and common property resources***

(CPRs): Community management of forests has proven to be effective in sustainable forest management. Many experiences show that greater land tenure security for local communities provides them with incentives for resource conservation. In Nepal and Vietnam, the quality of forest management increased when rights to state forests were transferred to communities and individuals (Deininger 2003). Also, over the years, the CFM agenda has increasingly incorporated poverty reduction, in recognition of the fact that communities cannot commit themselves to effective forest management if their basic needs are not secured.

Perhaps the strongest argument in support of community management is the fact that the indigenous peoples of Asia have managed their forests sustainably for thousands of years. Even today, significant tracts of forest continue to be de facto managed by communities in sustainable ways despite tenure insecurity. In Indonesia, agroforests created and managed without support from government or international agencies cover some 4 million hectares in Sumatra. About 7 million people spread over an area of 2.5 million hectares are estimated to live in Sumatra and Kalimantan around rubber-based agroforests alone (Contreras-Hermosilla and Fay 2005).

**Reluctance of governments:** Governments continue to be ambivalent about relinquishing or sharing real power, and about vesting significant rights in local people. Even where community forestry programmes are implemented, government institutions tend to retain control of key decisions. Communities are treated as “beneficiaries” in government-sponsored designs where decisions remain in the hands of government agencies, reinforcing patronage rather than partnership. Moreover, governments have been quicker to recognise “access” rights than to grant management, usufruct, or ownership rights to local communities, in view of the high value of forest resources.

Governments initially instituted CFM arrangements as a means to engage communities in meeting reforestation objectives. Hence, community forestry projects are often implemented on forest lands that have already been degraded (through timber concessions or by new settlers), rather than on lands that are pristine and need to be protected. Community access rights to forests are often restricted to NTFPs, while the more valuable forest resources such as timber are granted as concessions to more powerful interests (SEARCA 2007). Moreover, stringent requirements are sometimes imposed, such as the need for management plans, surveys, or resource inventories that require rigid use of legal and technical language and tools. Also, as governments often retain the right to terminate CFM arrangements, administrative discretion can lead to patronage and corruption. And outside of CFM arrangements, many other regulations continue to impinge on the resource rights of local communities e.g. restrictions imposed on the transport, sale, and proceeds of forest products.

Perhaps the main issue even with many existing common property regimes is that CPRs remain legally vulnerable in cases where the state can continue to claim ownership of the underlying resource. In Nepal, for instance, the “ownership” of forest land remains with the state, even as community management arrangements vest various rights over that land with local groups.

**Decentralisation policies:** Over the past two decades, there has been a trend in some countries towards government decentralisation, where certain responsibilities and rights for the management of local resources are transferred from central to local government bodies. These policies include the panchayat law reforms in India after 1993, the Philippines’ Local Government Code of 1991, Thailand’s Tambon Administrative Act of 1994, the upazilla structure of Bangladesh, Cambodia’s Commune Law of 2001, and Indonesia’s Law on Regional Autonomy (Law 22) of 1999.

At times, decentralisation has offered opportunities for local communities to acquire a greater say in the shaping of policies. It has also led to greater accountability at the local level, increased equity, and, in some cases, more sustainable use of forest resources. It brings government closer to the people and therefore more responsive to local demands than with centralised government schemes.

In some instances, however, decentralisation has been criticised for merely strengthening the powers of the local elite. Where policies merely increase government control over the management of local resources, minority community rights (women, dalits, indigenous groups, and forest-dependent peoples) are often disregarded, and past government policies are continued. The statutory systems in many countries still do not treat customary norms and rules as legitimate sources of rights to land and other resources. Where regulations are not clear, management of the land and resources is left to the interpretation and discretionary judgments of local, and often inadequately prepared, officials.

**Identifying forest rights holders:** A central question with the legal recognition of common property is the identification of the rights holders i.e. how is the concept of “community”

or “group” defined, and with which group should common property rights be vested? On this issue, there are four models (Lindsay 2004):

- User-groups, as practised in the Nepal Forest Law. These are self-identifying groups of households united by common interest in a particular resource;
- Adjacent communities: The identification of rights holders is based on reference to location and geographic boundaries. Some of the JFM arrangements in India, for instance, give co-management rights to communities living adjacent to a forest;
- Indigenous or community landholdings: Forest land is linked to a particular community’s struggle for self-determination, as embodied in the Philippines’ Indigenous Peoples Rights Act, where identified areas of ancestral domain are governed by customary law. India’s Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act also provides for much improved rights and decision-making powers for scheduled tribes and traditional forest-dwelling communities over forest lands and resources, compared with the earlier JFM regime (RRI 2010). However, much of this is still to be fully implemented;
- Local government: Responsibilities and rights for the management of local resources are transferred to local government bodies, based on geographic boundaries. These are embodied in legislation on decentralisation, such as in the panchayat law reforms in India after 1992 and the Philippines’ Local Government Code of 1991.

The local institutions that work the best are those that are rooted in local values and established practices. The groups that seem to work best in managing CPRs are indigenous communities and user groups, and not (statutory) local government units. Indigenous communities and user groups have a direct material interest linking them together, rather than just being defined as belonging to a common geographical jurisdiction.

**The case of China:** In China, a different kind of forest reform is taking place. Under Communist rule, the majority of forested lands (58%) were brought under legal ownership by collectives rather than by the central state, with a small portion of these

collectives consisting of indigenous ethnic communities. These collectively owned forests cover some 100 million hectares and more than 400 million people (Xu et al. 2010).

