LAND TENURE IN ASIA AND THE PACIFIC

CHALLENGES, OPPORTUNITIES AND WAY FORWARD

SECURING LAND AND PROPERTY RIGHTS FOR ALL

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LAND TENURE IN ASIA AND THE PACIFIC
Challenges, Opportunities and Way Forward

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CHALLENGES, OPPORTUNITIES AND WAY FORWARD

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ACKNOWLEDGEMENTS

PREFACE

This year will be seen as a landmark year for humanity, because world leaders agreed on the 2030 Agenda for Sustainable Development. The agenda includes 17 Sustainable Development Goals with 169 targets that will shape decisions, plans and actions for people and the planet, prosperity and peace, all aiming to bring about a world where no one will be left behind. The 2030 Agenda requires competent, concerted and collaborative efforts by many, including addressing challenges in the land sector.

With inputs from the Global Land Tool Network (GLTN) partners, this Review aims to contribute to that process by identifying the key land tenure security challenges in 15 selected countries across Asia and the Pacific, as well as opportunities and potential way forward. This review of tenure security is the beginning of a regional process for sharing information and for partners to work together to design strategic entry points so that the poor can also have access to land and secure tenure. It is intended that this review provides a platform for the formulation of a road map for pro-poor and gender-responsive coordination among GLTN partners and other land stakeholders, leading to country level implementation of land tools in the region.

The Review was coordinated by UN-Habitat through the Global Land Tool Network (GLTN) partners United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), RMIT University and the International Federation of Surveyors (FIG). The methodology was validated at an inception meeting in Bangkok in October 2013, and at the GLTN partners meeting in The Hague in November 2013. It is based on a detailed review of available literature, selected interviews with regional experts, questionnaire responses from thirteen (13) countries, discussions and validation at multi-stakeholder meetings, and peer reviews. The challenges and conclusions arrived at are limited to the 15 countries reviewed. These countries were selected for their geographical spread, for their different exposure to cross-cutting issues, and for their differences in land reform history, culture and capacity. The countries chosen were: Afghanistan, Bangladesh, China, Fiji, Georgia, India, Indonesia, Lao PDR, Mongolia, Pakistan, Papua New Guinea, Philippines, Timor-Leste, Viet Nam and Uzbekistan.

Four country case studies (Lao PDR, Pakistan, Papua New Guinea and Timor-Leste) were commissioned to provide a detailed understanding of the tenure security challenges and opportunities at country level. Selection of these countries was based on their level of tenure security and capacity challenges, their diversity in contexts, and their spread across the sub-regions. In each case, the country case study was undertaken by local experts, and a brief summary of each report is included as Appendix of this Publication.

Two multi-stakeholder workshops were held to validate the findings. The first was a two-day workshop in Pattaya, Thailand (11-12 June, 2014) jointly organized by UN-Habitat, Food and Agriculture Organization of the United Nations (FAO) and UNESCAP. The second was a half day special FIG workshop on the Land Tenure Initiative in the Asia and the Pacific region at the International Federation of Surveyors (FIG) Congress in Kuala Lumpur, Malaysia (16-21 June 2014). These workshops focused on the broader regional governance challenges and opportunities, and their aim was to seek endorsement of the scoping study findings. The findings were also validated during the Regional Committee of United Nations Global Geospatial Information Management for Asia and the Pacific (UN-GGIM-AP) in Bali, Indonesia (10-12 November 2014), International Conference on Land Tenure Security in Asia hosted

by International Union of Notaries (UINL) in Ho Chi Minh, Viet Nam (12-13 December 2014) and Regional Workshop on Land Monitoring Initiatives organized by ANGOC in Manila, Philippines (21-22 April 2015).

The literature review was a large undertaking involving many reports and journal publications. It is acknowledged that there have been many reviews focusing on tenure security across part of the region or on a specific tenure-related theme. These include reviews by the World Bank, ANGOC, FAO, International Fund for Agricultural Development (IFAD), International Land Coalition (ILC), Land Equity International (LEI), Landesa, and the Asia Development Bank (ADB) among others. Of note were detailed country studies commissioned by the World Bank in China, Indonesia, Lao PDR, Philippines and Viet Nam. ANGOC provided in-depth country case studies, including on Bangladesh, India, Indonesia, Pakistan and the Philippines. Other reviews have been completed more recently.

The discussion in this report is unique in covering the whole Asia and Pacific region. The aim has been to consolidate this previous work, supplement it with input from interviews, questionnaires and the four country-level case studies, validation from multi-stakeholder meetings, peer review, and to expand the sub-regional understanding of the key issues, challenges and opportunities to draw conclusions across the whole region. This report is the major output of the review, and builds on earlier presentations of the draft findings for discussion and validation at the multi-stakeholder meetings.

It is acknowledged that there are limitations on the degree to which fifteen (15) countries may be considered representative of the very diverse and complex Asia and Pacific region. The conclusions of this review should therefore be seen as generally representative of some key challenges across the region, but that significant differences in priorities will exist at sub-regional and country level. It is envisaged that further sub-regional or country-level studies will be needed early in the process of designing country-level interventions.

It is aimed at a general audience involved in policy and decision-making in the land sector, as well as the broader development audience. The objective is to highlight the major land issues, challenges and opportunities in the Asia and the Pacific region as a basis for future decisions about partnerships and engagement in the land sector at sub-regional and country level.

The report is structured as follows: first, it outlines the key land tenure challenges of the Asia and the Pacific region and these are structured around the cross-cutting themes of changing rural populations, women's access to land, urban growth, Indigenous Peoples, the impacts of climate change and Islamic tenures. Second, it describes the limitations and barriers to improved tenure security. Third it discusses the key opportunities for improved tenure security. Finally, as a way of conclusion, a way forward is articulated and is grouped into (i) responding to the crosscutting issues, (ii) towards improved land administration and management, and (iii) addressing the barriers.

ACRONYMS AND ABBREVIATIONS

ACHR	Asian Coalition for Housing Rights
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
ASEAN	Association of South East Asian Nations
CCA	Climate change adaptation
CCM	Climate change mitigation
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CoFLAS	Costing and Financing of Land Administration Services
DRR	Disaster Risk Reduction
DRM	Disaster Risk Management
FFP	Fit-for-purpose land administration
FIG	Federation Internationale des Geometres (International Federation of Surveyors)
FPIC	Free, prior and informed consent
GHI	Global Housing Indicators
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GLII	Global Land Indicators Initiative
Habitat III	The Third United Nations Conference on Housing and Sustainable Urban Development
IG-UTP	International Guidelines on Urban and Territorial Planning
IPs	Indigenous Peoples
IPCC	Inter-governmental Panel on Climate Change
ISOCARP	International Society of City and Regional Planners (ISOCARP)
KPA	Konsorsium Pembaharuan Agraria
LGAF	Land Governance Assessment Framework
LRMF	Land Reform Monitoring Framework
LWA	Land Watch Asia
PILaR	Participatory and Inclusive Land Readjustment
PRAI	Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources
REDD	Reducing Emissions from Deforestation and Forest Degradation
RICS	Royal Institution of Chartered Surveyors
SAARC	South Asian Association for Regional Cooperation
SPC	Secretariat of the Pacific Community
STDM	Social Tenure Domain Model
UNDAF	United Nations Development Action Framework
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UN-GGIM-AP	Regional Committee of United Nations on Global Geospatial Information Management for Asia and the Pacific
UINL	International Union of Notaries
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

EXECUTIVE SUMMARY

This Publication presents the findings of a review of land tenure security issues in fifteen (15) selected countries across Asia and the Pacific region. It aims to highlight the major land issues, challenges and opportunities as the basis for future decisions about partnerships and engagement in the land sector at sub-regional and country level. The findings are based on an extensive literature review, interviews, a questionnaire, validation at multi-stakeholder meetings, and peer review. It is aimed at a general audience involved in policy and decision-making in the land sector, as well as the broader development sector.

In the past two decades, urbanization and the rapid transformation of urban areas in the Asia- Pacific region has been the engine of economic growth and prosperity in most countries. Urbanization across Asia has increased from 32 per cent urban in 1990 to 48 per cent urban in 2010. In 2018, the region will have more people living in cities than in rural areas for the first time. However, this economic success has come with social costs related to equity of access to land, and with environmental costs. Poverty is concentrated in marginal areas such as remote uplands, marginal coastal areas and unreliably watered drylands, and socially among women, indigenous peoples, the socially excluded, pastoralists, internally displaced people, the landless, and small and marginal farmers. There are major challenges related to climate change, natural disasters, food security and environmental degradation.

Despite the diversity of the region, six issues emerged as the key land tenure security issues for most countries and most regions. These were: (i) *changing rural populations,* (ii) *women's access to land,* (iii) *rapid urbanization and urban growth,* (iv) *Indigenous Peoples tenure security,* (v) *climate change and natural disasters,* (vi) and as *Islamic tenures and principles.* These key challenges are summarized below:

Changing rural populations. Agriculture in the region is dominated by smallholders, with an ageing farmer population increasingly made up of women. Colonial and national land reforms have resulted in an uneven distribution of land, and increasing land values concentrate landholdings in the hands of a few. A result has been a rapid decline in the average size of smallholder farms. Food and fuel prices, the impact of climate change and the growing demand for agrofuels increases competition for land. This brings a greater level of livelihood risk for the vulnerable and an increase in the number of landless. Unequal distribution leads to unequal opportunity to access land, and may result in migration between communities and between urban and rural areas. Increasing numbers of large-scale foreign farmland acquisitions and large infrastructure, mining or forestry projects provide opportunities, but there are concerns about the impact on poor local people, who risk losing access to land on which they depend and a loss of livelihoods. The rural landless and those with insecure tenure rights are typically the poorest and most marginalized groups.

Women's access to land. Land is a critical resource for women. Secure tenure rights protect livelihoods, and enable women to invest in housing and the land's productive potential, and adopt environmentally sustainable farming practices. Most women access customary land as daughters, nieces or wivesAccess to land for women varies under state laws and customary arrangements, and this is a common way in which poor rural women can be disadvantaged. Central challenges to gender-responsive land governance are the deep-rooted cultural practices and legal barriers in many countries that deny women land rights. Duality of legal systems and a dichotomy between the law and practice impact on women's land and property rights. Women's ability to inherit property is restricted in many societies. Laws and customs that govern family and social relationships have

Informal settlements against the backdrop of high rise buildings. Jakarta,Indonesia. Photo © Iwan Rudiato.

a significant impact on whether women have the right to inherit. Women with strong property rights are less likely to become economically vulnerable as a result of migration, abandonment, divorce or death.

Rapid urbanization (and urban growth). Rapid urbanization is a key challenge for the region. Urban growth comprising natural growth, migration and reclassification leads to the expansion in size of urban settlements and cities. Urbanization also impacts on urban land markets and land speculation. Population growth combined with a lack of affordable land in safe areas typically manifests as unplanned and informal settlements on unsuitable or hazard-prone land. In rapidly expanding cities local governments struggle to meet basic urban infrastructure and service needs for people in these informal settlements. Forced

evictions and land grabbing can lead to loss of shelter and disconnection from livelihoods. Under the threat of eviction, communities are less likely to build strong lasting social networks. The issue of forced evictions is especially acute in countries and regions with recent or ongoing armed conflict and as pressure for land increases. As Asian cities grow in size, population and prosperity, the demand for land causes land speculation and market distortions, and brings unforeseen pressures on an already scarce resource.

Indigenous Peoples rights to land. Approximately two-thirds of the world's Indigenous Peoples live in the region and land is central to their life, culture and beliefs. Indigenous Peoples are among the most socially and economically marginalized members of society, and face dispossession of their lands and natural resources.
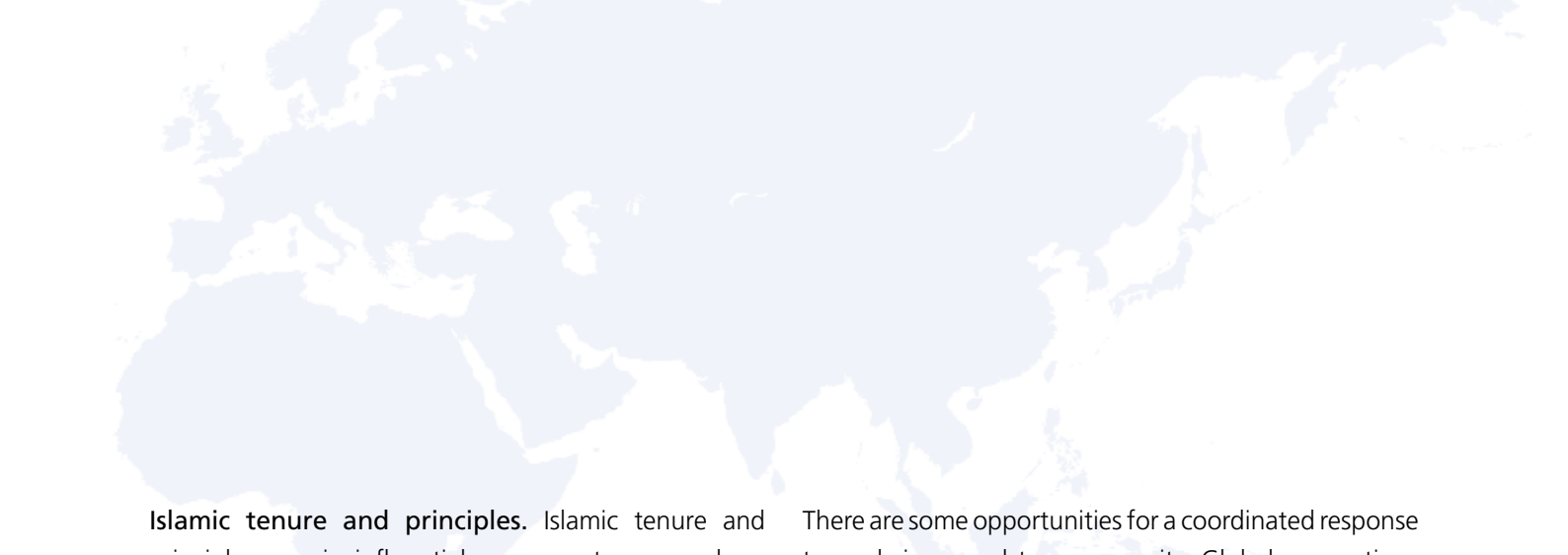
Technical team composed of women inspecting a shelter community project. Pakistan. Photo © UN-Habitat.

Increased demands for food and energy and foreign agricultural acquisitions have increased competition for common property land and resources. A result has been encroachments onto marginal and forest areas, Indigenous Peoples' territories and common property resources, and grabbing of Indigenous People's land has continued due to economic and commercial pressures. A proportion of Indigenous Peoples are also part of the global urbanization trend but in urban areas they encounter difficulty finding employment, and can face severe housing pressures.

Climate change and natural disasters. The region is among the most vulnerable to climate change, including more frequent natural disasters, glacial melt, sea-level rise, impacts on food and water security, and drought. The poor and most marginalized with tenure insecurity are more prone to long-term displacement after natural disasters. Responding to the impacts of climate change is one of the more urgent challenges of the post-2015 agenda. Climate change adaptation will require reducing the incidence of people settling on hazard-prone land, making decisions about existing settlements, and providing tenure security. The region also offers huge potential for REDD+ Programmes. However, poverty is more pervasive in forested areas that are vital to the rural poor. Interventions have the potential to impact on their existing property rights and many of these communities are not adequately recognized in the legal and institutional frameworks.

Islamic tenure and principles. Islamic tenure and principles remain influential as concepts, even where colonial reforms created new tenure types and formal approaches to land administration. However, there is a plurality of tenures in predominantly Islamic countries with formal, customary and Islamic tenures which results in land issues. Potential exists in using Islamic law principles and tenures to support pro-poor and gender-responsive land administration interventions. However, more research is needed on how these could be used as tools in practice.

Limitations in land administration and management. Across the region, ineffective and unresponsive land administration and management are barriers to improved tenure security. The legal and policy frameworks in most countries were largely developed during colonial periods and often only serve the elite. Duality exists between formal and informal systems and across sectors of government. Customary and other informal rights and norms are often not recognized and not recorded. In most countries reviewed, land tenure records are paper-based, out of date or inaccurate, and are vulnerable to destruction from disasters. Land-use planning in most countries is ineffective, highly political and subject to serious capacity and governance issues. Valuation of land is weak, impacting on the generation of tax-based revenue from the land sector, the determination of fair and reasonable compensation for people resettled, who have their land acquired. The key problems related to land management include:

(i) capacity limitations in public and private sectors requiring a long-term investment,
(ii) limited high-level support and the reliance on local champions, and
(iii) the large number of existing conflicts and backlog of land disputes which have a debilitating effect.

There are some opportunities for a coordinated response towards improved tenure security. Global conventions and frameworks articulate human rights and sustainable development principles that inform land responses. These include the Sendai Framework on Disaster Risk Reduction 2015-2030, the International Convention on Biological Diversity, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention and Protocol relating to the Status of Refugees, the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), and the International Covenant on Economic, Social and Cultural Rights. The Voluntary Guideline on Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), Land Governance Assessment Framework (LGAF), GLTN pro-poor and gender responsive land tools and approaches and Land Watch Asia also provide an opportunity for significant governance improvements at country level. There is also an opportunity to build on existing coordination networks, partnerships, programmes and projects in the region. Political-level regional coordination mechanisms and several regional forums exist. Existing programmes focusing on responsible land governance, disaster risk reduction, climate change adaptation and mitigation, dispute resolution, and food and water security programmes provide an opportunity to raise awareness of challenges and possible responses. The report concludes with recommendations in three areas:

(i) responding to cross-cutting themes,
(ii) improved land administration and management, and
(iii) addressing the barriers.

Responding to the cross-cutting themes on tenure security.

- Improvement to women's rights to land requires that all stakeholders embrace a human rights-based approach to create solutions that work for women. Development must be anchored in international law and provide for the full participation of women. Women's rights should be recognised and respected on equal terms, women provided with information about their land rights, and specialized programmes designed for particularly marginalized groups.

- A human rights-based approach requires that the legitimate land rights of the landless, rural tenants, smallholders, Indigenous Peoples, internally displaced people, customary landholders, and informal settlers be respected and protected. It will be necessary to ensure that the pressures from higher land values resulting from foreign investment and large development projects do not lead to dispossession of existing rights. Legislation and policies should recognize Indigenous Peoples' land rights, and require free, prior and informed consent. This involves recognition and documentation of the culturally distinctive differences in Indigenous People's land tenure regimes.

- Climate change adaptation (CCA) and mitigation (CCM), and disaster risk reduction (DRR) are priority actions and will require strong coordination between the multitude of stakeholders and local government. Securing and safeguarding land tenure rights for all is needed to improve resilience to the impacts of climate change, and effective land-use planning and control to minimize the spread of housing onto hazard-prone land. Land administration systems provide the basis for addressing land issues and, when informed about hazard risk and vulnerability, will support adaptation and disaster risk reduction programmes.