In line with ongoing forest reforms since 2000, a new national policy was instituted in 2008, entitled “Guidelines on Fully Promoting Collective Forest Tenure System Reform”. This policy encourages collective forest owners to reassess and reallocate their forest use rights (though not the land itself) – whether to assign them to individual households, collections of households, or private contractors; or to maintain collective management at the level of hamlets (village clusters) or the commune (Xu et al. 2010). The net effect of this reform will be a shift of ownership out of the public domain and into the hands of communities.

### **Asia’s food security: small vs large farms**

Agriculture in Asia continues to be dominated by smallholders or family farms that depend largely on household labour and have less than two hectares of crop land. Asia today accounts for an estimated 87% of the world’s small farms, with China and India accounting for 193 million and 93 million small farms respectively (Thapa and Gaiha 2011).

Small farms dominate in most Asian countries. About 81% of farms in India have less than two hectares, and they account for about 44% of the total cultivated area. In China, 95% of farms are smaller than two hectares. In Pakistan, where no effective land reform programme has been implemented, there is a high concentration of landholdings; some 58% of farms are smaller than two hectares, but they account for only 16% of the total farm area. Meanwhile, growing populations and competition for farmland have resulted in a rapid decline in the average size of smallholder farms. In India, for example, the average size of landholding fell from 2.6 hectares in 1960 to 1.4 hectares in 2000 (Thapa and Gaiha 2011).

**The contributions of smallholder agriculture:** In most Asian countries, smallholders contribute a significant amount to the total value of agricultural output. In the case of India, for example, smallholders contribute over 50% of the country’s total farm output although they cultivate only 44% of the land. In many Asian countries, smallholders are the main

producers of staples such as rice, corn, root crops, and pulses, thus highlighting their important contributions to food security.<sup>24</sup> Small farms also serve as conservators as they tend to grow a wider variety of crops; these, in turn, serve to increase the resilience of small farms against pests, diseases, droughts, and other stresses.

Small farms are characterised by higher use of labour and family-owned inputs; they have a generally higher cropping intensity and are more diversified than large farms. There is a growing body of evidence that demonstrates an inverse relationship between farm size and productivity, *i.e.* small farms are more productive per unit area than large farms. This has provided a compelling argument in favour of land reform, as land redistribution would increase productivity, efficiency, and equity. This has also been shown by the experience of China (1978–1983), where the earlier shift from collective farms to household-based smallholder farming increased the incentive for farming and resulted in dramatic increases in productivity.

**The Green Revolution:** In Asia between 1965 and 1990, the Green Revolution provided a dramatic increase in three cereal crops – rice, wheat, and maize. It was driven by scientific advances and substantial public investments and support for agriculture. Cereal production doubled between 1970 and 1995, due to increases in yields rather than through expansion of the cultivated area.

The Green Revolution showed how dramatic results could be achieved by bringing about increases in production across large numbers of farmers. Yet it also came in for heavy criticism<sup>25</sup>. One criticism was that the programme favoured better-off farmers on irrigated farms or in areas that best approximated the laboratory conditions for which the technology was developed. Moreover, it was claimed that the programme favoured large farms because of their better access to irrigation water, fertilisers, seeds, and credit.

24 Smallholders also dominate in certain tree crops. Small farmers and rural communities produce three-quarters of Indonesia's rubber, 95% of its coffee, and most of its coconut/copra production (Contreras-Hermosilla and Fay 2005).

25 Among other effects, according to critics, the Green Revolution contributed to rural indebtedness, chemical effects on soils, water, and human health, and the loss of biodiversity and indigenous farming systems.

**The transformation of Asian agriculture:** Since the 1980s, the face of Asian agriculture has been undergoing a new transformation that has increased the barriers and risks for smallholder farms in favour of large, commercial farms. Major trends include:

- Changing diets: Due to urbanisation and increasing incomes, there has been a gradual yet significant change in Asian diets, away from staples (*e.g.* rice) that have traditionally been produced by small farmers towards livestock and dairy products and fruits and vegetables, thus increasing demand for high-value agricultural products.
- Trade liberalisation in agricultural products has made it cheaper to import food. The growing demand for food in cities and urban centres, especially in coastal areas, has made it cheaper at times to import from abroad than to procure goods domestically.
- Integration of the food industry: There has been a major transformation of the agri-food industry in Asia, which started in the 1980s. There has been a gradual vertical integration of the industry, from wholesaling to processing and retailing. Governments have supported the restructuring of the wholesale sector through public investments and deregulation policies, while the integration of processing and retailing has been driven largely by private sector investments.
- Rise of supermarket retailing: The food retail sector, in particular, has been undergoing a major transition – a phenomenon referred to as the “supermarket revolution” – with the rapid spread of supermarkets and fast food chains in many countries<sup>26</sup>. This has been spurred by the rise in foreign direct investment (FDI) as well as by domestic investments. Supermarkets have expanded to include the sale of fresh produce, and the dominant position of traders and supermarkets has put small farmers in a disadvantaged position.
- Expansion of commercial farms: Finally, in many Asian countries, there has been growth and expansion of commercial farms, aided by government policies and driven by growing private investment.

26 The rise of supermarkets started in East Asia, then spread to Southeast Asia and China; it has been estimated that the market share of supermarkets in China will double to 23% by 2015. In South Asia, rapid growth of supermarkets is not expected to occur, because of low incomes and highly rural economies (FAO 2008b).

**Biases against smallholders:** In the developing countries of Asia, smallholders cultivate small plots, often with little or no public support; they continue to be among the poorest and most food-insecure sectors in Asia and the world today. They lack storage and processing facilities, and they often depend on prices dictated by a limited number of buyers. Yet recent trends in agriculture and the food industry are putting small farmers at even greater risk.

For many small farmers, the opening of agriculture to trade liberalisation since the 1990s has meant the abolition of agricultural credit and subsidies from government, the privatisation of agricultural support services, and increased competition from cheaper imports. With trade liberalisation policies, there has also been a general decline in public investment and spending in agriculture in many Asian countries, in sharp contrast to OECD countries where agriculture continues to be heavily subsidised by the state.

With the integration of the food industry, small farmers are facing an increasing number of challenges – difficulty in accessing services and credit, weak extension services, and continued policy distortions that work against them (e.g. controls on prices of staples and traditional food crops). New economies of scale have emerged, due to technical changes (e.g. GMOs), new marketing arrangements (contracts with supermarkets with demands for continuous supplies and uniform products), and institutional changes (access to international finance).

Furthermore, the new systems and rules of the market seem to work against smallholders; this includes the development of a variety of food standards.<sup>27</sup> Given the entry costs of certification, combined with the high costs of monitoring compliance, trading and export companies are likely to switch their sourcing from smallholders to larger farms. Companies generally prefer to source from larger producers because of the lower transaction costs involved and because these producers also have easier access to non-land farm assets such as storage, greenhouses, and irrigation (De Schutter 2009).

<sup>27</sup> This includes those stipulated under the Joint FAO/WHO Food Standards Programme (Codex Alimentarius). However, different countries and corporations impose additional food standards – including rules on safety and hygiene, nutrition, labelling, traceability, processing, packaging, organic standards, etc.

**Addressing the challenges to smallholder agriculture:** Asia's food security and agriculture have traditionally been built on the productivity and resilience of smallholder farming. Today, the challenges are two-fold: first, to eliminate policies that are biased against smallholder agriculture; and second, how smallholders can meet the new challenges and demands of the emerging market.

Meeting the new challenges and market demands will require technological and institutional innovations, supported by government policy and public investments. "Economies of scale", for instance, can be addressed through farmer cooperatives and producer associations for credit, extension services, and marketing, and through engagement in various forms of contract farming, rather than through consolidation of farms. There are many successful examples of such initiatives across the region. Moreover, the very nature and diversity of smallholder agriculture allows smallholders the opportunity to supply niche markets, as well as to cater for demands for high-value products. Support for farmers through intermediation and negotiation will be important. Finally, government support must be based on a genuine appreciation and recognition of the central role of smallholder agriculture in meeting food security.

**Growing competition:** Half a billion people in Asia are undernourished, and the demand for food is expected to grow further with increases in population. It is projected that the region's population will exceed 5.25 billion people by 2050, which will require a 70% increase in food production to achieve food for all. The competition for agricultural land will be further complicated by the growing demands of industrialisation and urban expansion. Already, cropland per capita is only 0.23 hectares in East Asia and 0.27 in South Asia (compared with 1.55 hectares in Latin America and 0.74 hectares in the Middle East and North Africa.)

In recent years, large-scale commercial agriculture has grown increasingly attractive for new investment, and this has led to a global rush to secure farmlands overseas, including in several countries in Asia.

## Foreign farmland acquisitions

In recent years, wealthy food-importing countries and private investors have begun acquiring farm lands overseas for the large-scale production of food, biofuels, livestock, and other products. About 1 million hectares of land in Cambodia were acquired between 1988 and 2006, for both agriculture and forestry projects, and more than 415,000 hectares were acquired in two provinces of Lao PDR (Cotula 2011). In Asia, these land acquisitions have been led by capital-rich Arab Gulf states and the prosperous countries of East Asia. By one estimate, China, South Korea, the United Arab Emirates, Japan, and Saudi Arabia controlled over 7.6 million cultivable hectares overseas by the end of 2008 (Kugelman and Levenstein 2009).

While there are no central databases to show a complete picture of land acquisitions, a World Bank report in 2010 identified large-scale farmland deals covering 56 million hectares in less than a year. A more recent 2012 publication by the International Land Coalition reports that 203 million hectares were acquired in the period 2000–2010. Of these, 71 million hectares have been cross-checked and verified. Of these lands, 78% were acquired for agricultural production, while the remaining 22% were for other purposes, including logging and mining, livestock production, and tourism (Anseeuw et al. 2012).

Farmland acquisition has been driven by rising world food prices, starting in the 1990s and peaking in 2006–2008. Major food-exporting nations withdrew their food exports to protect their own consumers and to prevent unrest at home, thus exacerbating the food insecurity of food-importing nations dependent on the global market. Wealthy import-dependent countries decided to acquire farmlands overseas to meet their own food needs directly and to avoid the risks associated with dependence on world markets for food supply. The rise in agricultural commodity prices has also shifted the distribution of risks and profits in the food chain, boosting the potential profits to be made from agricultural production (Cotula 2011).

China has 20% of the world's population but only 8% of its arable land. Although it has a total land surface of 960 million hectares, only about 20% is cultivable, and nearly 90% of the population lives on one-sixth of the total land area. Yet China has managed to maintain self-sufficiency in grains and has

been a net food exporter for over 30 years. In recent years, however, China has been moving out of land-intensive crops such as food, feed grains, and sugar towards the export of high-value horticultural, livestock, and aquaculture products (FAO 2008). It has begun investing in agricultural land overseas to ensure its food supply, as well as to seize new investment opportunities.