- Responses to urbanization demand a coordinated approach by local governments, the private sector, civil society, communities and customary land groups. Effective land-use planning and control, and pro-poor, fit-for purpose land administration will be needed. Effective urban profiling and slum upgrading programmes are a priority. The PILaR land tool artiulates an inclusive process of city growth and densification, and an improved supply of serviced urban land.

- In predominantly Islamic countries, applying appropriate Islamic law and principles in the design of land interventions, might provide additional legitimacy. These interventions should involve a political and risk assessment, and awareness that the existence of Islamic tools does not guarantee success.

Towards improved land administration and management:

- Greater awareness and implementation of the VGGT is needed. Monitoring and assessment using LGAF, the PRAI[1] and Land Watch Asia are also important. The Global Partnership on Land Indicators' Initiative (GLII), as facilitated by UN-Habitat/GLTN, provides an opportunity to assess progress against the Sustainable Development Goals.

- Achieving fit-for-purpose land administration at scale requires updating the legal framework that is consistent with international obligations and conventions. It should require that states recognize, record and respect all legitimate land rights. Equally fundamental is establishing the instruments to implement these frameworks.

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1   Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources, a discussion note prepared by FAO, IFAD, UNCTAD and the World Bank Group in 2010.

- Recognizing and recording rights to land across all tenures will require low-cost, pro-poor and fit-for-purpose land administration systems.
- Sustained and inclusive economic growth requires urban and territorial plans, and the provision of adequate infrastructure and services. Planning approaches should be adapted to different contexts and scales, and guide development agendas. Implementation will require political leadership, appropriate legal and institutional frameworks, improved coordination, sufficient capacities and consensus-building.
- Improved land valuation will support equitable land-based financing and taxation, establishing fair values for land acquisition or for establishing fair compensation for people who have been resettled.
- Land sector services also need to be more sustainable. Land agencies need to modernize their budgetary approaches and to adopt methodologies that ensure the provision of land services in an efficient, cost effective and inclusive manner.

Addressing the barriers:

- Capacity building is required in both the public and private sectors, for the successful implementation of land tools and programmes that address tenure security and land governance. Knowledge sharing and awareness raising are needed and civil society can play a key role. Improved human resource and technical capacity of land agencies is also critical.
- Cooperating on land issues amongs stakeholders are of great importance. Stakeholders agree that a regional coordination mechanism for stronger collaboration, learning exchanges, awareness building and capacity development is needed. Moreover, national platforms are needed to promote consultation and country-level dialogue

> *Capacity building is required in both the public and private sectors, for the successful implementation of land tools and programmes that address tenure security and land governance.*

on land tenure. These lead to joint advocacy statements that can engender high-level support at country level. Dialogue with communities and civil society builds consensus.
- Improving land-dispute resolution mechanisms is one of the most pressing issues identified by stakeholders and needs to be addressed. Several UN and international instruments and frameworks on managing competition over land and natural resources can provide further understanding and support.

01

INTRODUCTION

A local market place in Vanuatu. Photo@ UN-Habitat/Bernhard Barth.

Asia and the Pacific is one of the largest and most diverse regions on Earth in terms of economies, societies, culture, environment and human settlements. There is a vast diversity of cultural and ethnic heritage and the region's landscape varies from tundra to tropical forests and from the highest mountain to the greatest river delta. The region includes high-, middle- and low-income countries, several with Least Developed Country status, and many Small Island Developing States. The region is also diverse in terms of the legal and political frameworks and land tenure arrangements. According to *The State of Asian and Pacific Cities 2015,* between 1980 and 2010, the region's cities grew by around one billion people and will grow by another one billion up to 2040. The economic successes and transformations of cities in the region have lifted millions of people out of poverty, and cities are now the pre-eminent hubs of economic growth and wealth creation. However, in most cases this growth has come at significant social and environmental cost or in terms of equity (UN-Habitat and ESCAP, 2015). Also, great pressure has been put on land. Governments in rapidly growing urban areas are challenged to adapt quickly, to prevent settlement in hazard-prone areas, to develop solutions to informal settlements, and to provide basic infrastructure and services.

Export-led economic growth and expanding domestic demand has also helped the region to become a leader in poverty reduction. Between 1990 and 2005, extreme poverty in Asia and the Pacific declined by 50 per cent, from 49 per cent to 25 per cent of the population. Asia has also made good progress against the Millennium Development Goals' slum target, with governments improving the lives of an estimated 172 million slum dwellers between 2000 and 2010 (UN-Habitat, 2010).

The region's economic success has come with the social cost of increasing inequality as well as environmental cost. While there have been major gains over the last few decades, progress on urban poverty reduction is slow and, as a result, urban inequality is on the rise. The International Fund for Agricultural Development (IFAD) (2002) described the geographical and social dimensions of poverty in Asia from their field experience, saying that poverty is concentrated geographically in marginal areas such as remote uplands and mountains, marginal coastal areas and unreliably watered drylands, and socially "among women, Indigenous Peoples, the socially excluded, pastoralists, internally displaced people, victims of landmines, the landless, and small and marginal farmers". The Pacific Island countries (and

particularly Papua New Guinea) are highly dependent on subsistence agriculture and have not been able to sustain economic growth. In these countries, both poverty and inequality are much more pronounced than in East and South Asia.

Rapid urbanization and urban growth are major challenges in the Asia and the Pacific region and affect poverty levels, livelihoods, food security and the environment. The Asia and the Pacific region has also undergone rapid urban transformation and Table 1 illustrates the changes in the relative urban and rural populations (i.e. urbanization) in the sub-regions between 1990 and 2010. East Asia has had the most rapid urbanization rate at 2 per cent over the last two decades, and was 59 per cent urban in 2010. This growth has been dominated by China, which has had at an average annual rate of change in urbanization levels of 2.4 per cent and a growth in urban population of over 450 million people between 1990 and 2014. South-East Asia has the next highest urbanization rate (average growth of 1.4 per cent) and was 47 per cent urban in 2010. South and Central Asia are the least urbanized regions, with under 40 per cent of the population living in urban areas. Urbanization in the region is dominated by Southern Asia, with an annual average growth rate in urbanization rates of 1.2 per cent. The Pacific region overall (excluding Australia

TABLE 1: URBANIZATION IN ASIA AND THE PACIFIC 1990-2020 (ADAPTED FROM UN-HABITAT, 2010).

	Urban Population (1,000s)				Percentage Urban (%)			
	1990	2000	2010	2020*	1990	2000	2010	2020*
World	2,254,592	2,837,431	3,486,326	4,176,234	42.6	46.4	50.5	54.4
Asia	1,002,731	1,360,900	1,757,314	2,168,798	31.5	36.8	42.2	47.2
East and North-East Asia	430,533	594,676	784,688	940,684	32.2	40.4	50.2	57.3
South-East Asia	138,996	197,360	246,701	305,412	31.6	38.2	41.8	46.7
South and South-West Asia	351,062	467,323	598,207	765,125	27.9	30.6	33.3	37.4
North and Central Asia	140,475	139,358	137,184	140,435	65.4	63.9	62.9	63.6
Pacific - Melanesia	1,093	1,329	1,614	2,110	19.9	19.0	18.4	19.9
Pacific - Micronesia	261	326	390	454	62.6	65.6	68.1	70.4
Pacific - Polynesia	218	253	285	325	40.1	41.2	42.4	44.7

and New Zealand) has remained at low levels of urbanization, with Melanesia having an 18.4 per cent urban population in 2010. However, some Pacific Island countries are very urbanized, in particular Fiji, with an urbanization level of 52 per cent in 2010, and an annual average rate of change of 0.7 per cent (UNDESA, 2014).

Urban populations and urbanization trends in the region are dominated by China and India, which together account for 2.5 billion people (more than 37 per cent of the world's population). China was expected to become 50 per cent urban between 2010 and 2014, with India meeting this figure around 2044. Asia has six of the world's most populated countries: China, India, Indonesia, Pakistan, Bangladesh and Japan. However, India, Pakistan and Bangladesh are still predominantly rural, with only one-third of their population living in urban areas (UNDESA, 2014).

Rural land-use and livelihood patterns have also undergone a transformation with the rural farming population of predominantly smallholders becoming older and increasingly comprised of women. The rural-urban linkages are also becoming more complex. The global annual rate of rural population growth has declined from 1.34 per cent in 1960 to 0.37 per cent in 2013. While this is reflected across the Asia and the Pacific region, there are significant variations between countries. For example, the rural population actually decreased annually between 2010 and 2014 in China (-2.1 per cent annually), Mongolia (-1.6 per cent) and Indonesia (-0.3 per cent). Rural populations in Bangladesh, Fiji and Georgia remained static between 2010 and 2014, with small annual increases in Lao PDR during the same period. There was a modest annual increase in the rural population between 2010 and 2013 in India (0.8 per cent) and Pakistan (1.1 per cent). The remaining countries reviewed – Afghanistan, Philippines, Papua New Guinea, Timor-Leste and Uzbekistan – have had around 2 per cent annual growth in rural populations (UNDESA 2014).

Asia and the Pacific is also one of the most disaster-prone regions on Earth. Between 1970 and 2014, over 2 million people died from, and 6 billion people were affected by, natural disasters; that is 56.6 per cent of the global fatalities and 87.6 per cent of the people affected globally (UNESCAP, 2015).The most frequent disasters in this period were floods and storm surges. The impacts of climate change will be felt across all parts of the region (see Figure 1) and this presents a new range of challenges. Governments must address climate-related impacts in both urban and rural areas.

The region is also significant for the number of states that are fragile and conflict-affected. Of the 50 countries on the OECD's list of fragile states in 2015, 13 of these are in the Asia and the Pacific region. Four countries have remained on the OECD Fragile States list every year between 2007 and 2015: Afghanistan, Myanmar, the Solomon Islands and Timor-Leste (OECD, 2015). There is growing concern over the implications of fragility for international stability and post-2015 development goals.

Compounding these major challenges are tenure insecurity and conflict over land. Not everyone's access to land is secure and the more vulnerable groups are those most affected. The governance of tenure is a crucial element in determining the way people access land. Many tenure problems arise because of weak governance and attempts to address tenure problems are affected by the quality of governance. Weak governance of tenure adversely affects social stability, sustainable land use, investment and economic growth. People may lose their tenure rights because of corrupt tenure practices or if implementing agencies fail to protect their tenure rights. The result can include loss

of life in the case of violent conflict, loss of access to livelihoods, and loss of shelter.

FIGURE 1: OCCURRENCES OF NATURAL DISASTER EVENTS IN ASIA AND THE PACIFIC BY SUBREGION (1970 – 2014). SOURCE: UNESCAP (2015).
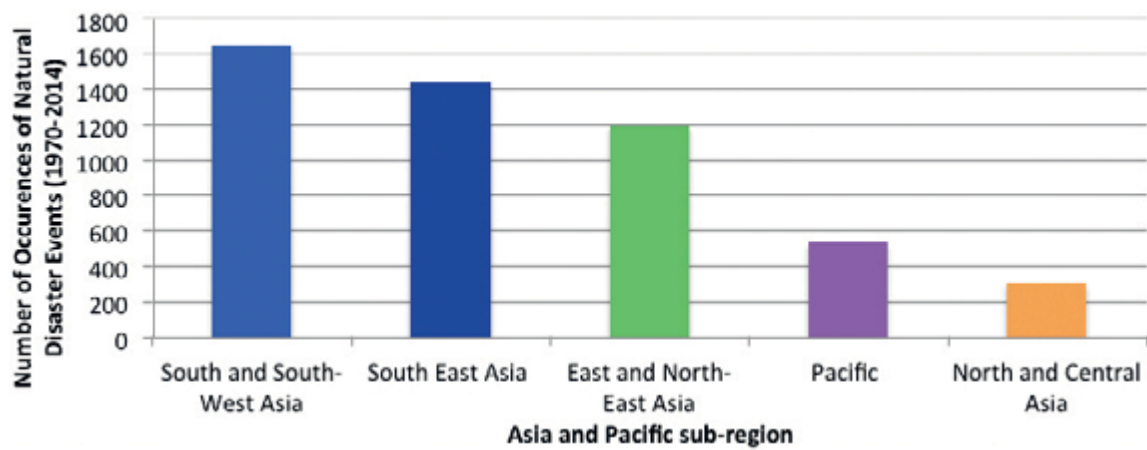
KEY LAND TENURE CHALLENGES

A woman working on a rice farm. Timor Leste.
Photo © United Nations/Martine Perret.

Land is a finite resource that must be managed more effectively to support the region's ambitious development goals for both rural and urban populations. While land issues are always highly political and controversial, they are extremely important to the lives of the poor, women, Indigenous Peoples and vulnerable groups.

Land tenure systems are a product of historical and cultural factors and they reflect the relationships between people, society and land. The land tenure system in each country has developed from historical norms and has been affected by colonialism. Outside factors, such as urbanization, economic growth and climate change, also affect land tenure systems. Despite the variety of challenges across the region, seven issues emerged as the key land tenure security challenges for most countries and regions. These are described in the following sections.

2.1 CHANGING RURAL POPULATIONS AND ACCESS TO LAND

Agriculture in the region is dominated by smallholders or family farms that depend largely on household labour and are made up of farm labourers, tenants and small farmers. However, pressures such as urbanization and climate change have led to an ageing farmer population increasingly made up of women. Rural women make critical contributions to household production and consequently to household and national food security, and the number of women smallholders is increasing as men migrate in search of other livelihoods. In some regions, the overall rural population is increasing, and in others it is decreasing.

A major issue affecting tenure security in rural areas is the declining availability of suitable land for agriculture. With many countries in the region experiencing increasing rural populations and competition for farmland, a consequence has been a rapid decline in the average size of smallholder farms. Over the last few decades, the size of smallholder farms has fallen dramatically, and it is estimated that 87 per cent of the world's small farms (less than 2 hectares) are in the Asia and the Pacific region. According to Thapa et al (2013), over 90 per cent

of the farms in China, Bangladesh and Viet Nam are less than 2 hectares in size. In Pakistan, 58 per cent of farms are smaller than 2 hectares, but they account for only 16 per cent of the total farm area, with some very large landholdings across the country, and this unequal distribution is one of the primary causes of poverty in rural areas. In India, for example, the average size of landholding fell from 2.6 hectares in 1960 to 1.4 hectares in 2000. The household responsibility contract system was adopted in 1982 in China, which led to agriculture land with rural collective ownership being divided by the number of households within one collective. Each family entered into a contract with the elected village committee about obtaining land-use rights to the agreed land parcels for a defined number of years.[1] This is a significant reason why China has so many small farms at present.

Thapa et al (2013) note that "despite wide-ranging diversities, many poor rural people in Asia and the Pacific region are either landless or own a limited piece of land, have large families, lack education and have limited access to markets, credit and technology". ANGOC (2012) adds that the rural groups most subject to poverty are the "landless, marginal farmers and tenants, adivasis or Indigenous Peoples, minority castes and internally displaced people. Rural women and female-headed households are particularly prone to acute poverty". Dry land-use systems in Pakistan have been defined for centuries by family and tribal relationships that allowed access to land on the basis of size of household and kinship. The increase in population and greater competition for rural land is increasing the pressure on these systems.

In addition to population growth and high food prices, the impact of climate change and growing demand for agro-fuels increases competition for land and threatens

tenure security. Insecure access to productive land and poor tenure security increases vulnerability to hunger and poverty, reduces capacity to invest in sustainable management practices and climate change adaptation, and reduces the security of livelihoods.

2.1.1 LAND DISTRIBUTION AND RURAL LANDLESSNESS

The impact of uneven land distribution was raised as an issue to varying degrees in relation to the countries reviewed. Previous colonial and national land reforms have led to patterns of uneven distribution of land and development. Higher commodity prices and food security challenges are also leading to increased demand for agricultural land. In many countries, the increasing value of land is leading to the concentration of landholdings in the hands of a few owners. This brings a greater level of risk to the more vulnerable and an increase in the number of rural landless and those with insecure tenure rights. ANGOC (2012) reviewed access to land in eight countries in South-West, South and South-East Asia and found that land ownership patterns are heavily skewed; land is concentrated in the hands of a few and many people own small parcels of land or are landless. Unequal distribution leads to unequal opportunity to access land and may result in migration between communities and between urban and rural areas. This can lead to tensions over land and resources. In some cases (for example, Indonesia), the rigidity of previous approaches to land distribution has led to land tenure structures with unequal access to land.

In China, according to the relevant law, a process of readjusting the contracted land parcels within one rural collective requires the agreement of at least two-thirds of the members of the village assembly, when the family changes its members or the total amount of agriculture land in the collective is changed. It is because of such complicated internal procedures that some families have been left with less land, and their tenure security and access to land is affected. In the Philippines, more

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1   It is stipulated in the law that the contract term of crop land, forest land and grassland is 30, 30-50, and 30-70 years respectively.

than 600,000 beneficiaries of agrarian reform are still waiting for the distribution of almost 1 million ha of land. In Bangladesh, there is a push for a declaration in the budget for the distribution of *khas* land to the over 30,000 landless households.

Land reforms in Pakistan in 1959, 1972 and 1977 have had a significant impact on the distribution of land. In the important *Qazalbash Waqf* case, a 1989 Federal Shariat Court observed that individual property rights in Islam are guaranteed and cannot be interfered with, and declared previous land distribution to the poor was un-Islamic. By 2000, only 37 per cent of rural households owned agricultural land, and 63 per cent were landless. As a result of land reform, Pakistan has retained a feudal system of land tenure in which an elite class of landowners owns vast holdings worked by tenant farmers and labourers. As little as 2 per cent of households control more than 45 per cent of all land, and 74 per cent of Pakistan's poor live in rural areas. Poverty is greatest among agricultural labourers and tenants. Since the 1989 ruling, rural discontent is widespread due to chronic poverty, corruption and a perceived failure of the government to foster development. Land tenure and property rights are an element of these problems, and undermine economic growth and fuel conflict. Extremists are building popular support based in part on anger over unequal distribution of land and unfair owner-tenant contracts (Khattak, 2014).

According to IFAD (2008), the rural landless and those with insecure tenure rights "typically constitute the poorest and most marginalized and vulnerable groups". Their rights tend to be unprotected and secondary, and rarely extend beyond use rights. Landlessness can be caused by a number of factors, including the impact of development projects. Various figures show that approximately 17 million rural families in India are landless with an estimated 60 million being displaced

over the last six decades, despite land ceiling laws. In Indonesia, landlessness is caused by expanding plantations and concessions for forest and timber and mining, and increases rural poverty and food insecurity. The landless families often reside on lands that are not recorded in their names. These lands could typically be government land or private land and, in the latter case, the landless families are allowed to reside only in exchange for free or subsidized labour.

A related issue is the large numbers of internally displaced people (IDPs) in the region. According to the International Displacement Monitoring Centre (IDMC, 2015), the largest number of Asia and Pacific IDPs in 2014 were in Pakistan (1.9 million) and Turkey (0.95 million). In South and South-East Asia, just under five million IDPs exist across 13 countries, with most in Pakistan, India, Afghanistan and the Philippines. At the end of 2014, there were at least 4.1 million IDPs in South Asia, and 854,900 IDPS in South-East Asia, as a result of internal armed conflict, violence and human rights violations (IDMC, 2015). There are more than 750,000 IDPs in Pakistan, with the majority living in Federally Administered Tribal Areas (FATA) in Khyber Pakhtunkhwa. This is recognized in the UNDAF for these countries, with the protection of these groups a priority. According to IDMC (2015), governments in the region largely prioritize return over other settlement options (e.g. integration or resettlement). They argue that in countries where the majority of IDPs do not wish to return to their places of origin (such as Nepal or Afghanistan), there should be alternative settlement options such as local integration.