After joining the WTO in 2001, and under its “Going Out” policy of 2004, China began investing in food and energy production in Africa and in Asian countries such as Burma, the Philippines, Laos, and Kazakhstan<sup>28</sup>. Similarly, Gulf nations have begun investing their huge oil-derived reserves in other Arab countries, in Pakistan, and in Southeast Asia. This trend is driven also by policy incentives for land acquisition overseas, such as Saudi Arabia's “King Abdullah Initiative for Saudi Agricultural Investment Abroad”, which supports agricultural investments by Saudi companies to promote food security (Cotula 2011).

This new wave differs from past foreign investments: it seeks resources (land, water) rather than commodities and markets; it seeks production for repatriation rather than for commercial export; and it involves actual production rather than joint ventures or contract farming. Also, the investments are much larger in scale, and are spearheaded by more government-led investment than in the past. While foreign investors are typically large, wealthy transnational companies or rich governments, host countries are poor or are embroiled in political conflict – thus raising questions about the terms and impacts of such acquisitions.

Yet far from being coerced, host governments have welcomed the new investments as a means to offset declining public investments in agriculture. FAO estimates that additional investments of USD 83 billion are needed annually for developing countries to meet their food needs in 2050. But with dwindling official development assistance (ODA) and large national budget deficits, many cash-strapped governments have to rely increasingly on the “private sector” or FDI. In most of South and Southeast Asia, agriculture's share of public spending declined from 14% in 1980 to just 7% in

28 China's trade with Africa grew from USD 2 billion in 1999 to over 107 billion in 2008 (Huggins 2011).



2004. Similarly, ODA to agriculture has declined significantly, by as much as 83% in South and Central Asia between 1980 and 2002, according to a 2004 DFID report (Ravanera and Gorra 2010). In Indonesia, agriculture accounted for 40% of GDP in 1970, but by 2008 the figure was less than 14%.

The second driver comes from the growth of the biofuels industry, which became competitive due to the sudden rise in global oil prices and Western governments' support for renewable fuels<sup>29</sup>. Biofuels production grew from 1 million hectares in 2001 to 25 million hectares in 2008 (FAO 2008). The usual crops are palm oil, sugar cane, maize, soy, and jatropha. With huge potential profits, the industry is expected to more than double in size between 2007 and 2017. This could affect agricultural production, with the possible shift of land use from food to biofuel crops. The production of biofuels is capital-intensive and has economies of scale, thus favouring the creation of large farms. FAO states that global biofuels production based on agricultural commodities increased more than three-fold between 2000 and 2008.

Many deals involve promises of financial investment, infrastructure, access to research and technology, and employment. The Malaysian and Indonesian governments have long supported the expansion of crude palm oil production for the biodiesel industry with tax holidays, subsidies, state company investment, and domestic agrofuel targets. In Pakistan, a Corporate Agriculture Farming Policy (CAF) was instituted by the military government in 2002, which offers state lands to foreign corporations (100% foreign equity), along with an attractive foreign investment package.

Given that most Asian countries limit foreign ownership of land, leasing has been the most common form of land investment in the region. This is done in two ways: either governments entrust ownership of large tracts of public land to special state agencies, which in turn lease them to foreign corporations, or

foreign entities enter into a joint venture or partnership with a domestic corporation, which then "fronts" as the lessee.

The deals have been labelled a "new colonialism" and an "international land grab". They raise many questions. What are the real benefits that accrue to the host country, and which sectors actually benefit? Why should host countries cede large tracts of productive land to foreigners while the countries themselves have growing populations who are chronically short of food supplies and dependent on imports? Don't such schemes compete for the same land as local farmers and producers?

One major concern has been the large-scale displacement of small farmers and settlers from their lands, even when so-called "public", "surplus", or "unused" lands such as forests are leased to foreign ventures. There are numerous written accounts of small landowners being pressured and intimidated into involuntarily leasing their lands. The intense competition for land can lead to conflict and abuses of human rights. Moreover, the new land deals will increase the concentration of land ownership and access, thus reversing the gains of earlier land reforms. Greater land competition also increases land values, thereby leaving the rural poor outside of land markets. Local communities are not likely to benefit if land deals result in the creation of "production enclaves" that operate in isolation from indigenous smallholder systems.

Questions have also been raised about the capacity of host governments to monitor investments and to implement regulations. Moreover, many of the deals are conducted in secrecy – without disclosure of information or public bidding – because they are treated as private transactions (even though foreign governments are involved as investors). With little prior information or consultation, local communities are caught unawares until the moment they are evicted or land clearing operations begin.

The international community has issued calls for international monitoring of investments, an international code of conduct, and voluntary guidelines for host governments. However, these voluntary guidelines are non-binding and non-enforceable.

29 The main driver for global investment in biofuels is the European Union policy target of sourcing 10% of all transport fuels from renewable sources by 2020. About 80–90% of this target is likely to be met by biofuels (Cotula 2011). According to Bello (2010), the irony is that, while policy-makers in the EU push for cleaner fuel and reduced greenhouse gas emissions, their palm oil imports (from Malaysia and Indonesia) actually destroy rainforests, threaten biodiversity, and cause the conversion of peatlands, which creates carbon emissions. Also, in 2007 the USA passed the Energy Independence and Security Act, which seeks to reduce the country's dependence on oil imports through mandatory use of renewable energy sources.

## Climate change and emerging land issues

Climate change is a consequence of the increased emission of greenhouse gases due to the burning of fossil fuels, and the loss of vegetation and carbon sinks. There is still great uncertainty about the levels of carbon emissions, the levels of warming, and their effects on biophysical systems and land use. What is generally accepted is that there will be a rise in temperatures, and that it is likely to be in the range of 1–2°C by 2050, based on scenarios put forward by the Intergovernmental Panel on Climate Change (IPCC). What is also certain is that climate change will have a direct impact on land availability and use, with implications for land tenure and distribution, thus adding a new layer to the complexity of Asia's land issues.

**Expected impacts:** Existing literature on climate change lists six types of impact:

- Rising temperatures, which will likely lead to reductions in crop yields;
- Reduced rainfall, which will reduce water availability for agriculture and is expected to affect semi-arid regions, especially South Asia;
- Increases in variability of rainfall in certain areas, with associated risks of flooding;

- Rising sea levels and increases in storm surges, which could affect coastal and low-lying areas, especially in South and Southeast Asia;
- Increased glacial melt, which could particularly affect the Himalayan glacial systems, on which the Indus/Ganges river basins depend;
- Loss of biodiversity, which could directly affect coral reefs, tropical forests, and other hotspots (Quan and Dyer 2008).

Among these changes, three are likely to have the greatest impact on land distribution and tenure systems. The first is the rise in sea levels, which will affect South Asia and Southeast Asia. Some two-thirds of the world's urban population living in coastal zones is in Asia, and current estimates of affected populations could grow even higher due to urbanisation and in-migration. The capacity of Asian countries to adapt to sea level rises will be affected by many factors, including the limited availability of land.

The second factor is glacial melt in Asia's mountainous interiors, which will affect the timing and flow of water downstream, on which irrigation depends. Water management systems, cropping patterns, and land tenure will be directly affected.

### Box 2: The monsoons of Bangladesh

The current effects of the annual monsoon season in Bangladesh provide an illustration of the potential impact and complexity of land tenure issues that come with climate change. Practically the whole of Bangladesh lies within the deltas of the Jamuna (Brahmaputra), Padma (Ganges), and Meghna Rivers. These rivers drain a 625,000 square mile area of South Asia that includes much of the Himalayas. During the monsoon months, an enormous amount of water flows over relatively flat lands – creating new channels, eroding riverbanks, and shifting silt deposits. In a country with high rural population densities, the social impact is immense. Over one million people a year shift their place of residence as their houses are washed away, or to take advantage of newly created lands (Indra and Buchignani 1997). As rivers expand and shrink, new land bars or riverine islands are created. These emerging riverine lands are known as char lands, where an estimated 5% of the population lives – literally, on shifting sands.

Settlement and ownership rights of char lands have always been complicated, in terms of ascertaining who owns the land. Is it owned by the state, by someone upstream, or by someone on the riverbank? There is a state ordinance that provides that “all newly emergent lands previously lost by dilution should be restored not to the original owner but only to the government”. In reality, however, it is often the locally powerful farmers (jotedars) who wrest control over accreted lands. Poor people have few options but to cope; as a local saying goes: “We just have to keep rolling like silt.”



An estimated half a billion people are likely to be affected in the Himalaya/Hindu Kush region and a quarter of a billion people in China who depend on glacial melt for much of their water supplies. Third is the collective impact of climate change on agriculture in a variety of ways – extreme weather, rising temperatures, water availability, and soil salinity – which will affect the distribution and use of arable lands.

**Response strategies:** Responses to climate change fall under two broad categories: adaptation, or efforts to reduce its effects on human and natural systems; and mitigation, or efforts to reduce the source of greenhouse gas emissions. Both adaptation and mitigation measures will involve major changes in land tenure arrangements. And while mitigation measures are likely to be driven by national agendas and international agreements, adaptation measures will be intensely local.

In adaptation, there is wide consensus that states should ensure adequate tenurial security for people and communities, as this provides the starting point and enabling environment for resource management. Currently, those sectors without secure land tenure rights and who are politically weak face the greatest threats from climate change. Hence, tenure systems should allow land rights to be reassigned to enable societies to cope with land use change, displacement and migration, and the expected rise in competition and conflict over land. As adaptation measures will be local, the capacity and role of local governments and institutions will be important. Communities will also need to understand the specific nature and scale of the risks that they face.

In climate change mitigation, on the other hand, much of the current debates related to land revolve around the use of forests. Deforestation currently accounts for 18–20% of global carbon emissions. Global strategies have been developed for forests that focus on the protection of (existing) natural forests and new tree-planting to offset carbon emissions. However, under an emerging global regime where forests are increasingly seen as carbon sinks and where carbon emission rights have become marketable commodities, these measures will have significant implications in the reassignment of property rights and tenure. They could further undermine land access and tenure security, especially for the rural poor, and could also lead to increased control of forests by corporations and external entities.

The strategy of improving forest protection is not altogether new, although when done under the framework of an international agreement it is likely to heighten debates about community ownership and access to forests. As countries are pressed to meet their international obligations, central governments are likely to impose stricter controls over forests, and conservation measures are likely to affect community livelihoods.

The second strategy involves tree-planting as a carbon mitigation measure. The Kyoto Protocol of 1997 led to the establishment of carbon reduction targets and to the recognition of trading in carbon emission rights as a means for countries to meet their obligations. This later led to the establishment of REDD (Reducing Emissions from Deforestation and Forest Degradation in Developing Countries), a mechanism whereby polluting governments and corporations can buy carbon credits to offset their emissions. What this “polluter pays” arrangement implies is that those with capacity to pay can continue their business as usual and can turn to the market for the purchase of “emission sequestration surpluses” (what might be appropriately termed “garbage rights”). The opposing view by governments is that financial incentives through REDD are necessary to ensure that mitigation measures are taken.