In post-conflict countries, there can be large numbers of internally displaced and landless people. Afghanistan's population is predominantly rural with a large number of landless people, and this is recognized as a priority in the United Nations Development Assistance Framework (UNDAF), while Timor-Leste still has a large number of IDPs.

A girl walks past newly constructed houses. Aceh, Indonesia. Photo @ UN-Habitat.

The main cause of conflict-induced displacement in India, Indonesia, Myanmar, Pakistan, the Philippines, Sri Lanka and Thailand was internal armed conflict between government forces and others. Around 261,000 people were reported to have returned to their homes during 2012, and some countries (Myanmar and the Philippines) made significant progress towards the peaceful settlement of long-standing conflicts (IDMC, 2015). IDPs lack access to land, tenure security and livelihoods, which in turn restricts their freedom of movement. Refugees and internally displaced people in urban environments are forced to settle on land that is unsuitable for residential development and where there is a risk of natural disasters and insecure of tenure (UNHCR, 2012).

2.1.2   LARGE-SCALE LAND ACQUISITION FOR AGRICULTURE AND FORESTRY

Large-scale land acquisitions involve the acquisition of the tenure or use rights, generally for the purpose of agricultural production or forestry. Recent changes to the economic and political environment seem to have accelerated Foreign Direct Investment (FDI) in real estate development and agriculture, especially in agriculture for bio-fuel production (Bell, 2014). One of the major

drivers of foreign farmland acquisitions and leases is food security concerns, and countries such as China, Qatar, Bahrain and the United Arab Emirates are investing in agricultural lands, including in Cambodia, Indonesia, Malaysia, the Philippines and Pakistan. In Indonesia, palm plantations are expanding and the country is now the world's largest producer of palm oil. Other factors include the demand for bio-fuels, population growth, urbanization, and economic development.

A study of large-scale land acquisitions in 14 countries by Deininger and Byerlee (2011) reported: "In South-East Asia, area expansion has been pronounced for oil palm, generally under large estates, often with smallholders attached to them in Indonesia and Malaysia. Rice cultivation, entirely based on smallholders, has also expanded significantly in countries such as Thailand and Viet Nam. The oil palm industry has grown rapidly in response to global demand, high returns to investment, and low labour costs. In Indonesia, planted area more than doubled from about 2.9 million ha in 1997 to 6.3 million ha in 2007, with significant smallholder participation and creation of an estimated 1.7 million to 3 million jobs. In response to policies that aimed to foster development of the industry by giving away land (and the trees on it) for free, large areas with high biodiversity value have been deforested without ever having been planted with oil palm." These large

land deals have the potential to inject investment into agriculture and rural areas and provide opportunities for improved access to capital, advances in productivity, the transfer of technology, and the generation of employment in poor developing countries (Arezki et al, 2011; Thapa et al, 2014).

However, there are concerns about the impact on poor local people, who risk losing access to and control over land on which they depend (land grabbing) and the loss of livelihoods, as well as impacts on local food security, environmental damage and social impacts (Arezki et al, 2011; Thapa et al, 2014). Deininger and Byerlee (2011) found that "in many instances, outside investors have been unable to realize this potential, instead contributing to loss of livelihoods. Problems have included displacement of local people from their land without proper compensation, land being given away well below its potential value, approval of projects that were only feasible because of additional subsidies, generation of negative environmental or social externalities, or encroachment on areas not transferred to the investor to make a poorly performing project economically viable". They added that "countries with poorer records of formally recognized rural land tenure…attracted interest, raising a real concern about the ability of local institutions to protect vulnerable groups from losing land on which they have legitimate, if not formally recognized, claims".

A major concern in the region has been the displacement of small farmers and settlers from their lands. Many of these include Indigenous Peoples and local communities. According to Quizon (2013), "[T]here 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,

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". The most vulnerable to being dispossessed are those with insecure tenure. There can also be secondary impacts on access to vital livelihood resources, such as herding and the collection of fuelwood.

Many land conflicts in the rural areas of Lao PDR are directly related to the loss of access to land as a result of economic land concessions used for plantations (rubber eucalyptus, agar wood, teak), agricultural crops (coffee, cassava) or bio-fuels. Causes of the conflicts have included loss of communal resources (swidden agriculture and forests), inadequate compensation, and restrictions on livestock grazing and labour issues (wages, benefits or working conditions). Economic land concessions for agriculture cover approximately 430,000 hectares in Lao PDR, including large areas of land traditionally used by villages, and the physical environment has been drastically altered. There has been increasing community unrest in relation to the impact of these concessions. In response to concerns over their sustainability and increased community resistance, a moratorium on new economic land concessions was issued by the Lao Government in 2012 with greater success than the 2007 moratorium. There have, however, been new concessions at the provincial level due to loopholes, and the moratorium included only rubber and eucalyptus and mining. In Papua New Guinea, the creation of Special Agricultural and Business leases has seen 5 million hectares (11 per cent of the country's land mass) leased out in less than a decade, much of it with inadequate consultation and compensation to customary landholders and land users.

There have been three major concerns over the impact of land concessions. Firstly, many land areas under concession are operated in a management vacuum and at risk of conversion or abandonment, resulting in a loss of government revenues, negative environmental impacts, and the loss of livelihoods for affected local communities. Secondly, the governments have often been slow in dealing with non-performing concessions. Thirdly, there has been insufficient assessment of the impact of concessions on local communities (Bell, 2014).

2.1.3 LAND ACQUISITIONS FOR INFRASTRUCTURE, MINING AND FORESTRY AND OTHER PROJECTS

At times, large projects occur on land that includes villages and smallholder farms. Across the region there has been wide variation in the degree to which the property rights and tenure security of these landholders has been respected during the implementation of large development projects. There have been many examples of people being displaced with inadequate compensation, causing difficulty in resuming livelihoods elsewhere. This is a significant issue for most of the Asia and the Pacific region.

> ❛*Across the region there has been wide variation in the degree to which the property rights and tenure security of these landholders has been respected during the implementation of large development projects.*

Bell (2014) argued that poor governance is a key underlying concern for compulsory land acquisition and compensation. For example, Scheduled Tribes (STs) with customary usufruct rights and other traditional forest dwellers in India have had their land acquired for development projects. Inadequate compensation and resettlement processes have resulted in up to 60 million

people being displaced following development projects over the last six decades, with only a third estimated to have been resettled. Under a new central law in India, land acquisition by the state requires a detailed process of consultation with the potentially affected people and, in specific cases, their consent. There has been conflict in Lao PDR over compensation far below market value being offered for resettlement caused by foreign investment development or infrastructure projects. In the Pacific Islands, there have been numerous examples of violent conflict over compensation paid for the acquisition of customary lands for large mining and infrastructure projects. Also, in Timor-Leste the tenure insecurity of customary and communal tenures exposes the rural communities to threats of eviction or loss of land due to large agricultural or infrastructure projects. The acquisition of land by the state in Timor-Leste (as in other countries) is complicated by the unclear status of land tenure and overlapping claims to land. In many cases, officials are not sure whether the land in question is state land, and if it is not, with whom should they negotiate regarding the acquisition of land?

The lack of a fair and transparent valuation system in many countries undermines the determination of fair land compensation across the region. Land acquisition that is not based on fair and transparent valuation of land and property frequently leads to unjust compensation and conflict. Compensation is a contentious issue across the region. In 2012, a coalition of civil society organizations in Indonesia issued a petition to the Constitutional Court to challenge the passage of the new Land Acquisition Law due to alleged breaches of human rights, noncompliance with the United Nations Declaration on the Rights of Indigenous Peoples, and alleged unfair and unjust compensation (Bell, 2014).

2.2 WOMEN'S TENURE SECURITY AND ACCESS TO LAND AND RESOURCES

Land is a critical resource for women. About 50 per cent of the world's resource-poor farmers are women who also have primary responsibility for food security. To meet daily household needs they must manage and supplement a limited supply of resources from croplands and forests. Quizon (2013) says that "productive assets (especially land), when placed in women's hands, can make a big difference". Men are more likely to receive the financial benefits, such as royalties and compensation payments, and women are more likely to use these funds to benefit their families and community. Households where women control greater shares of assets and land spend more on basic household needs (e.g. food, and education). Women are also more likely to reinvest cash income in productive, long-term land uses.

Secure tenure rights enable women to invest in housing or the land's productive potential, and adopt sustainable farming practices to protect food security and livelihoods. Women with secure access to land become less dependent on men and are empowered to be involved in decisions about land. According to the International Land Coalition (ILC), 45 per cent of economically active women in South-East Asia are engaged in agriculture. While many women are not titleholders, they control the farm work. Land is acquired through customary inheritance systems but cultural norms and legal pluralism complicate policies and practices regarding land ownership and acquisition for women. Also, colonization, land reform and modernization have had a mixed effect on women's access to land in the Asia and the Pacific region. Land reform programmes often used the "head of family" concept (usually male) as the basis of land reallocation,

Tribal women on their way to market to sell their agricultural produce. Viet Nam. Photo © Muhibuddin Usamah.

resulting in the relative neglect of women's rights to land in some countries. Increased male urban migration leaves women as *de facto* heads of the household without statutory authority over land resources.

According to the Association of Southast Asian Nations' (ASEAN) (2007) *Third Report on the Advancement of Women in ASEAN,* women's rights to land are affected by:

- Land being predominantly owned by males. Fathers and sons carry the cultural tradition of being "bread winners, and land-titles are usually in their names.
- A predominant bias against women in access to credit. Women lack the assets that financial institutional institutions require as collateral, and are limited to informal credit which is more expensive and exploitative.
- Limited control over resources and productive assets affects the autonomy and economic, social and political participation of women.
- Men predominantly control productive assets such as land, capital, labour and technology, limiting women's full participation in productive activities.
- Poor availability of data on ownership indicators such as land, access to capital and credit, access to technology and information.

Gender roles shape the relative access to land and livelihoods for women and men. The diversity of land-tenure systems and cultures related to women's rights to land are complex and varied across the Asia and the Pacific region. However, there are some common themes. Across the region, most women access customary land as daughters, nieces or wives rather than in their own right. Women's rights to land, therefore, depend on maintaining good marital and social relations.

A central challenge to gender-responsive land governance is the deep-rooted cultural practice in many countries of denying a woman's land rights to her parents' land or to her husband's land if he dies. Under traditional or customary law in many countries across the Asia and the Pacific region, women acquire land through their husbands and male relatives. Women have to maintain good social relationships to access land. Cultural norms in South Asia often dictate that women cede their shares in parental land to brothers or uncles. In some cases, male relatives manipulate legal documents or use threats to discourage women from pursuing claims (Quizon, 2013).

2.2.1   INHERITANCE

Family laws also vary with regard to women's rights to property and inheritance, depending on ethnicity, religion or caste. Women have traditionally received land and property through inheritance in all East Asian countries, although this right to land is generally held without formal documentation (Bell, 2014).

In India, although women have equal legal rights to own land, less than 20 per cent of private land is in the woman's name. Similarly, under Chinese law, women enjoy similar rights to land as men, however, only a small percentage of women's names appear on land documents and forestland certificates. Rural land in China is mostly owned by rural village collectives and membership of a collective is closely related to the land tenure. It is common that a rural woman changes her membership in a rural village collective when she is married and moves to live with a man of another collective. There is still lack of practical regulation to ensure the women's rights are fully realized during their marriages.

In Timor-Leste, a lack of documentation of women's rights to land has become a major issue because a large proportion of women are left behind when men

migrate to urban areas. Many of these women are poor, illiterate, malnourished and with high fertility and low earnings. However, including women's name on land records does not guarantee full protection. In Indonesia and Viet Nam, while the inclusion of women's names on titles is an important element of a gender-responsive land administration process, it still does not guarantee full protection in the event of divorce. Some countries have implemented additional processes to protect the rights of women through targeted awareness-raising programmes among women and within their extended families (Bell, 2014).

2.2.2 LAND LAW, POLICY AND PROGRAMMING

Legal pluralism and a lack of gender responsiveness in legislation are key factors in gender inequality. Most of the countries reviewed are characterized by some degree of legal pluralism that impacts on women's land rights. This means women's access to land varies under the provisions of state laws and a variety of customary institutions, and this is a common way in which poor rural women can be disadvantaged. Where customary, religious or statutory systems co-exist, the least favourable law to women is often selected. Even when the legal framework is gender-responsive, other factors, such as the power differences between women and men, and cultural or social norms, determine who participates in policy-making, reducing the likelihood of gender-equitable processes and outcomes (FAO, 2013). Customary practices are often overwhelmingly more important to women's land rights than formal laws. Throughout South and South-West Asia, women's rights to land are recognized under customary, Islamic law or Hindu law, but family pressures and customs prevent women from benefiting from the rights afforded them under formal laws.

There is a dichotomy between the law and practice in many countries with regard to women's rights. For example, many countries in the regions have signed the *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),* and key parts of this international covenant are entrenched in national or local laws and policy documents. However, good laws and policy on land tenure have not always been enforced in practice due to a myriad of reasons, including gender and cultural bias, a genuine lack of capacity to do so, or indeed, a failure to adequately invest (or prioritise) in this.

In Pacific Island Countries, differences between traditional or customary norms relating to women's access to land and formal legislation and policies also affect women. According to the Pacific Islands Forum Secretariat (2008), "[T]here are documented cases in different Pacific countries where women's customary rights of full involvement in decision making have been usurped by male relatives when economic development of land or land titling takes place." Customary systems can "reinforce the subjugation of women, with introduced reform measures seen as positive, providing opportunities for equal participation in decision-making processes and increasing women's ability to reduce their economic and social vulnerability to outside influences". (Pacific Islands Forum Secretariat, 2008). For example, AusAID (2008) noted: "In Papua New Guinea, when mining leases were negotiated in Bougainville, women's rights in land were diminished during negotiations and in formal agreements. Men were over-represented as landowners in spite of these societies being matrilineal and rights to land being transferred through women. Men were signatories to agreements and gained control over compensation payments and royalties, often to the exclusion of their mothers, sisters and sister's children." Few women in the Pacific hold rights to customary land independently, and few contribute directly to decisions affecting their customary group's land. Therefore, women's property rights and access to land can be lost or modified through ways that are outside their control.

2.2.3 WOMEN'S TENURE SECURITY IN ISLAMIC COUNTRIES

Women have the right to acquire, hold, use, inherit and sell land under Islamic principles. However, under classical Islamic law (*Shari'a*), the devolution of land in full ownership (*mulk*) led to women receiving smaller inheritance shares. Historically, ownership of endowment (*waqf*) property was important for women, however, this is in decline. Land reforms across the Islamic world have tended to consolidate land in the hands of men. Women in predominantly Islamic countries often do not have access to the legal system through customary arbitration, Islamic (Shari'a) or state courts. *Waqf* represented an important means for women to access land. Nevertheless, the importance of waqf diminished for several reasons, for example the increasing number of beneficiaries that decreased the economic value of the land. Whereas waqf land accounted for up to one-third of land during the

> '*Women in predominantly Islamic countries often do not have access to the legal system through customary arbitration, Islamic (Shari'a) or state courts.*

Ottoman Empire, colonial and post-colonial influences led to the nationalization, regulation or complete abolishment of waqf, which negatively impacted on women's access to land especially. Today, large parts of waqf are unregistered and state-managed waqf often lies in waste or has been illegally encroached on, for example in India where waqf land has been nationalized. In Afghanistan, large parts of waqf are under state control and are not distinguishable from other public land. Due to the lack of capacity of the national agencies established to administer waqf land, it is frequently misused, which has led to a growing demand for privatization of waqf land.

Islamic law offers clear guidelines on which family members are allowed to inherit and what share of the inheritance each heir will receive. The group of receivers include the deceased's wife and children but also members of the extended family (UN-Habitat, 2011) Islamic law enables the inheritance of up to one-third of a deceased's property according to his Will. This provides the possibility of favouring female descendants as well as adopted or extramarital children. However, this possibility is often not used as Wills are often contested. The complex inheritance laws create challenges not just for the inheritors but also for the property because, according to Islamic law, one cannot withdraw as inheritor, which leads to an increasing fragmentation of Islamic land (UN-Habitat, 2011).

2.3 RAPID URBANIZATION AND URBAN GROWTH

Urbanization (the percentage urban) has increased dramatically across Asia, rising from 32 per cent urban in 1990 to 48 per cent urban in 2010. East Asia has had the highest annual change in urbanization (2 per cent) over the last two decades, and was 59 per cent urban in 2010. This growth has been dominated by China (2.4 per cent annual change). South-East Asia has had an average growth of 1.4 per cent, and was 47 per cent urban in 2010. South and Central Asia remain the least urbanized areas in Asia, with under 40 per cent of the population living in urban areas. The Pacific region overall still has low levels of urbanization. The result of increased urbanization includes population growth and the physical expansion of cities. These put pressures on the economic dynamics inherent to urban areas, resulting in more active (often informal) land markets, and more speculation over land. All of these factors, and not only the increased population number, threaten land tenure security.

Urban growth is a combination of rural-urban migration associated with urbanization, reclassification from rural

to urban areas, and natural growth which is typically the larger component and can be as much as 60 per cent of urban growth (Tacoli et al, 2015, UN-Habitat, 2015a). Urban growth has led to land pressures in cities due to the huge numbers involved. These pressures include housing shortages, rising costs of land for housing, and limitations in the availability of suitable and safe land for housing. The result is growth in urban slums, often on unsuitable and unsafe land, without adequate building quality, infrastructure and services. These issues are compounded by tenure insecurity and the threat of eviction. Another impact of informal urban settlements is that they often grow outside local government boundaries and plans for management of urban areas. For example, in Vanuatu's capital city Port Vila, much of the urban and peri-urban growth is outside the urban area and on customary land, with the local government lacking jurisdiction over it. Well-functioning land markets can enable effective and fair transfers of land and support revenue generation for government through land taxes, however informal settlements exist outside formal urban land markets.

According to UN-Habitat (2010), East and North-East Asia was the region with the largest urban population and also the highest percentage increase (32 per cent) between 2000 and 2010. South and South-West Asia had the second highest urban population and an increase of 28 per cent in the same period. North and Central Asia was the only region with a decrease in urban population during that period, however it is projected to increase by 1 per cent by 2020. China and India dominate urban growth predictions. Forward projections suggest that the highest rate of urban growth until 2020 will be in South and South-West Asia (27 per cent), which will also have the greatest growth in urban population (166 million people – 100 million of these in India). East and North-East Asia is second, with an estimated growth in urban population

of 156 million (of which 150 million will be in China). Another characteristic of the rapid urban growth is the emergence of mega-cities (See Table 2) and secondary cities in the region. Of the world's ten largest mega-cities of 10 million inhabitants or more, six of these are in Asia (Tokyo, Delhi, Shanghai, Mumbai, Osaka and Beijing).