The new global trade in emission rights has led to growing interest and speculation in forest land in Asian developing countries, creating new pressure on existing land systems. At the local level, one current debate is whether REDD schemes should be seen as an opportunity or as a threat for poor communities who depend on forests for their livelihoods. Some sectors claim that REDD provides an opportunity to compensate or reward communities for their sustainable use and conservation of forests, akin to a payment for environmental services. Others view REDD as a threat, arguing that the legal and institutional frameworks are not likely to favour poor, forest-dependent communities.

For example, entitlement to payments under carbon offset schemes is directly linked to land rights; hence, those without legal forest tenure are likely to be left out or even displaced with increasing global competition for forest lands. In India and elsewhere, state agencies still tend to regard many large areas where indigenous people live as “wastelands” or “degraded land”, placing them at risk of expropriation for

plantation projects. Experience shows that where new money is involved, such as in carbon payment schemes, central states are likely to increase their controls over state forests and to reduce community influence over such resources.

Many carbon offset schemes are also likely to involve large, monoculture plantations of fast-growing tree species, displacing the forest systems on which communities depend. This is partly because new planting makes it easier to compute the levels of carbon sequestration on which payments depend. Furthermore, carbon sequestration has been cited in many instances as a new justification for the continued expansion of commercial tree plantations (rubber, palm oil, jatropha), which has displaced local communities in the process. As many plantation companies currently control large tracts of concession lands, they are simply on the look-out for the next profitable cash crop, which could be carbon.

The REDD mechanism has been viewed by some civil society groups as representing a “new colonisation” of forests in developing countries. Some international environmental groups argue that, where carbon offsets are traded to preserve forests, this would have the net effect of holding forests hostage to the price of carbon sequestration. Treating forests as “carbon sinks” also tends to overlook the other functions that they provide, especially for local people. Furthermore, since the Kyoto Protocol does not allow developing countries to create emission reductions from “avoided deforestation”, there is less of an incentive to protect existing forests than there is to replant new ones.

In the light of REDD, the key question now is what should be done to strengthen the legal and institutional framework for forest governance, including the nature and distribution of property rights in forest areas, and mechanisms to ensure and protect the land rights of the poor.

# Annexes

## Annex 1: Land and population in selected Asian countries

Country	Total land area (1,000 ha)	Arable and permanent cropland*		Population 2006		Pop'n annual growth rate (%)	Rural pop'n (%)	GDP 2006	
		Area (1,000 ha)	% of irrigated land	Total pop'n (x 1,000)	Density pop'n (per sq km <sup>1</sup> )			Per capita (USD)	Annual growth rate (%)
South Asia									
Bangladesh	13,017	8,417	54.3	155,990	1,198	1.8	74.5	1,155	6.6
Bhutan	4,700	n/d	n/d	648	14	1.7	88.6	4,010	8.5
India	297,319	169,583	32.7	1,151,751	387	1.4	71.0	2,489	9.2
Nepal	14,300	2,484	47.2	27,641	193	2.0	83.7	999	2.8
Pakistan	77,088	22,110	81.1	160,943	209	1.8	64.7	2,361	6.9
Sri Lanka	6,463	1,916	34.4	19,207	297	0.5	84.9	3,747	7.4
Southeast Asia									
Cambodia	17,652	3,852	7.0	14,196	8	1.7	79.7	1,619	10.8
Indonesia	181,157	38,500	12.7	228,864	126	1.2	50.8	3,454	5.5
Laos	23,080	1,074	17.2	5,759	25	1.7	79.0	1,980	7.6
Malaysia	32,855	7,585	4.8	26,113	79	1.8	31.8	12,536	5.9
Myanmar	66,755	n/d	n/d	48,379	74	0.9	88.7	979	4.1
Philippines	29,817	10,700	14.5	86,263	289	2.0	36.6	3,153	5.4
Thailand	51,089	17,687	26.6	63,443	124	0.7	87.4	7,599	5.0
Vietnam	31,007	8,920	33.9	86,205	278	1.4	73.1	2,363	8.2
East Asia									
China	932,740	115,632	47.5	1,328,474	142	0.6	68.7	4,644	10.7
Japan	38,450	4,714	54.7	127,953	351	0.0	34.0	31,947	2.2
North Korea	12,041	1,839	47.1	23,707	197	0.4	38.0	--	--
South Korea	9,873	n/d	n/d	48,050	487	0.4	19.0	22,988	5.0
Mongolia	156,660	1,200	7.0	2,604	2	0.0	43.1	2,887	8.6
Central Asia									
Kazakhstan	269,970	22,562	15.7	15,314	6	0.7	42.4	9,832	10.7
Kyrgyzstan	19,180	1,391	76.0	5,258	27	1.1	64.0	1,813	2.7
Tajikistan	13,996	1,057	68.2	6,639	47	1.4	75.4	1,610	7.0
Turkmenistan	46,993	2,266	89.1	4,899	10	1.4	53.4	4,570	11.1
Uzbekistan	42,540	5,040	87.4	26,980	63	1.5	63.3	2,192	7.3

Source: FAO. "State of the World's Forests 2009", Annex Section, pages 103-105. In addition, the data for arable and permanent cropland are from World Bank. "World Development Report 2008", pp.324-325