By 2014, China had six megacities and India three. Outside of China and India, Asia has seven other megacities and 11 other large cities in 2014 (UNDESA, 2014). Of the urban agglomerations with more than 5 million inhabitants, the highest average annual rate of change (2010-2015) in the region has been in Suzhou (6.3 per cent), Guangzhou (5.2 per cent), Surat (4.8 per cent), Hangzhou (4.6 per cent), Beijing (4.6 per cent), Bangalore (4 per cent), Chengu (3.8 per cent), Dhaka (3.6 per cent) and Nanjing (3.6 per cent) (UNDESA, 2014). The majority of the population in Asia resides in secondary cities (cities of less than one million people),

TABLE 2: THE 10 LARGEST URBAN AGGLOMERATIONS RANKED BY POPULATION SIZE - PROJECTED TO 2030 (ADAPTED FROM UNDESA, 2015).

Rank	Agglomeration and country	population (millions)
1	Tokyo, Japan	37.19
2	Delhi, India	36.06
3	Shanghai, China	30.75
4	Mumbai, India	27.80
5	Beijing, China	27.71
6	Dhaka, Bangladesh	27.37
7	Karachi, Pakistan	24.84
8	Cairo, Egypt	24.50
9	Lagos, Nigeria	24.24
10	Mexico City, Mexico	23.87

Of the world's ten largest mega-cities of 10 million inhabitants or more, six of these are in the region including Shanghai.
Photo © UN-Habitat/Julius Mwelu.

with 47 per cent of the population living in cities of 500,000 or less. Therefore, these secondary cities are important in regional and national economies.

The urban population in South-East Asia is estaimted to grow by 59.7 million during the decade to 2020, with an additional 19.3 million people in Indonesia. There has been a marked increase in urban growth in the Pacific sub-region. For many Pacific Island Countries, 10-year growth rates are close to 50 per cent. For example, there are very high growth rates in Kiribati and peri-urban areas in Fiji and Port Vila (Vanuatu). The largest growth in urban population to 2020 is estimated to occur in Papua New Guinea with an increase of 331,000 people and a growth rate in the urban population of 38 per cent. This growth rate will present a significant challenge to Papua New Guinea. Fiji is also estimated to have strong urban growth with an additional 58,000 people and a growth rate of 13 per cent. In both cases, this growth predominantly occurs in informal settlements on the fringe of existing urban areas.

The World Bank Group has recently released a report that measures the spatial expansion of urban growth over a decade in East Asia (World Bank, 2015a). They found that the rates of urban expansion varied widely across the region; Lao PDR (7.3 per cent) and Cambodia (4.3 per cent) had the fastest rates of urban expansion over the decade to 2010, with Myanmar, DPR Korea and Japan having the lowest rates or urban expansion. This study also produced new data on the relative density of urban areas, finding that East Asia has among the densest cities in the world. Overall, these cities have expanded while maintaining relatively high levels of population density. This is at odds with claims of uniform urban sprawl. The highest urban density averages were in the Republic of Korea and the Philippines (more than 10,000 people per km2). China's urban density remained stable in the decade up to 2010 at 5,300 per km2. In the same period, Indonesia's density increased sharply to 9,400 per km2, while the lowest densities were in Japan, Lao PDR, Malaysia, Mongolia and Thailand.

2.3.1   URBAN LAND-USE PLANNING

Effective land-use planning and development control is essential for managing urban growth in a socially and environmentally responsible manner, and for supporting the performance of land markets. However, key characteristics of urban growth in many cities include diffuse patterns of growth, inefficient use of land resources, and a lack of effective urban and rural land-use planning. Key causes are outdated or conflicting policies governing land use, and ineffective planning controls and building regulations. Much land use is being privatised and governments have less and less control. The conversion of quality agricultural land into urban settlements, the growth of mega-cities, the large proportion of people who live in informal settlements, poor quality housing, and large increases in property values in some areas are all indicators of the ineffectiveness of land-use and development control policies and of land-use planning in urban and peri-urban areas. Another indicator of the inability of government to control urban growth is the spread of informal settlements onto unsafe, hazard-prone or unsuitable land. Settlement is more likely to be informal on hazard-prone areas, such as in marginal, low-lying sites along rivers, on floodplains, and areas at risk of landslides. These areas are less in demand and the poor and landless are less likely to be evicted from them. For example, in Phnom Penh in Cambodia, the pressures of rapid urban growth and an absence of land-use planning has exacerbated the shortage of housing for the poor, resulting in the spread of squatter and low-income settlements. As urban growth has occurred, the poor have been driven further to the periphery. Most lots in prime locations are government-owned and are sold to the private sector for development or retained for speculation.

UN-Habitat (2015a) argues that a typical response by government to rapid urban growth has been to formulate strategies to promote the development of secondary and tertiary cities rather than the mega-cites. However, historically, this has been difficult because growth patterns have been driven by economics and

> **'** *A key challenge for the region is to develop stronger land-use policies for urban growth that include all levels of government and are adopted across sectors.*

influenced by geographic factors. Also, resource constraints limit the number of urban centres that can be supported. Instead of land development policies controlling urban growth, macro-economic and sectoral polices in the region have had a greater influence and may be at odds with urban planning policy. A key challenge for the region is to develop stronger land-use policies for urban growth that include all levels of government and are adopted across sectors.

2.3.2   GROWTH OF INFORMAL SETTLEMENTS

Across the region, urban growth combined with a lack of adequate suitable land typically leads to informal settlements. These can take two forms: (i) housing constructed on land that the occupants have no legal claim to, or occupy illegally, and (ii) unplanned settlements and areas where housing is not in compliance with current planning and building regulations. Many settlements of the second type are established on unsuitable or hazard-prone land and are more exposed to natural hazards. Local governments in rapidly expanding cities struggle to meet basic urban infrastructure and service needs for people in these informal settlements and many residents live with constant risk to their lives and homes from disasters. Factors that contribute to vulnerability of informal settlements include limitations in the quality of housing, their location on unsafe sites,

insecure tenure and poor infrastructure. Many face the daily threat of eviction or resettlement, and state and community recognition of their right to land become important elements of their security.

According to UN-Habitat (2010), 505.5 million slum dwellers live in the Asia and the Pacific region (over half of the world's slum population). Officially, a "slum household" consists of one or a group of individuals living under the same roof in an urban area, lacking one or more of the following five amenities: (i) durable housing, (ii) sufficient living areas, (iii) access to improved water, (iv) access to improved sanitation facilities, and (v) secure tenure. East Asia (mainly China) and South Asia (mainly India) have the highest numbers of people living in slums. Across the various subregions, the proportion of urban residents living in slums varies between 24 and 35 per cent. The highest percentage living in slums in 2005 were in Afghanistan (89 per cent), Lao PDR (79 per cent), Bangladesh (71 per cent), Mongolia (58 per cent), Pakistan (47 per cent), Philippines (44 per cent) and Viet Nam (41 per cent), with significant concentrations in Fiji and Papua New Guinea. An increase in urban migration and the establishment of informal settlements is becoming a significant issue in Timor-Leste (UN-Habitat, 2010).

In the Pacific subregion, there has been significant rural–urban migration and growth of informal settlements. According to AusAID (2008), a common view in the communities is that informal settlements are temporary and that residents in these settlements will eventually return to their customary lands or be sent home. In recent times, some Pacific Island Countries (e.g. Fiji) have taken steps to recognize informal tenure in these settlements and to provide improved basic infrastructure and services where the community has existed for some time. Some of the problems related to Pacific urbanization include poor housing and an increasing

number of informal settlements, limited access to land, inadequate basic infrastructure, and increased hardship for vulnerable groups (e.g. youth, women and people with disabilities) who often lack formal tenure rights to occupy the land they have settled on. Given the rapid pace of urbanization and urban growth, and the limited availability of state and freehold land, most people are forced to live under informal arrangements on customary land with poor tenure security.

Between 1978 and 2004, the urban population of China grew from 18 per cent to 41 per cent of the total population. The formation of informal settlements occurred with the rapid influx of rural labour into the cities. Rather than spawn large shantytowns in China, scattered villages within cities are often behind walls built to hide their squalor and old, state-owned apartment buildings have filled the gap. In fact, the traditional notion of what a slum is appears to be difficult to find in modern China. Urban land in China is state-owned, while buildings on the land are owned by different entities or private people. Since the land-use right is separated from state land ownership, a land market has been developed with active transactions of land-use rights. Rural migrants living in slums often rent the houses and still have their memberships in the rural collectives they belong to, and hold the ownership of the rural collective land.

In China, there have been two classes of urban dwellers: those who have an official city residential permit (hukou) and the more recent arrivals who do not. The household registration system physically defines people as urban and rural. On the one hand, this system protects them from being completely homeless when urban development takes place in the area where they are renting the houses, but on the other hand it hampers them from becoming recognized as urban due to the lack of laws on the withdrawal of their

memberships at their original rural collectives. Reform of the rural collective land tenure system in response to urbanization is needed in China.

Insecurity of tenure, poor quality shelter, high risk of hazard and a lack of infrastructure and services for the slum dwellers was a concern in most of the countries reviewed. In Timor-Leste, for example, squatters are living in abandoned buildings or in poor quality shelters on unoccupied land. Their lack of tenure security and pressure from development and infrastructure projects exposes them to the threat of eviction without suitable resettlement alternatives. Throughout the Pacific Island Countries, there are many informal settlements at risk of natural disasters, particularly flooding. Papua New Guinea has many informal settlements in Port Moresby and Lae, although local authorities have not formally recognized their existence. Also, people who have occupied state land for more than 10 years are considered to be illegal occupants. In the urban areas of Papua New Guinea, informal settlers are the most vulnerable group as many live in flood-prone areas and drainage reserves.

The Centre for Urban Studies at Dhaka University in Bangladesh estimates that around 140,000 people affected by floods move to Dhaka every year. This migration puts tremendous strain on a very crowded city, and the Ganges Delta creates significant limitations on urban expansion. Dhaka is increasingly characterized by large slums, of which approximately 80 per cent are on privately owned land and are without basic services. Due to tenure insecurity, the slum dwellers live with the constant threat of eviction. In Afghanistan, informal, unplanned settlements shelter approximately 80 per cent of Kabul's residents. Ongoing tenure security challenges include inappropriate resettlement, land pooling by powerful interests, and approaches to land regularization.

Forced evictions and land grabbing are also major issues across the region. Eviction from increasingly sought-after plots leaves low-income populations with few alternative central locations (UN-Habitat, 2010). There are also strong links between the threat of eviction and the persistence and entrenchment of poverty. Eviction threats undermine the social, physical and financial capital of the communities and under these threats, communities are less likely to build strong, lasting social networks that would foster their self-development. Households, governments, NGOs and development organizations are unwilling to improve the housing conditions due the potential loss of valuable resources and facing legal actions. Also, individuals and households are unable to buy and sell their rights or use their property as collateral for investment.

The issue of forced evictions is especially acute in countries and regions with recent or ongoing-armed conflict, and as pressure for land increases. For example, in Afghanistan, many internally displaced people sought the relative physical security of Kabul offered during the conflict and built on public land. A consequence of rapid economic growth is that many private landowners and government agencies develop urban land, or they start commercial or infrastructure projects and evict slum-dwellers.

According to UN-Habitat (2010), nearly half of all forced evictions in the world occur in Asia's four most populated countries (Indonesia, China, Bangladesh and India). A major reason for evictions is increased pressure on land caused by rapid urban growth or large building projects, and a consequence of eviction is that it generates further poverty. Poor communities are the main targets and have the least resilience. Women bear the brunt of further impoverishment arising from evictions, having to deal with a lack of resources for families' food and basic services. Huairou Commission

(2012) argues for a greater role of women at the grassroots level. Organized communities where the majority of the members are women and are supported by grassroots women can be successful in addressing urban evictions and can develop sustainable policies and solutions for communities.

2.3.3 INSUFFICIENT AFFORDABLE, SAFE AND ACCESSIBLE LAND PROVIDED FOR HOUSING

The pressure for land in the region's fastest growing cities adds to the tenure insecurity of slum-dwellers. Urban land comes under pressure from migration, demographic growth and economic development. As Asian cities grow in size, population and prosperity, demand for land puts unforeseen pressures on an already scarce resource. One of the causes of the creation of new informal settlements is insufficient affordable land in safe areas. Low-income households need to live close to livelihoods. However, the most suitable land is generally in high demand and is the most expensive. Low-income households that need to be near the city centre occupy land that is not in demand, such as land which is prone to hazards (floods, landslides, earthquakes), or beside railway lines, canal banks and roadsides. Often this land is located on the urban edge and is not serviced. The inaccessibility of low hazard-risk, secure and affordable land is the major factor in the abundance of slums and urban poverty (UN-Habitat, 2010).

As many of the Pacific Islands comprise a large percentage of customary lands, much of the urban growth exists on customary land with or without the agreement of customary landholders. Also, this growth often occurs outside the urban zones and is not strictly under the control of urban local governments. One result is that the development is informal, often has insecure tenure, and has inadequate provision of infrastructure and services. In some countries in

the subregion, customary landowners enter into land deals that allow migrants (from other parts of the country) to settle on customary land. In Port Moresby in Papua New Guinea, for example, the conditions include a large initial payment and ongoing rental payments. In some countries, there is an active market for buying and selling dwellings in informal settlements (AusAID, 2008). For example, more than 80 per cent of the land in Fiji and Papua New Guinea is under customary ownership. Therefore much of the existing freehold or state land tends to be already urbanized or hazard-prone. In response to rapid urbanization and the growth of informal settlements, the Papua New Guinea Government has established the Office of Urbanization to attempt to free up customary land for urban expansion. However, their work to date has been hindered by land ownership conflicts.

2.4 NEED TO PROTECT THE TENURE SECURITY OF INDIGENOUS LANDS

The United Nations Special Rapporteur on the Rights of Indigenous Peoples defines Indigenous Peoples as "distinct cultural groups… who are indigenous to the countries in which they live and have distinct identities and ways of life". While in the Philippines the term "Indigenous Peoples" is used explicitly, most Asian countries use national terms such as ethnic or national minorities, hill tribes, adivasi, Masyarakat Adat, cultural communities or scheduled tribes (Feiring, 2013).

Feiring (2013) reports that approximately two-thirds of the world's Indigenous Peoples live in Asia.

The majority are in India (80 - 100 million), China (60 - 80 million) and Indonesia (50 - 70 million). Indigenous Peoples make up about 30 per cent of the population in Lao PDR and Myanmar and 14 per cent in the Philippines. Customary groups also comprise

Coastal towns are vulnerable to climate change impacts. Port Moresby, Papua New Guinea.
Photo © UN-Habitat/ Bernhard Barth.

the vast majority of the population in Pacific Island Countries, although their perceived tenure security is relatively secure compared to other regions given the predominance of customary lands. Indigenous Peoples are among the poorest in terms of incomes and, in some countries, have higher poverty incidence rates than the rest of the population (e.g. Viet Nam). In other countries, they constitute a large proportion of internally displaced populations (e.g. India). However, there Indigenous People's adopt diverse livelihood strategies in the region that includes pastoralism, small-scale agriculture, hunting and gathering, fishing and shifting cultivation. While most Indigenous Peoples have an historical cultural and spiritual bond to the land and natural resources, land is central to their life, culture and religion. As Quizon (2013) notes: "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."

2.4.1 NEED TO RECOGNIZE INDIGENOUS PEOPLES' RIGHTS AND TO PROTECT THEIR ACCESS TO LAND.

Indigenous Peoples are among the most socially and economically marginalized members of society and face dispossession of their lands and natural resources. Fluctuating oil and food prices, increased demand for food and energy, and foreign agricultural acquisitions have increased competition for common property land and resources. A result has been encroachments onto marginal and forest areas, Indigenous Peoples' territories and common property resources. Access to these common property resources is critical as they represent an important source of food and are the foundations of certain types of rural livelihoods. Particularly threatening to tenure security are large infrastructure projects, natural resource

extraction projects and projects involving payments for environmental services (e.g. REDD+), where indigenous communities may be displaced against their will and with inadequate compensation. In many countries, Indigenous People face forced evictions, destruction of their livelihoods and subtle pressure to assimilate. As a result, they strive for greater collective tenure security of their lands and access to resources that most legislation and land administration systems have difficulty addressing. The customary governance of Indigenous Peoples' land tenure and resource use has been eroded by colonization and land reform. In many countries, the legal frameworks for land place the right to state or "public" lands with the government. Conflicting laws regarding land protection, management and use have further marginalized Indigenous Peoples. Land grabbing of their land has continued due to economic and commercial pressures, and foreign farmland acquisitions have had a significant impact on Indigenous Peoples in some countries (Feiring, 2013).

> '*Indigenous Peoples are among the most socially and economically marginalized members of society and face dispossession of their lands and natural resources*

A 2013 ILC report on Indigenous Peoples states that a major challenge throughout the region "is the increasing privatization/ individualization of land ownership. This is happening even in areas where Indigenous Peoples are largely in control of their land and resources, such as in the Sixth Schedule areas and the 'tribal states' (Nagaland, Mizoram, Meghalaya, Arunachal Pradesh) in north-east India. In Cambodia, a programme pushing for registration (and titling) of individual land holdings is undermining the community land rights act, as people fear (and have been told)

that if they do not get their plots registered now they will end up having nothing at all. In north-east India, privatization of hitherto communal land is a complex process which is caused by state policies, changing land use (promoted by the government), the weakening of customary institutions, and the general underlying discourse of 'modernization'. As can be expected, such processes are captured by local elites and the result is a concentration of land in the hands of a few and the growth of landlessness" (Feiring, 2013).

Registration of customary lands is a key issue in Afghanistan to improve the tenure security of the approximately 80 per cent of customary landholdings. In China, the traditional customary land tenure was transformed into the rural village collective land ownership more than 50 years ago. Registration of rural collective ownerships has not been completed and a priority for China is for the registration to cover the entire country. In Indonesia, the Basic Agrarian Law (BAL) does not allow for the recognition of communal rights – an issue recognized in the United Nations Development Assistance Framework.

2.4.2   URBAN MIGRATION OF INDIGENOUS PEOPLES

According to the United Nations (2009), available data indicates that the majority of the world's Indigenous Peoples live in rural areas. However, there is evidence that Indigenous Peoples are part of the global urbanization trend. The causes of urban migration are the same for Indigenous Peoples as the wider population, and include seeking better economic opportunities and closer proximity to social services and facilities. In some cases, urban migration may be due to the destruction of traditional livelihoods, dispossession, military conflict or displacement due to natural disasters. The underlying factors can include poverty and inadequate tenure security of lands and resources. Indigenous Peoples in urban areas have difficulty finding employment, they

can have severe housing needs and limited access to services, and they have difficulty accessing credit to start businesses or income-generating activities. Indigenous youth are particularly vulnerable (United Nations, 2009). Indigenous migrants frequently become slum dwellers, often lack access to clean water, sanitation and energy, and are more vulnerable to natural disasters. These factors are some of the underlying causes of poverty and social exclusion among urban indigenous communities (United Nations, 2009).

2.5 THE IMPACT OF CLIMATE CHANGE AND NATURAL DISASTERS ON TENURE SECURITY

2.5.1 VULNERABILITY TO NATURAL DISASTERS

Responding to the impacts of climate change is one of the key challenges for the region in the Post-2015 Agenda. The Asia and the Pacific region is among the most vulnerable to the impacts of climate change, including an increase in the incidence and severity of natural disasters, glacial melt, sea-level rise, impact on food and water security, and drought. The regularity, severity and frequency of disasters has resulted in increased vulnerability and escalated tenure-related conflicts due to the post-disaster displacement and dislocation of residents that can severely impact on tenure security. Further, the poor and most marginalized may be more prone to dispossession in post-conflict settlements – particularly those with poor pre-disaster tenure security. This impact may be reduced if policy frameworks are put in place that recognize the importance of recording pre-disaster land rights, land-use planning informed by hazard-risk, and the channels for assistance.

The Asia and the Pacific region is especially vulnerable to natural disasters as it includes the volcanic ring of

fire in the Pacific and the cyclone and storm paths of Asia. The region dominates the list of 15 most exposed countries in the world (see Table 3). Between 1970 and 2014, 6 billion people were affected by natural disasters in Asia and the Pacific - 87.6 per cent of the people affected globally (ESCAP, 2015). From 1970 to 2014, a total of 11,985 natural disaster events were reported globally, of which 5,139 (or 42.9 per cent) were in Asia and the Pacific (ESCAP, 2015). In terms of absolute numbers, the countries most affected tend to be the largest and most populous countries and are often exposed to flooding (e.g. Bangladesh, China, India and the Russian Federation).

ESCAP (2015) reports that South and South-West Asia experienced the most natural disaster events between 1970 and 2014 (1,652), with over 1,000 reported in both South-East Asia and East and North-East Asia. The Pacific and North and Central Asia had significantly lower numbers of reports. However, the smaller countries may be even more exposed when considered against land area and population. The World Risk Index 2014 (Bündnis Entwicklung Hilft and UNUEHS, 2014) lists the number of people exposed to or threatened by earthquakes, storms, floods, droughts and sea level rise, and 9 of the 15 most-exposed countries globally are from Asia and the Pacific: Fiji, the Solomon Islands, Tonga, Vanuatu, Bangladesh, Brunei, Cambodia and the Philippines. Pacific Island Countries such as Fiji and Vanuatu regularly experience storm surges, while the Solomon Islands, Tuvalu and Fiji are in seismically active areas and are exposed to earthquakes. The largest relative physical exposure to floods, storms and earthquakes is in South Asia, South-East Asia and the Pacific Islands. Urban growth and population growth are exacerbating the exposure, and ESCAP (2015) notes that the number of people exposed to flooding every year has more than doubled between 1970 and 2010 from 29.5 to 63.8 million, and the population living

TABLE 3: TOP 15 COUNTRIES WORLDWIDE MOST EXPOSED TO NATURAL DISASTER (SOURCE: ESCAP, 2015).

Rank	Country	Exposure (%)
1	Vanuatu	63.66
2	Tonga	55.27
3	Philippines	52.46
4	Japan	45.91
5	Costa Rica	42.61
6	Brunei	41.10
7	Mauritius	37.35
8	Guatemala	36.30
9	El Salvador	32.60
10	Bangladesh	31.70
11	Chile	30.95
12	Netherlands	30.57
13	Solomon Islands	29.98
14	Fiji	27.71
15	Cambodia	27.65

in the cyclone-prone area has also grown from 71.8 million to 120.7 million.

As illustrated in Figure 2, East and North-East Asia accounted for approximately 68.9 per cent of total economic losses due to disasters in Asia and the Pacific, with South and South-West Asia accounting for 15.5 per cent. However, economic losses in East and North-East Asia are due to the larger economies of this subregion. The economic losses as a percentage of subregional gross domestic product was similar across all subregions (except North and Central Asia), and ranged from 0.28 per cent to 0.37 per cent (ESCAP, 2015).

When natural disasters occur and people are displaced from their lands, it is those with poor tenure security that have the greatest difficulty proving the legitimacy of their rights to land. They are also the most vulnerable to land grabbing and eviction. Improving tenure security of people living in informal tenures on hazard-prone land should be seen as a priority and included in disaster risk reduction programmes.

According to the Inter-governmental Panel on Climate Change (IPCC), sea level will rise between now and 2100 will likely be in the range of 0.26 m to 0.55 m for Representative Concentration Pathways 2.6 (RCP2.6) - a low-emissions scenario where carbon emissions are rapidly cut. Higher rises are predicted for other emissions scenarios. As many countries in the region have major urban areas in low-lying coastal zones, sea-level rise and storm surges in this range would have a major impact on existing and future urban areas (IPCC, 2013). Between 2000 and 2010, the number of people living in cities located in Asia's Low Elevation Coastal Zone (i.e. less than 10 metres above sea level) rose from 238 million to an estimated 304 million (about 18 per cent of Asia's urban population). Particularly vulnerable are deltas and low coastal plains where many large cities are located, such as in Bangladesh, and much of South-East Asia. Sea-level rise is a particular challenge for Small Island Developing States (SIDS) and the Atoll nations in the Pacific Islands. In extreme cases, such as in Kiribati and Tuvalu, sea level rise will put enormous pressure on a large proportion of the population to relocate, in some cases to another country. Kiribati has responded by buying land in surrounding Pacific Island countries to provide the potential to accommodate migration. SIDS (such as the Maldives and Pacific Island Countries) are particularly exposed. The capacity of SIDS to adapt to sea-level rises will be affected by many factors, including the limited availability of land.
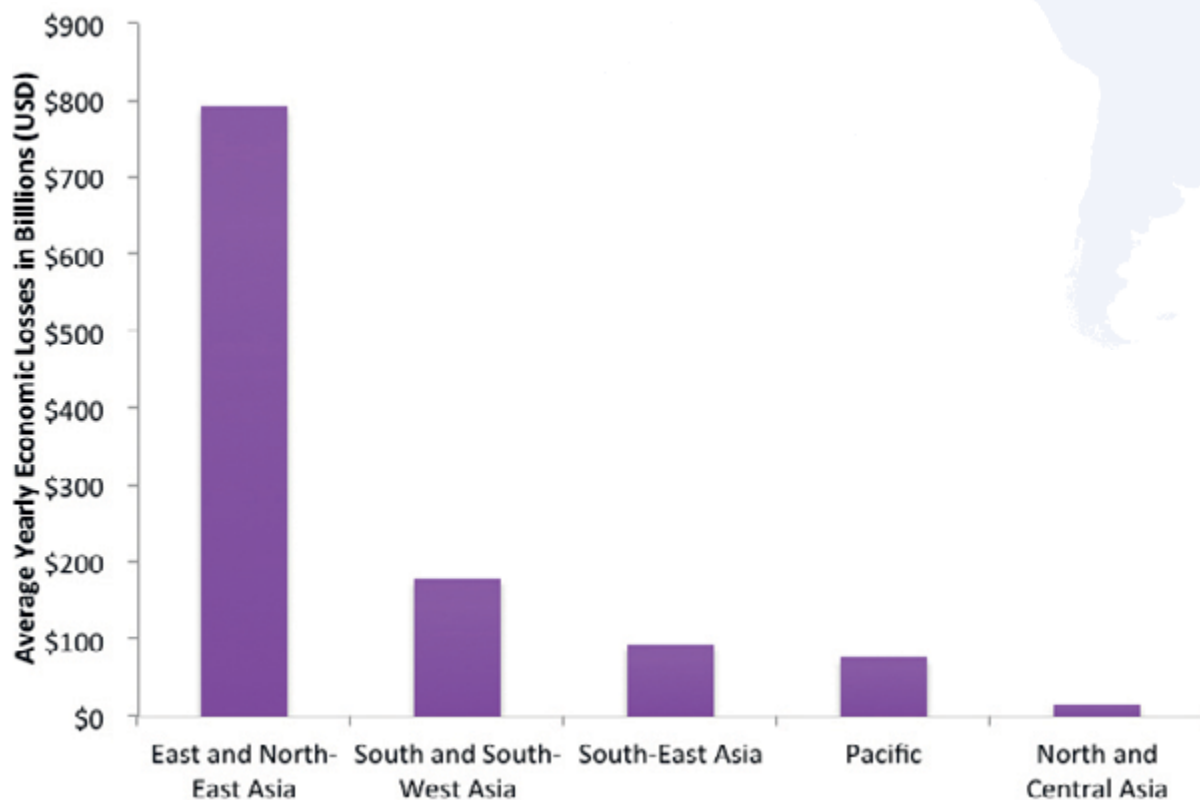
FIGURE 2: TOTAL ECONOMIC LOSSES OF ASIA AND THE PACIFIC FROM NATURAL DISASTERS BY SUBREGION (1970 – 2013) (ADAPTED FROM ESCAP, 2015).

Changes in the climate will also affect the glacial melts that provide water supplies to Central, South, East and South-East Asia. Quizon (2013) notes that glacial melt would have the greatest regional impact on the Himalayan glacial systems, on which the Indus and Ganges river basins depend. There would be changes to the timing and flow of water downstream, and therefore on water management systems and agriculture. He notes that 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". A decrease in the availability of freshwater is predicted to affect up to a billion people in Asia by 2050 (those living in affected areas). UN-Habitat/IIED (2012) note that

"freshwater availability in Central, South, East and South-East Asia, particularly in large river basins, is projected to decrease due to climate change which, along with population growth and increasing demands arising from higher standards of living, could adversely affect more than a billion people by the 2050s". In rural areas, loss of agricultural land due to inundation, drought or increased desertification will affect food security.

Quizon (2013) notes that climate change will also have a direct impact on land availability and land use, "with implications for land tenure and distribution, thus adding a new layer to the complexity of Asia's land issues". The poor are the most vulnerable, and climate change adaptation and mitigation responses must

also be aware of local migration patterns and consider security of tenure for the poor and vulnerable. Drought is more likely to affect the politically and economically marginalized. ESCAP/UNISDR (2012) report that Least Developed Countries (LDC), SIDS and Landlocked Developing Countries (LDCs) have small and vulnerable economies and less capacity to absorb impacts and recover. Many of the Pacific Island Countries, have small populations and comprise many small islands spread over a large geographic area. This results in limited capacity to undertake CCA or DRR measures. This is especially true of the small atoll nations such as Kiribati and Tuvalu where sea-level rise poses extreme challenges. Small islands have a high percentage of coastal zone that is at risk of the impact of natural disasters.

A woman gladly helping in the housing reconstruction project. Nias. Indonesia. Photo @ UN-Habitat.

2.5.2   REDD+ PROJECTS AND TENURE SECURITY

Studies have shown that the region offers huge potential for the United Nations' Reducing Emissions from Deforestation and Forest Degradation (UN-REDD) as its forests and peat lands are significant carbon sinks and important sources of carbon dioxide emissions. Through avoiding further deforestation, and forest-carbon stock enhancement, the region can contribute about 40 per cent of the total global REDD+ potential by 2050.The potential of forests to help stabilize the global climate has drawn international attention to conserving forest resources.

The Asia and the Pacific region contains almost one-fifth of the world's forests (18.6 per cent). Indonesia, Papua New Guinea, Lao PDR, Timor-Leste, Viet Nam, Georgia and Fiji have greater than 25 per cent forest cover. The Asian Development Bank (2010) undertook a classification of developing countries in the Asia and the Pacific region by forest cover (whether >25 per cent of land area) and rate of forest loss (whether greater than 0.5 per cent forest cover change). The greatest potential gains from avoiding forest degradation and

deforestation are in countries with large areas of forest cover and a high rate of forest loss. According to the ADB classification, six countries in South-East Asia (Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar and Timor-Leste), two in the Pacific (Papua New Guinea and the Solomon Islands,) and two in South and South-West Asia (Nepal and Sri Lanka) fit this criteria. These 10 countries make up 28 per cent of all forests in the Asia and the Pacific region, covering more than 206 million ha and Indonesia holds almost half of these. As a result, some countries have already implemented REDD+ projects and others are moving towards doing so. Indonesia has established a Presidential Task Force on REDD+. Viet Nam and Papua New Guinea also included the development of a national REDD+ mechanism as an UNDAF priority, and other countries with large areas of suitable forests will develop the capacity to move in this direction. Pakistan's Ministry of Climate Change, with the support of the UN-REDD programme, has established a national REDD+ Steering Committee, and undertaken pilot activities in the northern provinces where the majority of Pakistan's forest cover is located.

Two-thirds of the world's poor live in the region and poverty is more pervasive in forested areas, which are vital to the rural poor. For Indigenous Peoples, forests provide livelihoods, food and fuel and are an integral part of their cultural, social and spritual identities. According to Quizon (2013), REDD+ schemes "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". Quizon (2013) argues that in the light of REDD+ schemes, the key question 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".

In Lao PDR, a challenge for the introduction of REDD+ is the sustainability of land concessions and land and forest governance and tenure. The Lao Government responded by (i) creating a moratorium on new economic land concessions in 2012 in response to concerns over their sustainability, and (ii) undertaking a major overhaul of land and forestry legislation in 2013 to address these issues and introduce a basic legal framework for REDD+. The forest legislation review was initiated by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) CliPAD[2] project, as legislation was needed to ground the REDD+ investment in Lao PDR. There was a consultation process with civil society organizations and the private sector, but the process stalled with the creation of the new Ministry of Natural Resource and the Environment, and the associated institutional changes.

Interventions have the potential to impact the existing property rights and access to land of the forest dwellers.

‘ *Two-thirds of the world's poor live in the region and poverty is more pervasive in forested areas, which are vital to the rural poor.*

Many of these communities are Indigenous Peoples or poor rural communities and are not adequately recognized in the legal and institutional frameworks. For example, efforts to mitigate climate change in Lao PDR through reduced deforestation have important implications for land tenure security. The forest land best suited to REDD+ is often communal or state land used by rural villagers for non-timber forest product collection, timber harvesting and agricultural production. Also, seasonal swidden cultivation cycles are common on this land and farmers do not have secure tenure, so targeting this land for projects aimed at reducing deforestation without addressing land tenure security issues increases the likelihood that farmers would lose their access to land. A challenge for the introduction of REDD+ in Lao PDR is the sustainability of land concessions and resultant conflict over land. A major overhaul of land and forestry legislation to address these issues and introduce a basic legal framework for REDD+ was started in 2013.

According to IFAD (2011): "In practice, poor rural people face significant risks and barriers in relation to carbon markets and payments for environmental services more broadly. Participation in such schemes often requires that participants have clear titles over land, which may disfavour those who have insecure or informal land entitlements. Also, payments for environmental services (PES) contracts typically require long-term land management changes, which poor rural people may perceive as excessively risky. High transaction costs related to the development, registration and implementation of projects also create barriers. When

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2   Climate protection through avoided deforestation (CliPAD)

contracts for payments are made with groups, moreover, eligibility requirements and power inequalities can exclude poorer people. In addition, certain types of PES schemes – notably linked to REDD+ – may have negative impacts on Indigenous Peoples' communities where they provide incentives for others to encroach on their territories by increasing the market value of forest areas."

2.6   ISLAMIC TENURE AND PRINCIPLES

The Asia and the Pacific region is home to one billion people of Islamic faith, which is approximately 24 per cent of the total population in the region, and is 62 per cent of the global Islamic population (Pew Research, 2009). Even where colonial reforms created new tenure types and formal approaches to land administration were introduced, Islamic principles and tenures remain influential as concepts. The Ottoman Empire had a large impact on Islamic land law and modern land administration in the Islamic world. The Ottoman Land Code of 1858 was introduced based on Ottoman practices, and featured Islamic (Shari'a) as well as secular principles. Even before the introduction of the Land Code, the Ottoman Empire made great progress in land registration and a cadastral system was developed that covered almost the entire land holdings of the empire. The Ottoman Land Code of 1858 continues to be important conceptually in many Middle Eastern countries, including Iraq. The registration and taxation system is still used in many Islamic countries and represents a great source for historic data. Therefore, a broad knowledge of Islamic law and Ottoman practice is vital for the understanding of Islamic tenures (Sait, 2013; IIUM, 2014).

There is a plurality of tenures in predominantly Islamic countries with formal, customary and Islamic tenures that result in land issues. The Indonesia Constitution respects the existence of *adat* (customary traditions and usages).

Adat requires national level and transparent state land management, which is responsive to local traditions and customary practices, rather than private ownership. In Indonesian society, marriage and asset transfers are carried out based on adat, which is applied at the village level with a reference to Islamic law and religious tenets (Srinivas et al, 2015). The duality between Islamic law and post-colonial land law creates disconnects and land issues. For example, Islamic inheritance splits all assets, including land, among the inheritors which leads to fragmentation of small holdings (secured both through adat and occupation of degraded land areas) into much smaller sizes and rendering land administration almost impossible (Srinivas et al, 2015).

It could be argued that Islamic principles can inform land reform in predominantly Islamic countries. However, while there is a very long history of land administration under Islamic regimes, there is uncertainty in modern land reform in predominantly Islamic countries about the extent to which Islamic normative systems and principles should be engaged. Islamic principles are often not documented or aligned with formal land administration systems and legal frameworks.

Potential exists in using Islamic law principles to support pro-poor and gender-responsive land administration interventions. For example, there are obligations regarding philanthropy, fairness, responsibility, poverty alleviation and redistribution. Natural resources are subject to divine ownership with humans responsible for their just, equitable, productive and responsible use. The public treasury in the Islamic welfare state must support the poor and landless and ensure fairness and redistribution. As well as tax revenue, state funds come from individual contributions to the poor (*zakat*). Therefore Islamic practices provide access rights to a broad range of beneficiaries, including women, children, landless people and minorities.

Women's group meeting. Pakistan. Photo © Muhibuddin Usamah.

However, there is little research into how these tools could be used in practice (Sait, 2013).

This section considers Islamic tenures and legislation as a basis for assessing their potential for implementation as Islamic land tools.

2.6.1   ISLAMIC TENURES

Types of land tenure in Islamic countries are largely based on the Ottoman Land Code of 1858. They are very complex and do not follow Western concepts of ownership (Sait and Lim, 2006). Access to land is through intricate and interrelated tenure relationships, and is influenced by overlaps in Islamic, customary and formal norms. Inheritance rules allocate fixed shares to descendants. These are not merely individual rights; under these tenure systems landholders must exercise the rights responsibly and productively or the rights will be assigned to someone else more deserving (Sait, 2013).

Sait (2013) and IIUM (2014) described the following traditional Islamic tenure types.

1. *Mulk / millkiyyah* – private land with extensive land-use rights. Administration is based on the Islamic Inheritance Law and the rules of the Koran and mulk lands, along with usufruct rights can be passed on as gift or endowment (*waqf*) and can be inherited. Transfer is through a pre-emption (*shuf'a*) that provides a privilege to acquisition to the land's co-inheritors and neighbours.

2. *Mirri* – state-owned land. However, this does not follow the same principles as public land in Western countries. Mirri lands are held by the state in trust for the Islamic community, but with a wide range of access and usufruct rights to individuals. It is referred to as cultivated land where the cultivator pays taxes and holds a quasi-ownership of the land,

which allows him or her, amongst other things, to rent and sell land and its user rights. Robust individual usufruct *(tassaruf)* rights can exist over state land – This includes the right to use, exploit and dispose of *miri* land. The state cannot ordinarily acquire this land and must compensate the rights holder if it does.