Annex 2: Asian countries: land area and land use, 2010 (in thousand hectares)

Countries	Total country area	Land area		Land use								
		Arable land and permanent crops	Permanent meadows and pastures	Forest areas	Other land							
	Hectares	%	Hectares	%	Hectares	%	Hectares	%	Hectares	%		
East Asia												
China	960,000	100	932,749	97.2	124,320	12.0	400,001	41.7	204,097	21.3	204,330	21.3
Korea, DPR	12,054	100	12,041	99.9	2,855	23.7	50	0.4	5,792.6	48.1	3,343.4	27.7
Rep of Korea	9,990	100	9,710	97.2	1,796	18.0	58	0.6	6,228.6	62.3	1,627.4	16.3
Japan	37,794.7	100	36,450	96.4	4,609	12.2	–	–	24,970.2	66.1	6,870.8	18.2
Mongolia	156,412	100	155,356	99.3	962	0.6	114,838	73.4	10,980	7.0	28,576	18.3
Southeast Asia												
Brunei	577	100	527	91.3	8	1.2	34	0.6	381.8	66.2	134.2	23.3
Cambodia	18,104	100	17,652	97.5	4,055	22.4	1,500	8.3	10,221.4	56.5	1,875.6	10.4
Indonesia	190,457	100	181,157	95.1	42,600	22.4	11,000	5.8	95,117	49.9	32,440	17.0
Lao PDR	23,680	100	23,080	97.5	1,468	6.2	878	3.7	15,829.2	66.8	4,904.8	20.7
Malaysia	33,080	100	32,855	99.3	7,585	22.9	285	0.9	20,542.8	62.1	4,442.2	13.4
Myanmar	67,659	100	65,352	96.6	12,135	17.9	305.5	0.5	32,082.6	47.4	20,828.9	30.8
Philippines	30,000	100	29,817	99.4	10,450	34.8	1,500	5.0	7,610.2	25.4	10,256.8	34.2
Singapore	71	100	70	98.6	0.7	1.0	–	–	2.3	3.2	67	94.4
Thailand	51,312	100	51,089	99.6	18,995	37.0	800	1.6	18,957.2	36.9	12,336.8	24.0
Timor-Leste	1,487	100	1,487	100.0	225	15.1	150	10.1	753.2	50.7	358.8	24.1
Viet Nam	33,105.1	100	31,007	93.7	9,630	29.1	642	1.9	13,653	41.2	7,082	21.4
South Asia												
Afghanistan	65,223	100	65,223	100.0	7,910	12.1	30,000	46.0	1,350	2.1	25,963	39.8
Bangladesh	14,400	100	13,017	90.4	8,549	59.3	600	4.2	1,444.6	10.0	2,423.4	16.8
Bhutan	38,394	100	38,394	100.0	100	2.6	407	10.6	3,238.2	84.3	94.2	2.5
India	328,726	100	297,319	90.4	169,623	51.6	10,340	3.1	68,289	20.8	49,067	14.9
Iran	174,515	100	162,855	93.3	18,991	10.9	29,524	16.9	11,075	6.3	103,265	59.2
Maldives	30	100	30	100.0	7	23.3	1	3.3	0.9	3.0	21.1	70.3
Nepal	14,718	100	14,335	97.4	2,520	17.1	1,730	11.8	3,636	24.7	6,449	43.8
Pakistan	79,610	100	77,088	96.8	21,280	26.7	5,000	6.3	1,730	2.2	49,078	61.6
Sri Lanka	6,561	100	6,271	95.6	2,170	33.1	440	6.7	1,874.6	28.6	1,786.4	27.2
Central Asia												
Kazakhstan	272,490	100	269,970	99.1	23,480	8.6	185,000	67.9	3,314.6	1.2	58,175.4	21.3
Kyrgyzstan	19,994.9	100	19,180	95.9	1,351	6.8	9,266.3	46.3	936.9	4.7	7,625.8	38.1
Tajikistan	14,255	100	13,996	98.2	875	6.1	3,875	27.2	410	2.9	8,836	62.0
Turkmenistan	48,810	100	46,993	96.3	1,910	3.9	30,700	62.9	4,127	8.5	10,256	21.0
Uzbekistan	44,740	100	42,540	95.1	4,651	10.4	22,000	49.2	3,279.4	7.3	12,609.6	28.2
ASIA (including West Asia)												
	3,196,501	100	3,093,557	96.8	549,611	17.2	1,089,226	33.1	590,819	18.5	863,901	27.0