3. *Waqf / awqaf* – is a charitable endowment where the property owner dedicates permanently real property, usufruct or income that is derived from the property. Islamic law recognizes waqf as owned by God and neither part of private nor public ownership. *Waqf* can refer to the endowment to the public *(waqf-khairi)* following the principles of charity to the Islamic community. *Waqf* can also be transferred to family members or other private persons *(waqf-ahli or waqf-khas),* in that sense, waqf acts as means to safeguard family property, as waqf is not allowed to be confiscated. The Islamic endowment is a key institution that incorporates vast areas of land in the Islamic world. At one time, one-third of Ottoman land was held in trust, although modern land reforms in several Islamic countries severely impacted endowments. However, the waqf concept remains influential and is closely tied to Islamic philanthropic principles, including those related to landless people.

4. *Mewat / mawat* – uncultivated or undeveloped land without an owner. One can be granted the right of ownership of *mewat* by cultivating the land based on the fundamental principle that land should be made productive and should encourage cultivation for subsistence farming. *Mawat* land has traditionally been used for reintegration of displaced people, and mawat land reclamation or land grants (iqta) by the state can facilitate greater land access.

5. *Musha* – held by communities and tribes for residence or herding. It can either be common, undivided land or communal grazing land. Every member of the community gets an assigned part of the land, which is redistributed periodically. *Musha* land still exists and plays an important role (Sait 2013, IIUM 2014).

However, formal legislation that derives from colonial times often does not adequately recognise these influences and overlaps. In Pakistan, for example, the implementation of Islamic principles in legislation is complex. For example, various *Shariat* Application laws introduced during pre-partition and post-partition times and the Constitutions of 1956 and 1973 recognize the application of Muslim personal laws to a deceased estate, where women are entitled to inheritance as per the rules of their faith. Different laws apply for Sunnis and Shias regarding deceased estates. However, no one can be deprived of inheritable property on the pretext of traditions and customs (Khattak, 2014).

2.6.2   LAND ACQUISITION

The fundamental concept of land ownership in Islam is that all land vests absolutely in Allah, not in the state. The role of the state, however, is as a trustee of Allah to govern lands in its territory for the benefit of its citizens and the public at large. In line with the social orientation of Islamic land ownership, the Islamic state has, on several occasions, compulsorily acquired land belonging to individuals or a group of people where the land is required for public interest (IIUM, 2014).

In Pakistan, the land administration system is very old with key reforms being undertaken in the sixteenth century and the British formalizing the land administration system during colonial rule. They introduced legislation providing for state rights, the relationship between owners and tenants, adjudication processes and dispute-

resolution mechanisms. Much of the land legislation from the British period is still in force. Other major land reforms were in 1959, 1972 and 1977 when land was surrendered to the government and redistributed, and restrictions were gradually imposed on maximum land ownership (Khattak, 2014).

A landmark verdict by the *Shariat* Bench of the Supreme Court of Pakistan is often cited as the main obstacle in the implementation of land reforms in Pakistan. The *Qazalbash Waqf* case involved the expropriation of land of *Qazalbash Waqf* (a religious charitable trust with more than 1,000 acres of irrigated land near Lahore). The land was appropriated for land reform in the late 1960s and early 1970s during the third wave of land reforms. Pakistan's Prime Minister Zulfiqar Ali Bhutto enacted the Martial Law Regulation, which provided for land to be taken from the rich and distributed among the poor. The Land Reform Act 1977 (Act II of 1977) further lowered the maximum limit of land ownership and provided cash compensation for those who surrendered land. The amount paid, though, was nowhere near the market price. Many who lost their lands (including the *Qazalbash Waqf)* approached the courts to seek relief but for many years there was none available as the land reform legislation was protected by the Constitution under various articles that prohibited judicial review and counter-legislation in this area. *Qazalbash Waqf* approached the Federal Shariat Court (FSC) in 1979 to have the decision reviewed. By 1989, the FSC declared land reforms un-Islamic and the land reform legislations passed during the time of Zulfiqar Ali Bhutto null and void. Recently, the Workers Party Pakistan, with some politicians and trade unionists, filed a petition in the Supreme Court of Pakistan to review the verdict (Khattak, 2014).

03

LIMITATIONS AND BARRIERS TO IMPROVED TENURE SECURITY

3.1 KEY BARRIERS

3.1.1 CAPACITY IN THE PUBLIC AND PRIVATE SECTORS

It is generally considered that institutional capacity in the public and private sectors in the Asia and the Pacific region is lacking. This is evident in the limitations in resources, inadequate legal and policy frameworks, and limitations in technical capacity. A lack of technical standards and practical guidelines of land tenure registration is another major problem. In many countries, the number of technicians and professionals who are capable of conducting a cadastral survey and registering land is insufficient and there are few universities providing degree courses in this regard. Inefficiency and limitations in transparency and accountability of land institutions are also key barriers to the implementation of projects to improve tenure security, sustainable growth and poverty reduction. Implementation of land tools at country level will therefore depend on the level of capacity, local priorities and demand, with questions of appropriate timing.

Capacity is a particular challenge for Least Developed Countries and the Small Island Developing States, which are lacking capacity at present to allow for the sustainable implementation of projects and land tools. In the Pacific region, while Fiji and Papua New Guinea have the greatest capacity for implementation, the other nations would require significant assistance. Many of these countries will continue to rely heavily on donor funding to implement large projects.

These limitations in capacity are a serious impediment to long-term and sustainable improvements to land governance and tenure security of the vulnerable. This report identifies many land issues that should be addressed and includes suggestions from various forums for improvements to land governance and land tools that could address these issues. However, while these recommendations can be implemented in more developed countries, they will be beyond the capacity of many countries in the short term. Least Developed Countries will have the greatest implementation challenge and will rely on significant financial and human resource support.

Building capacity and improving the institutional frameworks are needed across the region. Capacity development measures must be established at the start of projects that seek to improve land governance or tenure security, and should be at the societal, organizational and individual levels. Projects that address the capacity of government land agencies to implement the VGGT and address tenure security issues are a priority. Projects are also needed that help community organizations to develop knowledge of the VGGT, available land tools, land laws and policies, and will allow them to better negotiate and claim their rights. Improving the capacity of these organizations may allow them to partner with larger organizations to achieve greater impact with their advocacy for the poor and vulnerable. Building the capacity of women to advocate for gender mainstreaming is also important. The GLTN Capacity Development Strategy may provide some guidance for the Asia and the Pacific region.

3.1.2 HIGH-LEVEL POLITICAL SUPPORT

Significant and sustainable improvement to tenure security at the country level requires a long-term investment of at least 15 years and cannot occur without political will at a high level in government. However, support for the implementation of land tools often relies on a local champion to articulate the importance of improvements to land governance or the implementation of land tools. At the multi-stakeholder workshop in Pattaya, Thailand, it was suggested that governments have yet to give adequate priority

to agriculture and rural development. This includes budgetary support, incentives and awareness for youth employment in farming, measures to address migration and the aging farmer population, and address the conversion of land to non-agricultural use.

> ' *Significant and sustainable improvement to tenure security at the country level requires a long-term investment of at least 15 years and cannot occur without political will at a high level in government.*

There are signs that the importance of addressing land issues and sustainable development is increasingly recognized at the political level, and this is evidenced by the inclusion of land tenure in many United Nations Development Action Framework (UNDAF) documents. The recognition is also evident in the endorsement of the VGGT by the Committee on World Food Security, and the commitment to LGAF process in several countries across the region. In many of the countries, addressing land issues is recognized as essential, with high-level commitment to land reform. This creates an opportunity for improved dialogue and consultation, and assessment of priorities.

Both the World Bank and FAO have expressed a desire for interventions to be demand-driven through their Country Assistance Strategies and United Nations Development Action Framework (UNDAF) country strategies respectively. Articulation of the need for long-term investment by national governments to address the local land tenure and land governance priorities will require the development of a suitable political forum. ESCAP, through its existing networks and role in the region, has a potential role as the political platform for engaging governments in the land sector in the region.

3.1.3   CONFLICT AND LAND DISPUTES
Many of the issues raised above lead to land disputes or conflict over land, with governments unable to resolve the disputes within a reasonable time. Indigenous Peoples often find themselves involved in conflict with the dominant society, mostly over the loss of their lands, territories and resources or the deprivation of their civil, political, cultural, social and economic rights. The rapid pace of globalization has accelerated such conflicts and Indigenous Peoples, like all other peoples, need access to mechanisms for peaceful conflict resolution.

Disputes can also become violent and lead to deaths. For example, ANGOC (2012) reports that the estimated total number of deaths in Bangladesh attributed to land litigation in 2002 was 32,073. The annual number of new land-related cases in the country is 63,158, or 206 cases per 100,000 people. Plantations are the leading cause of mounting agrarian conflicts in Indonesia, making up 38 per cent of the total number of disputes. Data from the Supreme Justice shows that 60 per cent to 70 per cent of processed cases are land related. While the Philippines' legal framework has mechanisms for settling land disputes, one study found that land conflicts between farmers and other farmers are the main type of conflict (41 per cent), followed by conflicts with former landowners (at 35 per cent).

Land projects provide an opportunity to address long-standing land conflicts and disputes. The surveying and adjudication processes, extensive social engagement, and active participation of communities provide an opportunity for long-standing disputes to be resolved. For example, in Mindanao in the Philippines, conflicting claims over lands and their resources have triggered violent conflicts between many parties. Long-term sustainable development in conflict-affected areas in Mindanao requires that disputes over property rights of the settlers, ancestral land claims and communal land

ownership of Islamic Peoples and Indigenous Peoples be resolved. This is a daunting challenge when overlaid with poor governance, overlapping and conflicting land policies, and widening indifference and animosities among the parties involved (Bell, 2014).

IIn the Pacific Islands land can be a source of dispute and conflict. In extreme cases, this can lead to violent conflict. For example, violent conflict erupted between people in a number of squatter settlements on the edge of Honiara, in the Solomon Islands, who resettled from other parts of the country (mostly from the island of Malaita) following the Second World War and migrants working on the Gold Ridge mine and plantations. Much of the land occupied by settlers was on good- quality customary land, causing tensions. There can also be tensions between different ethnic groups. For example, indigenous Fijian clans cannot sell their land to non-clan members, however they can lease it. Most notably, many indigenous Fijians lease their land to Indo-Fijian farmers for the sugar cane plantations that are a crucial element of the Fijian economy. In recent years, land leases have been a major source of tension as many have expired or are approaching the end of the lease period. Many indigenous owners have not renewed leases and are planning either to begin working the land themselves or to try to obtain higher rents privately, leading to tensions between owners and tenants.

Participatory processes during land demarcation and adjudication minimize disputes. Bangladesh. Photo © UN-Habitat/Washim Akhter.

One of the key land challenges is to develop dispute-resolution mechanisms that are accessible and accepted by all and can reduce the backlog. It is simply not possible to making lasting improvements to tenure security without addressing the level of conflict and the processes of conflict and dispute resolution.

3.2 LIMITATIONS IN LAND ADMINISTRATION AND MANAGEMENT

The colonial history of land reform discussed earlier has had a significant impact on tenure security across the region. Colonial land reforms created a duality or plurality of customary and formal tenures, and associated legal, institutional and policy frameworks. Some legal frameworks across the region exclude the recognition of informal rights and some have significant overlaps and inconsistencies. Dual land administration systems exist in many countries for administering formal land rights and informal rights to land, including customary and indigenous rights. There are also disconnects in the legal, institutional

and policy frameworks across the land, forestry and agriculture sectors in many countries, with different laws and administration of rights existing in each sector. It has been estimated that as much as 70 per cent of the existing land rights globally are not recorded by land agencies, largely because of the disconnects mentioned above. These disconnects are a major impediment to security of tenure for all people.

3.2.1   LAND LEGISLATION AND POLICY

A disconnect between the legislation for formal and informal rights to land originates from colonial land reforms and exist across much of the region. This is compounded by administrative and capacity limitations, as well as overlapping and conflicting legislation across various sectors – in particular land, forestry and agriculture. Indonesia, for example, operates a dual system of land administration, with around 70 per cent of the land mass considered forestry land and covered by the Basic Forestry Law, and 30 per cent non-forestry land covered by the Basic Agrarian Law. A further 15 million hectares of forested land lies outside of the forest zone and is vulnerable to exploitation. Different interpretations and conflicting policies threaten the existing rights of Indigenous Peoples and local communities, and results in competing tenure claims and tenure insecurity (Srinivas et al, 2015).

In Timor-Leste, an urgent priority is the approval of a national land tenure policy that provides guidance on resolving overlapping land claims. The various waves of conflict-related displacement have created several layers of overlapping land claims with different sources of legitimacy: customary-based land rights, Portuguese land titles, Indonesian land titles, long-term occupation, and improvements made to destroyed and abandoned property by occupants. Since independence in 1999, a clear policy and legal framework has not been developed to guide decisions on these layers of

land claims. Consequently, a considerable proportion of land parcels are still disputed, and there is no legal mechanism to adequately address this (Almeida, 2014).

Legal and policy frameworks need to better reflect the rights of the most vulnerable groups and improve their access to justice. Section 5 of the VGGT calls on states to provide and maintain policy, legal and organizational frameworks that promote responsible land governance. A common barrier raised in this review relates to the plurality of land administration systems and legal frameworks. In the countries reviewed, the legal framework for land was developed during colonial times and only serves the elite. Rigid legal frameworks lack the flexibility to adapt to informal or customary practices and this has resulted in formal land administration systems, that cover a minority of the population, running in parallel with customary or informal systems for managing land. Therefore, the legal framework works against initiatives to improve tenure security and record tenure rights for all.

> ‘ *Land policies across the region do not adequately protect the tenure rights of the more vulnerable.*

Land policies across the region do not adequately protect the tenure rights of the more vulnerable. As mentioned earlier, in China there are no practical regulations to ensure women's rights are fully realized following marriage. Where they do exist, land policies in each of the countries reviewed lack adequate protection and tenure security for the poor and vulnerable. In many countries there is poor public awareness of the legislation and administrative processes for land administration and for protecting their land tenure rights. A further concern is the level of conflict over land, with the government unable to resolve the

large numbers of land disputes that arise. In each of the countries discussed in this report, the impact is a backlog in the resolution of land claims.

3.2.2   LAND ADMINISTRATION AND INFORMATION

Rapid urban growth has created a huge demand for new land rights to be recorded. The majority of these are social tenures and include primary and secondary rights to land. These legitimate social tenures with their primary and secondary rights should be recognized, recorded and protected. However, the capacity of land institutions to record informal rights is limited. Across the region, most people do not have access to formal land administration systems to record and safeguard their land tenure rights. The majority of these people are the poor and vulnerable who have legitimate but informal tenures. In most countries reviewed, there is a disconnection between informal customary/indigenous land practices and the formal land administration system. The lack of land records for informal tenures means that many of the vulnerable are not adequately recognized by governments, putting them at greater risk of eviction and land grabbing. For example, most states in India have land declared as non-distributable, however these lands have been cultivated for decades without land records. The land of tribal families is also recorded as Ryoti Land. Government land has been assigned to the poor in several states, however the recording of land rights and clear demarcation pose a challenge. These are key concerns for the Asia and the Pacific region.

In most countries, the land administration system is not capable of recording multiple overlaying rights reflected in informal tenures. Informal tenure tends to be very dynamic and requires that information on land use be collected more frequently than for formal tenure. A challenge for most of the Pacific Islands, for example, is how to formally recognize customary laws and property rights in a way that does not dilute or simplify the complexity of existing cultural norms. Where land rights are recorded, there is insufficient recognition of the complexity of informal tenures in the formal land administration systems.

There are two main limitations in the recording or rights in land administration systems: (i) tenure insecurity through poor land records or uncertain demarcation of boundaries for informal tenures, and (ii) land information that is incomplete and out of date. In most countries reviewed, land tenure records are out of date or inaccurate. The land administration system in Afghanistan, for example, has overlaps and lacks coordination; there are significant problems with the quality of land title records in Bangladesh and their processes for updating; in Georgia, like many countries in the region, less than 30 per cent of public land is identified on the ground; in India, records in most states are out of date and there is a disconnection between records and the possession of the land that affects nearly 30 per cent of rural families. Land records in Pakistan are predominantly paper-based and outdated (with the exception of the Punjab computerization project), cadastral maps are not connected to a geographic datum and are updated only every 25 or 30 years, with land records updated every four years rather than on each land transaction. The land records that do exist are limited to recording information on the proprietor, but not on the nature of property rights. One respondent said that corruption, changes to land records and the difficulty and expense in obtaining land records within a reasonable time in Pakistan are common causes of land disputes.

In all subregions, the quality of land information is a key issue. Land records in many countries are paper based and often out of date. The coordination of the management of land information management across different ministries is typically poor. In Lao PDR, for example, land-related information is not managed by the government in a systematic and uniform way. Each department responsible

Salvaging land titles after a flood. Leyte, Philippines. Photo © UN-Habitat/Danilo Antonio.

for work related to land manages its own information, so land-related information is stored within different departments and not combined in one location. The Department of Lands maintains data on registered land and property taxes within its various national, provincial and district offices, while the Department of Forestry manages information about the areas and location of different types of forest land (Inthakoun, 2014).

Protecting land registration systems and land records from disasters is also an important issue. Damage or loss of land records in a natural disaster can severely impact the mortgage system and prevent legitimate rights holders from proving their rights to land, which creates the potential for land grabbing, conflicts and disputes. Following the 2004 Asian tsunami, land records and household records in Aceh were severely affected. While some government land records were recovered using a freeze-drying technique, the effect on land records created a serious impediment to the post-disaster adjudication of land rights and a complete reconstruction of land records was required. All land recording systems should provide for records to be digitized and backups stored in a safer location. A national land record modernization programme in India aims to update and digitize all land

records, and several states have initiated the digitization of land records and village maps showing individual plots.

3.2.3   LAND-USE PLANNING

Land-use planning can be highly political and creates significant governance challenges. Effective land-use policies require a better understanding of the nature of urban growth and reliable, relevant and current spatial information is needed to inform policy decisions. This includes spatial and attribute data on urban growth trends, density, the number of people who move into key zones and commute between these, employment and mobility trends.

As discussed earlier, land-use planning in most countries has been ineffective in controlling urban growth and managing changes to rural populations. Limitations in land-use planning include outdated planning legislation and practices, inconsistency in land-use plans at different levels, lack of institutional capacity, poor enforcement and compliance, and weak links between urban and regional planning, and between land-use planning and land administration. The following discussion provides examples at country level:

1. **Outdated planning legislation and practices** - Srinivas et al (2015) argue that in Indonesia, many households are not able to meet the complex administrative and regulatory requirements in land-use regulations for home construction, which drives them into informal settlement and housing. Another driver for informal development in that country is informal subdivision following inheritance. New, smaller parcels are created informally and without regard for zoning controls, and without the provision of adequate infrastructure and services.