Source: FAOSTAT; Forest area: FAO, Global Forest Resources Assessment 2010

### Annex 3: Forest area and forest coverage in selected Asian countries<sup>0</sup>

Country	Extent of forest 2005			Annual change rate			
	Forest area (1,000 ha)	% of land area (%)	Area per 1,000 people (ha)	1990–2000		2000–2005	
				(1,000 ha)	%	(1,000 ha)	%
South Asia							
Bangladesh	871	6.7	6	0	0	-2	-0.3
Bhutan	3,195	68	4,931	11	0.3	11	0.3
India	67,701	22.8	59	362	0.6	29	0
Nepal	3,636	25.4	132	-92	-21	-53	-1.4
Pakistan	1,902	2.5	12	-41	-1.8	-43	-21
Sri Lanka	1,933	29.9	101	-27	-1.2	-30	-1.5
Southeast Asia							
Cambodia	10,447	59.2	736	-141	-1.1	-219	-2
Indonesia	88,495	48.8	387	-1872	-1.7	-1871	-2
Laos	16,142	69.9	2,803	-78	-0.5	-78	-0.5
Malaysia	20,890	63.6	800	-79	-0.4	-140	-0.7
Myanmar	32,222	49	666	-487	-1.3	-466	-1.4
Philippines	7,162	24	83	-283	-2.8	-157	-2.1
Thailand	14,520	28.4	229	-115	-0.7	-59	-0.4
Vietnam	12,931	39.7	150	236	2.3	241	2
East Asia							
China	197,290	21.2	149	1,955.00	1.2	4,058	2.2
Japan	24,858	58.2	194	-7	0	-2	0
South Korea	6,152	51.4	251	-135	-1.8	-127	-1.9
North Korea	6,265	63.5	130	-7	-0.1	-7	-0.1
Mongolia	10,252	6.5	3,937	-98	-0.7	-83	-0.5
Central Asia							
Kazakhstan	3,337	1.2	218	-6	-0.2	-6	-0.2
Kyrgyzstan	889	4.5	166	2	0.3	2	0.3
Tajikistan	410	2.9	62	0	0	0	0
Turkmenistan	4,127	8.8	842	0	0	0	0
Uzbekistan	3,295	8	122	17	0.5	17	0.5

Source: FAO. "State of the World's Forests 2009". Annex Section

Annex 4a: Forest tenure distribution in the most forested countries of Asia, 2008 (all figures expressed in millions of hectares; numbers have been rounded)

Country	Public		Private	
	Administered by government	Designated for use by communities and indigenous peoples	Owned by communities and indigenous peoples	Owned by individuals and firms
China	72.85	0.00	99.94	0.00
Indonesia	121.89	0.23	0.00	1.71
India	49.48	17.00	0.00	1.07
Papua New Guinea	0.26	0.00	25.51	0.00
Japan	10.24	0.00	0.29	14.44
<b>Sub-total</b>	<b>254.72</b>	<b>17.23</b>	<b>125.45</b>	<b>17.22</b>

Source: Rights and Resources Institute (2010). "The End of the Hinterland: Forests, Conflict and Climate Change", p.8.w

Annex 4b: Concession data for three forested countries in Asia, 2008 (all figures expressed in millions of hectares; numbers have been rounded)

Country	Area of forest lands under concession	Area of forest lands designated for and owned by communities and indigenous groups	Comments
<b>Indonesia</b>	38.23 (timber) 32.77 (onshore oil) <b>Total: 71.00</b>	0.23	In Indonesia there are 319 natural forest concessions and 219 timber plantations
<b>India</b>	0.06 (mining) <b>Total: 0.06</b>	17.00	
<b>Papua New Guinea</b>	10.50 (timber) 4.99 (oil and gas) 0.19 (minerals) <b>Total: 15.68</b>	25.51	

Source: Rights and Resources Institute (2010). "The End of the Hinterland: Forests, Conflict and Climate Change", p.17.

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### About this volume

This paper examines land tenure systems and legal frameworks in Asia, and the current major debates around processes of land reform and justice for poor land users. It sets today's systems in their historical context, tracing their roots back to regimes imposed by colonising powers, mainly European, over a 450-year period. Colonial governance focused first on trade but then evolved to encompass land as a commodity and a source of revenue, with increased concentrations of ownership. Following World War II, many newly independent countries in the region initiated processes of land reform, which played an important part in state building. However, these efforts met with very different degrees of success, determined by individual country conditions and their historical legacies. The land reform process has remained largely incomplete, but today there is a resurgence of interest. This paper examines various models for reform and their potential to protect rights and access for poor land users. Among the major issues it discusses are women's access to land, the land rights of indigenous peoples, tenure for forests and public domains, the role of small farms, the phenomenon of land grabbing, and the emerging effects of climate change.

### About the Framing the Debate series

The aim of the Framing the Debate series is to facilitate a deeper understanding of land governance debates. Land governance is understood as the formal and informal rules, mechanisms, processes and institutions through which land is accessed, used, controlled, transferred, and land-related conflicts are managed. It encompasses, therefore, land tenure systems, land and agrarian reforms, and land administration.

The terms of the debate on land, agrarian reform, land tenure and administration have become increasingly diverse and complex, as a result of a rapidly and radically changing global context. The greater demand for land, for productive use, human settlements, as well as for environmental conservation and climate mitigation purposes, creates new land governance challenges.

Framing the Debate comprises regionally or nationally focused thematic papers relating to on-going and emerging land-related debates. A single publication may treat a wide range of land governance issues or focus on a specific theme. This publication commissions renowned land experts to share their perspectives on key issues, while acknowledging and fairly discussing other views. The papers published in the Framing the Debate series are intended to be accessible to a wide audience of land specialists as well as non-land experts.

This publication serves to better understand the current state of the land governance debate, to trigger further debate and pave the way for future study.

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Contribute your comments and opinions on the issues raised in this publications. The International Land Coalition welcomes letters on any subjects raised in Framing the Debate series articles, as well as your opinions personal perspectives on land governance issues. We really would appreciate hearing from you. Please submit articles of no more than 750 words. Please note that articles will be edited for publication.

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Please email your articles to: [info@landcoalition.org](mailto:info@landcoalition.org) with the subject line Framing the Debate Contribution.



### **Our Mission**

A global alliance of civil society and intergovernmental organisations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue, knowledge sharing, and capacity building.

### **Our Vision**

Secure and equitable access to and control over land reduces poverty and contributes to identity, dignity, and inclusion.

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