2. **Inconsistency in land-use plans at different levels** – In Lao PDR, for example, the central government has developed land-use plans for large-scale land uses at the national scale, such as the location and extent of national protected areas (NPAs), national production forests, national protection forests, industrial zones, urban areas and agricultural zones. This central-level planning is relatively well integrated with provincial-level planning for protected and production forests and with provincial-level industrial and agricultural zones. However, it does not connect well with village-level planning, which is carried out by the district government. Village-level land-use planning occurs for every village without consideration of larger land-use plans at the provincial and central level (Inthakoun, 2014).

3. **Lack of institutional capacity** - Capacity for urban planning is especially weak in the smaller countries, such as the Pacific Islands and Timor-Leste. In Papua New Guinea, land-use planning is under the control of the Department of Lands and Physical Planning. Though most urban areas have land-use/zoning plans, and there is a certain level of compliance, it is extremely hard to monitor implementation of

these plans because of limitations in the number of trained staff (Thomas, 2014). In the Pacific Islands, there is also a need for greater transparency and active participation of customary landowners and other stakeholders in customary land management efforts.

4. **Poor compliance and enforcement** - The Georgia LGAF report notes: "Public input is sought in preparing and amending land-use plans but the public comments are largely ignored in the finalization of the land-use plans" (Egiashvili, 2011). In Indonesia, implementation of land-use planning and city planning is expensive and difficult to enforce. Srinivas et al (2015) note that city boundaries rarely correspond with actual settlement patterns or zoning. Changes in land-use plans are made frequently and without proper public notice. The LGAF report for the Philippines notes weak land-use planning and implementation of land-use restrictions, and complex processes for formalization of urban housing. Papua New Guinea has developed land-use zoning plans for most cities and towns, and the types of land use and zones are identified in the Physical Planning Regulation. However, shortages in human resources and equipment in the Department of Lands and Physical Planning mean that it is extremely hard to monitor the implementation of these plans. Elaborate and ineffective land-use controls and very time-consuming procedures in Ha Noi, Viet Nam, have increased the costs of housing projects. Private developers are encouraged by the government to provide for low-income groups in accordance with stipulated ratios or land regulations. However, the lower profits derived from new, low-income housing have discouraged many private developers from fulfilling their legal obligations (UN-Habitat, 2010).

Land and property values are steadily increasing in many urban centres in the region. Hong Kong. Photo © Donovan Storey.

3.2.4   LAND-BASED FINANCING AND VALUATION

Local governments are vested with the responsibility for providing services, but are often not provided with the corresponding revenue sources and organizational infrastructure. The collection of taxes by local governments in the region is generally not optimal and they do not receive the revenue they are due. National policies are needed that are linked to fiscal transfers and provide incentives for improved finance performance. Introducing nationally mandated minimum property valuations and taxation rates can raise revenues for local governments (Roberts and Lindfield, 2014). However, this will require that the valuation of land be comprehensive, current and fair.

Urban land markets help to underpin the rapid urbanization and urban growth occurring in the region. However, these markets could contribute more to economic growth and poverty alleviation. That they do not is due to limitations in financing for low-income residential development; land speculation and under-use of land due to ineffective land valuation systems, and planning controls that limit the supply of serviced land or allow development on unsuitable land (Childress, 2004).

Property valuation is necessary for a number of public and private functions in the land sector, including state disposal of land, compensation for state acquisition, equitable land taxation, and determination of the value of collateral assets. Land taxation is a potentially effective source of public revenue, particularly at the local level.

Across the region there is poor adoption of international valuation standards and regulation. Childress (2004) notes: "Inadequate land valuation systems and a focus on high-income development expose financial systems to high levels of loan default risk in fast-growing urban markets and crowd out-financing of lower- and middle-income development." The lack

of a fair and transparent valuation system is a major factor in unfair land compensation practices across the region (Bell, 2014). Inadequate valuation also impacts on government revenue. While most countries in the region collect land tax, it is often not based on the real or potential value of the land. Improving valuation systems throughout the region would create additional safeguards for banks, enhance public revenue in sales, and increase the fairness of public acquisition.

Most countries in the region have limitations in the process of valuation of land. Two significant implications of this were raised. Non-existent or inefficient land valuation systems impact on: (i) the ability for government to generate revenue from land taxes, and (ii) the determination of fair and reasonable compensation for people resettled, or through land acquisition. Many countries in the region with ineffective cadastral systems have difficulty raising sufficient taxation to provide adequate funds to local government. In several countries (e.g. Afghanistan, Lao PDR, Papua New Guinea, Philippines, Timor-Leste and Viet Nam), informal or inefficient land markets exist with limited internal revenue generation. There is no legislation covering the profession of land valuers in Timor-Leste. Urban growth and investment in property development in the capital, Dili, also create incentives for people to purchase property through an informal land market, which exposes them to insecure transactions with limited legal security.

Valuation is done in Papua New Guinea to support taxation and decisions on compensation and litigation. However, like many countries in the region, the Papua New Guinea's valuation system covers urban areas only and is ineffective and inefficient, with property valuation records unreliable. Analysing market data is difficult in that country because of (i) inadequate legal frameworks

that do not allow for the efficient functioning of the property market; (ii) lack of published information required for proper valuation; (iii) volatility of property markets; (iv) a lack of adequately trained, professional valuers; (v) out-dated (or lack of) national standards; and (vi) external pressure and excessive or insufficient government interference. Limited resources in the department, a lack of adequately trained professional valuers and outdated national standards are central to the problem (Thomas, 2014).

> **❝** *The more vulnerable people in the region with informal tenures are at risk of being paid inadequate compensation when resettled, when their land is subject to land acquisition, or when the land they occupy is leased.*

The more vulnerable people in the region with informal tenures are at risk of being paid inadequate compensation when resettled, when their land is subject to land acquisition, or when the land they occupy is leased. Resettlement and compensation policies and legislation are weak or poorly enforced, particularly in the Pacific, South and South-West Asia, and South-East Asia. An ADB report in 2007 on *Compensation and Valuation in Resettlement in Cambodia, People's Republic of China, and India* found that common challenges include the difference between replacement value and "market value"; determining compensation where land markets are inactive; the failure of government agencies to recognize claims of informal tenures; and inadequate information provided to affected people regarding procedures, participation and redress. While valuation of non-formal lands (e.g. customary and informal settlements) is more difficult, literature exists that provides guidance.

04

OPPORTUNITIES FOR IMPROVED TENURE SECURITY

4.1 EXISTING LAND GOVERNANCE GUIDANCE AND ASSESSMENT FRAMEWORKS

There was much discussion at the multi-stakeholder meeting in Pattaya and also at the FIG Congress workshop on the need to monitor and assess progress at the country level in order to strengthen land administration and management, and also to support monitoring against the SDGs. It is now accepted that the links between tenure and development goals exist. Reporting associated with the Post-SDG agenda requires data on land and global land indicators to include questions on tenure and access to resources. The Global Land Indicators Initiative (GLII), as facilitated by UN-Habitat/GLTN, is a collaborative and inclusive process by many international partners for the development of global land indicators. Under the GLII, a list of eight to ten land indicators is being developed that will complement the Post-2015 development agenda.

Existing assessment programmes provide a strong foundation. Various assessment mechanisms have been developed to assess tenure security and land governance. The Land Governance Assessment Framework (LGAF) in partnership with FAO, UN-Habitat/GLTN, IFAD, IFPRI, the African Union, and bilateral partners is led by the World Bank. It is a diagnostic tool to assess the status of land governance at country level in a participatory process that draws systematically on local expertise and existing evidence. It focuses on five key areas (rights recognition and enforcement; land-use planning, land management, and taxation; management of public land; public provision of land information; dispute resolution and conflict management) with optional modules for other topics (e.g., forest land) that have often been dealt with separately from each other. This process helps to establish a consensus and priority actions on: (a) gaps in existing evidence; (b) areas for regulatory or institutional change, piloting of new approaches, and interventions

to improve land governance on a broader scale (e.g. by strengthening land rights and improving their enforcement); and (c) criteria to assess the effectiveness of these measures. LGAF helps to put in place a structure and process to systematically track progress in improving land governance over time (Bell, 2014).

A methodology has also been developed by FAO to determine to what extent and how LGAF can be used to support the implementation of the VGGT. LGAF assessments can inform on-going policy and legislative development, civil society organization networks in advocacy works on land issues, many donor initiatives in land governance in the region, and can provide synergy with VGGT advocacy and initiatives.

Land Governance Assessment Framework (LGAF) has been undertaken in several countries in the Asia and the Pacific region over the past several years, including: Indonesia (national as part of LGAF pilot development and subnational for Central Kalimantan province); Georgia, Philippines and Viet Nam. Experience shows that LGAF provides an unbiased assessment of the sector and agreement on next steps - even in highly complex situations with weak land governance (Bell, 2014). However, the LGAF could also be considered to be limited by:

- the long duration (1-2 years on average);
- the focus on international comparison ratings which can distract from local issues.
- An indirect alignment with the VGGT.
- LGAF does not cover forest areas, mining and extractive industries, or Indigenous Peoples' rights.

The World Bank has also completed a "stock-take and synthesis of the land sector" that reviewed five countries in East Asia. Land Watch Asia is a regional campaign to ensure that the rural poor's access to land is addressed in national and regional agendas towards

sustainable development. The campaign involves civil society organizations (CSOs) in Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines and Sri Lanka. The Land Reform Monitoring Framework in Asia has been developed to enhance the capacities of CSOs in monitoring agrarian reform. The CSO Land Reform Monitoring Framework aims to:

a. identify key indicators for CSO land reform monitoring;
b. ascertain the various users and uses of the framework;
c. suggest instruments to gather data and generate output tables for land reform monitoring; and
d. recommend an institutional mechanism to implement the framework.

There are recommendations that these initiatives be extended across the entire region and for all countries. When combined with the extensive analysis at regional level, opportunities exist for coordination between GLTN partners for more detailed analysis at the country level.

Also important are the Global Housing Indicators (GHI), which collect information on the policy environment for adequate and affordable housing and advocate for property rights. The GHI includes information on the policies and practices under which housing in a country is (or is not) owned, rented, financed, subsidized, serviced, regulated, planned and built.

Despite the considerable governance challenges in the land sector in each of the countries reviewed, the VGGT, LGAF, GLTN land tools and the Land Reform Monitoring Framework provide a framework for guidance and assessment that provides an opportunity for significant governance improvements at country level. Capacity building and the dissemination of information and education about the VGGT and other

similar instruments should be a priority for action at national level in most countries.

4.2 BUILDING ON EXISTING COORDINATION NETWORKS, PARTNERSHIPS, PROGRAMMES AND PROJECTS IN THE REGION

A consistent message throughout the consultation was the opportunity to build on existing coordination networks, partnerships, programmes and projects in the region. At the multi-stakeholder meetings in Pattaya (Thailand) and Kuala Lumpur (Malaysia), a consensus emerged at regional level of the need to coordinate and collaborate. There was also an acknowledgement by many partners and countries that addressing land issues is key for sustainable and economic development goals.

Existing international platforms include the Global Land Tool Network, the Global Land Indicators Initiative (GLII), the Committee on World Food Security, the Global Donor Platform Working Group on Land, the United Nations and the Rule of Law Platform. These also provide an opportunity for regional engagement and discussion. It was suggested that political-level, regional coordination mechanisms for land need to be established. Regional forums, such as the Association of Southeast Asian Nations (ASEAN), South Asian Association for Regional Cooperation (SAARC), the Mekong River Commission, the Secretariat of the Pacific Community (SPC), and the Pacific Islands Forum Secretariat are important mechanisms that can be built on. The United Nations Initiative on Global Geospatial Information Management (UNGGIM) also grew out of this region and there have been discussions on including land administration and management agenda into the UNGGIM-Asia Pacific work plan. There was a call for one voice from United Nations' agencies. UNESCAP aims to

promote inclusive and sustainable development in the region and is well placed to have a role as the political platform for engaging governments in the land sector. The themes explored in this review of tenure security fit well with the UNESCAP mandate. One respondent argued for the establishment of a regular forum under UNESCAP to be a platform for countries in the region to share their progresses and challenges of land tenure and land administration. Another opportunity exists through the recently formed South Pacific Geospatial and Surveying Council (SPGSC), which has government and professional status.

United Nations' agencies rely on partnerships to raise awareness and introduce land tools at country level. FAO has established links with government agencies in its work on raising awareness of the VGGT. This engagement provides a firm basis for further development of high-level support for the implementation of the VGGT and land tools. GLTN also has a strong history of working with partners globally to develop and implement land tools and increasingly moving towards country level engagement. Some of these existing global partners are in the Asia and the Pacific region, and there is also an opportunity to engage with new, regional, civil society organizations. There is a strong opportunity for citizens or civil society organizations to offer policy alternatives on land tenure, advocate on behalf of citizens, or even challenge what is being promoted by government if they feel the solutions are inadequate.

Improved mechanisms for resolution of disputes must be part of the regional- and country-level response. Given the high proportion of disputes that relate to land tenure, there is an opportunity to raise awareness of the importance of emphasising land disputes within wider conflict resolution programmes by the broader United Nations community.

The cross-cutting issues discussed earlier (climate change, urban growth and informal settlements, changing rural populations, and food and water security) have a greater impact on people with insecure tenure. The need to address land issues in Disaster Risk Reduction is well established. The Sendai Framework for Disaster Risk Reduction 2015-2030 (UNISDR, 2015) also encourages, among other measures, the establishment of mechanisms and incentives to ensure high levels of compliance with laws and regulations for urban planning and building codes, and the mainstreaming of disaster risk assessments into land-use policy. The Sendai Framework also promotes the incorporation of disaster risk management into post-disaster recovery and rehabilitation, facilitating the link between relief, rehabilitation and development, and the development of measures such as land-use planning. These measures should also apply to temporary settlements and displaced people, and provision of tenure security is key.

There are also clear messages on the need to protect the tenure security of the more vulnerable in climate change mitigation programmes (e.g. REDD+) and climate change adaptation (urban and rural) programmes. Requirements to protect tenure security should be built into DRR, CCA and CCM programmes as a standard safeguard. Other climate impacts affect food and water security, and programmes in these areas should also ensure that tenure security is provided for the most affected. Slum-upgrading programmes now typically address tenure and the fit-for-purpose principles provide a framework for this work. In rural areas, land tenure must be central in addressing the challenges of poverty and inequality, and water and food insecurity.

Our review of projects related to tenure security in the region has reinforced the depth and breadth of work being undertaken by national governments, key organizations and donors. A global mechanism

In-situ slum upgrading programs that address tenure security issues are good practices. Thailand. Photo © UN-Habitat/Jean Du Plessis.

established at the start of 2013 under the Global Donor Platform for Rural Development (the Global Donor Working Group on Land) is also working to compile a comprehensive global reference source on ongoing and planned projects. IFAD has many rural development projects that address land issues in Bangladesh, India, Indonesia, Mongolia, Nepal, Pakistan, the Philippines, Sri Lanka and Viet Nam. Throughout this review, many significant projects and programmes were identified, and it is clear there is an opportunity for even greater coordination and harmonization of activities and projects.

4.3 EXISTING GLOBAL FRAMEWORKS AND CONVENTIONS

Land is a cross-cutting issue when considering the three pillars of sustainable development. A number of global conventions and frameworks inform the progress towards sustainable development outcomes, including the recently concluded Sendai Framework on Disaster Risk Reduction 2015-2030. In building on existing coordination networks, partnerships, programmes and projects in the region, cognizance must be taken of these global conventions and frameworks.

These include the International Convention on Biological Diversity, the United Nations Declaration on the Rights of Indigenous People (UNDRIP), the Convention relating to the Status of Refugees, the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons. The International Covenant on Economic, Social and Cultural Rights calls on states to "undertake to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights". The covenant also recognizes the rights to food and housing. The Habitat III Conference next year will build on the momentum of Habitat I, the Brundtland Report, the Rio Summit and Habitat II. Habitat III has the convening power to bring together Member States, multilateral organizations, local governments, the private sector and civil society to achieve the solutions needed by humanity for the complex challenge of urbanization leading towards the "New Urban Agenda".

4.4 HABITAT III AND THE ASIA-PACIFIC URBAN FORUM

The third United Nations Conference on Housing and Sustainable Urban Development (Habitat III) will be convened in Quito, Ecuador, in October 2016, to reinvigorate the global commitment to sustainable urbanization and to focus on the implementation of a "New Urban Agenda". The United Nations Conference on Sustainable Development (Rio+20) agreed to launch a process to establish universal Sustainable Development Goals (SDGs). The SDGs will build on the progress of the Millennium Development Goals and will be an integral part of the Post-2015 Development Agenda. Sustainable urban development has been among the key issues considered in the discussions related to the SDGs, as recognized by the inclusion of a proposed Goal 11: "Make cities and human settlements inclusive, safe, resilient and sustainable", in the Report of the Open Working Group of the General Assembly on the Sustainable Development Goals, presented at the sixty-eighth session of the General Assembly.

Habitat III will be one of the first United Nations summits to follow the adoption of the Post-2015 Development Agenda and will provide a unique opportunity to discuss how human settlements are planned and managed, in particular how their role as drivers of sustainable development can be fulfilled and strengthened through the implementation of new sustainable development goals. General Assembly resolution 67/216 and resolution 24/14 of the Governing Council requested that regional commissions contribute to each stage of the preparatory process, including through the preparation of regional reports, contributions to a global report, the convening of regional meetings and the utilization of their regular sessions to provide inputs. The Government of Indonesia has been elected as member of the Bureau of the Preparatory Committee for Habitat III.

Resolution 70/12 adopted at the seventieth session of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), called on ESCAP, in collaboration with the United Nations Human Settlements Programme and other concerned bodies and agencies, to support the Government of Indonesia by organizing APUF as well as the High-level Regional Preparatory Meeting for Habitat III. This provides a strong opportunity to highlight regional issues. The Asia Pacific Urban Forum (APUF) is a multi-stakeholder forum organized by ESCAP, providing a regional platform for urban actors to, among other things, discuss emerging and critical urban development issues from the perspectives of different stakeholders; share experiences, practices and approaches for urban development; and explore cooperation opportunities and links to regional and global processes and development objectives.

The Sixth Asia Pacific Urban Forum (APUF-6) will take place from 19-21 October 2015 in Jakarta, Indonesia, back-to-back with the High-level Regional Preparatory Meeting to Habitat III for Asia and the Pacific on 22-23 October. Both meetings provide a key opportunity to articulate and shape the new Asia and the Pacific region urban policy agenda against the backdrop of the new Sustainable Development Goals. Given the increasing importance of cities in the Asia and the Pacific region on global development prospects and outcomes, the region's Urban Agenda will be a key element of the New Urban Agenda.

05

WAY FORWARD

In all countries reviewed, the number of people with insecure tenure is a major concern. By some estimates they represent as much as two-thirds of the population globally. Mostly they are the poor and those who are the most vulnerable to the effects of climate change and urbanization. While a range of social and informal tenures exist in all countries, most countries only record land rights with a limited range of tenures. Where land tenure rights are recorded, they may not be secure. The large number of disputes over land in the region also means that any efforts to improve tenure security across a range of tenures must also include improved dispute-resolution mechanisms.

Recording land tenure rights for all people across the continuum of rights must be a priority for all countries. In particular, a priority should be securing (recording) and safeguarding land tenure rights on informal tenures of the most vulnerable peoples (including women, Indigenous Peoples, ethnic minorities, IDPs, the elderly, the slum dwellers and the very poor). Within the group of vulnerable peoples, particular emphasis should be on protecting the tenure and access rights of women.

Securing and safeguarding rights for people in informal settlements on hazard-prone land, or those people who face the largest impact from climate change effects such as glacial melt, drought, water and food security issues, and sea level rise, should be emphasized. In some cases, resettlement, along with the provision of secure tenure rights, may need to be considered.

Major projects (existing and in the pipeline) by the World Bank and others that focus on urban upgrading and reconstruction and slum upgrading in Afghanistan, Viet Nam, India and the Pacific Islands provide great opportunities for partnerships and shared lessons. More work is needed on urban growth, Indigenous Peoples and IDPs. Options could be explored for the incremental improvements to land tenure security across the continuum in urban and peri-urban areas in the most highly urbanized countries, including Bangladesh, India and Indonesia. The work on participatory enumerations by the World Bank and GLTN provides opportunities for ways forward.

The multi-stakeholder consultations involved in this review provided the opportunity for sharing of knowledge, experiences, good practices and lessons learnt on land tenure among the countries and stakeholders in the region. Many of these country-level experiences are included in this report. The broad regional conclusions also provide a basis for strengthening of regional level collaboration, coordination and networking on land tenure in Asia and the Pacific region among all stakeholders. This is, however, only the start of a process that aims to make improvements at country level. The local context varies considerably from country to country, and further sub-regional and country-level assessments and consultation are necessary prior to the design of country-level implementation.

Across the region, there is inadequate capacity to implement land tools at scale in the short term. Reform will require significant long-term investments. The lessons from the Land Policy Initiative (LPI) in Africa are that this is going to be a long journey and, in this review, people have suggested the need for a 15-year time frame. Another lesson from the LPI is that interventions are required at the political level so that buy-in is achieved. Champions in governments are needed to move the agenda at country level. A challenge for the land sector is to increase awareness of the VGGT and to use them at country level.

5.1   RESPONDING TO THE CROSS-CUTTING THEMES ON TENURE SECURITY

The following sections consider tenure security in relation to the key cross-cutting themes of women's access to land, rural land and Indigenous Peoples, climate change and disaster risks, rapid urbanization and urban growth and Islamic tenure and principles.

5.1.1.   WOMEN'S ACCESS TO LAND AND TENURE SECURITY

The importance of women's access to land is recognized across the region and also reflected as a priority issue in the UNDAF for many countries, including Papua New Guinea, Mongolia, Afghanistan, Bangladesh and Viet Nam. Gender is one of the 10 core principles of the VGGT, and the 2013 FAO publication *Governing Land for Men and Women* provides guidance on achieving gender equality in tenure governance. At the multi-stakeholder meetings, it was noted that there is limited information on good practices, relevant outcomes of gender mainstreaming and the impact on women.

Given that women comprise more than 50 per cent of the people across the region, and increasingly they manage the land and households, improvements to women's tenure security and access to land will have a large impact. Since women are responsible for household subsistence, strengthening their property rights will contribute to gender equality and poverty reduction. Because land tenure security issues are directly linked to gender relations, measures to develop gender-responsive actions will have a direct and positive impact. Strong women's advocacy groups can have a positive impact and in Thailand, China, Malaysia, Lao PDR and the Philippines they have helped to overcome existing barriers or protect women's inheritance rights.

OHCHR / UN-WOMEN (2013) argue that embracing a human rights-based approach is needed to create effective solutions that work for women. This requires that plans, policies and processes of development are anchored in a system of rights and obligations that are established by international law and be effectively harmonized so they are consistent. Laws, policies and programmes should provide for the full participation of women, ensure that women's rights (including those in marginal groups) are represented on equal terms,

Women agree to support initiatives for tenure security improvement and settlement upgrading. Bangladesh.
Photo © UN-Habitat/Danilo Antonio.

ensure women are provided with full and accurate information about land rights, prohibit discrimination against women, and that specialized programmes are designed for particularly marginalized groups (OHCHR/UN-WOMEN, 2013).

Key messages on gender mainstreaming from the multi-stakeholder meetings included the importance of:

- Including empowerment and transformative processes in programmes and policies to ensure that gender considerations are mainstreamed. Awareness of gender considerations in all land processes, such as land consolidation, land readjustment, slum upgrading or resettlement.
- More reliable, local, socio-economic information to support gender evaluation, including tenure options of women. Disaggregated gender data and mapping of good practices are also needed.
- Improving documentation on the impact on women of land grabbing, violence and climate impacts.

- Capacity building is needed at the grassroots level in order to use existing tools effectively. The need to focus on empowerment was also emphasized. Knowledge and research on leadership of women, capacity strengthening and policy and institutional strengthening.

An amendment in 2005 to the Hindu Succession Act 1956 to improve women's inheritance rights is often quoted as example of a low-cost way to reduce gender discrimination and socio-economic outcomes for women through legislative reform. Since the amendment, more women have been elevated to being Class I heirs in respect of property left behind by a Hindu male who has died without making a Will. Deininger et al (2010) found that the amendment significantly increased women's likelihood to inherit land, although without full compensation for the underlying gender inequality. There was also a significant increase in girls' educational attainment after the legislative amendment (Deininger et al, 2010). For example, the Pakistan

Constitution and the legal framework gives women the right to acquire, hold and dispose of property without discrimination. However, women are sometimes deprived of their rights regarding the acquisition and retention of property due to local customs and tradition. This is compounded by a legal profession that is traditionally dominated by men although the number of female lawyers in Pakistan is increasing. In response, UN-Habitat, with the assistance of the local Bar Associations, trained 1,317 female notaries and lawyers involved in land administration. The training was based on a new *Guide on Land and Property Rights in Pakistan* and a related training manual.

Land administration reform is needed to make it gender-responsive. As most land administration staff in the region are men, women often do not participate in project activities such as land demarcation or surveying. In some cases, women are not included in the design of projects, and project implementers may not be fully aware of the local gender aspects of land rights. There is a need for gender-responsive participation in the technical aspects of land administration activities, technologies and systems. There are two aspects to this: how land administration design can address women's needs, and how women can equitably participate in land administration activities (FAO, 2013).

The GLTN *Gender Evaluation Criteria Tool* aims to assess objectively which land interventions are, or have been, more or less gender responsive. The criteria can be used in the design of new land interventions and for monitoring purposes. GLTN has also developed two training packages addressing gender equality. At the GLTN partners' workshop on "Land Tools To Increase Women's Tenure Security In Islamic Communities", the following priority areas for land tools that support gender-responsiveness in the Islamic world were:

- Awareness and capacity development of useful Islamic principles, human rights principles and practical mechanisms to access land;
- Inheritance: awareness and clarity regarding inheritance rights, alternative mechanisms for women to access land; and
- Land and property regimes and marriage regarding marital property, land regimes during and after marriage, and options for single women, widows, only wives, co-wives, orphans, girls, etc.

'*Recognition of all legitimate tenure rights across the continuum is needed to improve the tenure security of the landless, rural tenants and smallholders, Indigenous Peoples, IDPs, customary and communal landholders, and informal settlers.*

5.1.2   RURAL LAND, INDIGENOUS PEOPLES AND TENURE SECURITY

Recognition of all legitimate tenure rights across the continuum is needed to improve the tenure security of the landless, rural tenants and smallholders, Indigenous Peoples, IDPs, customary and communal landholders, and informal settlers. Growing pressure from foreign investment, large concessions and development projects means that land held and claimed by Indigenous Peoples, customary groups and ethnic minorities increasingly needs special protection.

Land may be transferred to an international investor through land acquisition, voluntary transfer, or the lease of state land. Deininger and Byerlee (2011) note that: "Even if large-scale land acquisition is not a desirable option, it will, in many cases, be necessary to improve land governance to ensure that

the pressures from higher land values do not lead to dispossession of existing rights. To ensure that existing rights are protected and a level playing field exists to make voluntary transfers feasible, three priority areas need to be covered. First, have state land identified geographically and ensure that mechanisms for its management, acquisition and divestiture, as well as the imposition of land-use restrictions, are transparent and justified. Second, make information on land rights that is complete and current available to all interested parties in a cost-effective manner. Finally, ensure that accessible mechanisms for dispute resolution and conflict management are in place."

Thapa et al (2013) state: "Secure land rights can increase incentives for investment and secure tenure can increase land values substantially. In addition, such security reduces conflicts, assures availability of collateral, improves the bargaining power of poor people and helps reduce poverty. However, policy interventions to ensure this security must be carefully designed to guarantee equity without upsetting local customs, as in the case of Indigenous Peoples. The market for rentals also enhances the opportunity for landless labour to cultivate and move towards owning land."

The Asian Development Bank's *Indigenous Peoples Safeguards* have been applied in projects in Bangladesh, China, India and South-East Asia. Countries like China or India have elaborate policies for their many and often large "national minorities" or "scheduled tribes".

Quizon (2013) notes that several Asian states have instituted progressive legislation and policies that recognize Indigenous Peoples' 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 recognizes 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 Indigenous Peoples 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 Indigenous Peoples and indigenous cultural communities (ICCs) to self-governance, and their right to free, prior and informed consent (FPIC). In the first 10 years of IPRA's implementation, up to 2008, some 45 Certificates of Ancestral Domain Titles were issued, covering over 874,000 hectares."

Several international conventions recognize and emphasize that Indigenous Peoples have the right to FPIC. Moreover, a human rights-based approach to development implies that the rights of Indigenous Peoples be respected and protected (no infringements and do no harm). In practice, this involves ensuring that FPIC has been solicited based on full disclosure of the intent and scope of the activities planned and their implications. States have a responsibility to respect Indigenous People's rights and to hold private companies accountable for appropriate consultation with indigenous groups and providing FPIC, and that Indigenous Peoples have the means for redress. At a land tenure level, this involves recognition and documentation of the culturally distinctive differences in Indigenous People's land tenure regimes. In most countries, the formal recognition of these regimes and property rights is often incomplete, leaving the communities at risk of marginalization and land grabbing. One response is an inventory and assessment of indigenous and customary land and the associated resources, as well as the communities on the land and their property rights. In many countries, the external boundaries of indigenous lands are also

Urban chiefs and customary authorities can play an important role in land governance. Port Vila, Vanuatu. Photo@Donovan Storey.

not clearly demarcated or formally agreed on. FAO has produced a technical guide on how to respect FPIC. It includes advice for governments, companies, Indigenous Peoples and local communities, and non-government organizations, and outlines the process for identifying rights-holders and land users in a project area.

Land Watch Asia argued that greater recognition is needed for customary practices. They call for restitution and land rights for Indigenous Peoples, development in the capacity of Indigenous Peoples to understand legal contracts and undertake risk analysis, and for the principle of FPIC to be applied to all legitimate landholders and dwellers. They also state that transparency and access to timely and accurate information for all lands allows grassroots organizations to better advocate for the rights of people on informal tenures.

When considering entry points, priority should be given to the countries with large indigenous populations (or percentage of population) including India, China, Indonesia, Lao PDR, Myanmar, the Philippines and many of the Pacific Island Communities, and those with large numbers of landless people.

5.1.3 CLIMATE CHANGE, DISASTER RISK AND TENURE SECURITY

Most of the countries reviewed include climate change adaptation and disaster risk reduction as the UNDAF priority issues at country level. The individual country focus varied depending on the level of country development and included mainstreaming disaster risk reduction and climate change adaptation into all sectors, assessing disaster risk, undertaking climate-resilient development, mitigation of impact on lives and livelihoods, and addressing some of the underlying degradation causes. The Sendai Framework for Disaster Risk Reduction 2015-2030 encourages the mainstreaming of disaster risk assessments into land-use policy. Mainstreaming DRR into land administration and management will require

including knowledge of vulnerability and disaster risk in land-use planning and recording legitimate land rights for all disaster-affected people.

As climate change 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. ESCAP/UNISDR (2010) reported that national and regional coordination gaps were implementation challenges. They noted that progress in risk reduction is difficult and slow at local levels, and governance systems need to be effective at local, national, regional and international levels. Indonesia, Nepal and the Philippines have a clear commitment to the delegation of authority to local levels. Other countries emphasize that the local and community-level empowerment and local-level capacities are highly variable.

Mainstreaming climate change adaptation priorities into the land sector, and understanding of land issues into CCA and DRR, requires strong coordination between the multitude of stakeholders in the fields of DRR, CCA and development. Improved coordination is needed between donors, development partners (including NGOs) and regional organizations to improve harmonization and the use of resources. This will also reduce the burden on countries' capacities, and be more responsive to the needs and priorities of countries. In many countries, there are also limited formal coordination mechanisms between land agencies and disaster management agencies or those concerned with climate change responses. The creation of a regional forum for land will help improve coordination.

Improving the climate resilience of urban development in the Pacific region requires including risk considerations in all development decisions. According to the World Bank/GFDRR (2012), current governance arrangements at the regional and national levels make it difficult to facilitate the integration of risk considerations into development. In many cases, separate institutional, legal and policy frameworks that exist for CCA and DRR have weak links with the development sectors. Pacific leaders have recognized the urgency of addressing climate change impacts and have prioritized action on climate change under the Pacific Plan in 2008 and 2009. The Land and Resources Division of the Secretariat of the Pacific Community (SPC) is undertaking work in this area and plans to strengthen the coordination of these activities in support of country adaptation strategies. However, there is a long way to go.

The principles of the Sendai Framework cannot be upheld without addressing the major land tenure and land-use impacts. This involves securing and safeguarding land tenure rights for all to improve resilience to the impacts of climate change, and effective land-use planning and control to minimize the spread of housing onto hazard-prone land. Land administration systems provide the basis for addressing land tenure and land-use issues and, when informed by hazard risk and vulnerability, support Climate Change Adaptation and Disaster Risk Reduction programmes.

5.1.4 RAPID URBANIZATION AND URBAN GROWTH

Improved management of urbanization and urban growth will be the responsibility of many stakeholders, including local governments, the private sector, civil society, communities and customary land groups. Decisions made by all these stakeholders about future land use will define the way urban growth occurs. In many countries, local governments cannot do this alone. Partnerships may be required to support decisions about housing and the provision of infrastructure. For example, in the Pacific Islands, much of the urban growth will occur outside urban boundaries on customary land and customary groups will have a central role.

More effective management of urban growth will require urban and rural authorities to adopt a coordinated approach that involves the effective land-use planning and control, and pro-poor and fit-for purpose land administration. An important step will be developing more local-level information on the projected nature of urbanization and urban growth. Recent work by the World Bank has provided broad mapping of urban growth patterns and density in East Asia, and allows for predictions of future growth patterns. This work should be expanded across the region to provide realistic projections of future urban growth, the potential location of that growth and the estimated density. When combined with local assessments of hazard risk and vulnerability, this will provide a sound basis for decisions about how that growth can be effectively managed. The information also creates an opportunity to address tenure security challenges at the same time.

The need for pro-poor urban development and slum upgrading are recognized as priorities in the United Nations Development Assistance Framework (UNDAF) for Bangladesh and the Philippines, and many major projects are planned or underway to address these issues. There are two major World Bank projects that address infrastructure, improvements to tenure security, and urban planning – the USD 400 million "Urban Upgrading Project" in Viet Nam and the USD 250 million "Kabul Urban Reconstruction Project" in Afghanistan. Another World Bank project in the pipeline is the USD 1,000 million "Informal Settlements Improvement Project" in 10 or 15 selected cities across India. The "Urban Partnerships for Poverty Reduction Programme" is a very large programme in urban slum settlements targeting 3 million people in 30 cities, including Dhaka. The UN-Habitat "Participatory Slum Upgrading Programme" is active in Fiji and Papua New Guinea as well as other Pacific Islands. It involves urban profiling followed by participatory slum upgrading that includes the promotion of security of tenure.

Several Asian cities have tried innovative methods to help the urban poor acquire serviced land within a reasonable distance from income-earning opportunities. In Phnom Penh, Cambodia, urban poor organizations have been involved in citywide surveys that have identified the location and scale of low-income communities and any vacant land where they might be housed. In Karachi, Pakistan, detailed mapping of all informal settlements, indicated the location and quality of existing infrastructure as the basis for identifying improvements needed (Satterthwaite, 2005).

The Participatory and Inclusive Land Readjustment (PILaR) land tool aims to improve urban governance and inclusion in the process of city growth and densification, and to improve the supply of serviced urban land through a negotiated process. To date there has been considerable progress in fast-tracking PILaR design and implementation. There are lessons for this region from the Sourcebook on PILAR, which has been completed and a GLTN publication is underway. Efforts to link land readjustment to slum upgrading are also being made.

Figures on the total number of people in slums and the percentage of urban people living in slums can guide decisions on entry points. Using the UN-Habitat definition of slums, China (180 million), India (110 million), Bangladesh (30 million), Pakistan (28 million) and Indonesia (27 million) have the highest overall slum populations. The countries with the highest percentage of urban people living in slums are Afghanistan (88 per cent), Bangladesh (71 per cent), Cambodia (77 per cent), Lao PDR (79 per cent), Mongolia (58 per cent), and Nepal (59 per cent). While there is not adequate data for Pacific Island Countries, many of them have very large informal settlements (especially in Papua New Guinea and Fiji). Therefore, efforts to improve tenure security in slums must address these countries.

School children walking on a newly-paved road in a resettlement site. Afghanistan. Photo © UN-Habitat/Wataru Kawasaki.

5.1.5   ISLAMIC TENURE AND PRINCIPLES

Even where colonial reforms resulted in new tenure types and legislation, the Islamic tenures remain influential as concepts, if not always in practice, in many parts of the Islamic world (Sait, 2013). The International Islamic University of Malaysia (IIUM) (2014) argues that the implementation of land tools in predominantly Islamic countries is more likely to be successful if they work within the framework of Islamic law and Islamic principles, and the existing forms of Islamic tenure. The Islamic principles should be considered in the design of land administration and management responses where appropriate, but accompanied by a realistic political assessment of the risks and opportunities of doing this. Sait (2013) cautions that the existence of tools in Islamic land law does not guarantee their success when embedded in land projects. Successful implementation will require decision-makers to understand the relationship between Islamic, customary and state laws, as well as the historical role of Islamic land tenures, Islamic philanthropic obligations and financial traditions.

The emphasis on partnership and community welfare in Islamic law provides opportunities to respond to the needs of the urban poor, through promoting land access and distribution. Also, the egalitarian principles integral to Islamic life may legitimize and underpin modern land readjustment and slum upgrading strategies. There are also Islamic principles that can be legitimately applied to land administration, land-use planning, land management and providing land-related finance. Using these Islamic principles can give legitimacy to modern land reform.

In terms of entry points for aligning land tools with Islamic principles, all predominantly Islamic countries should be a priority. Indonesia (with a population of 248 million), Pakistan (184 million) and Bangladesh (154 million) have major roles to play as the largest predominantly Islamic countries. However, Malaysia also has a role to play as a country aiming to attain more developed-country status in the short-term, and with an effective land administration system in place. There are opportunities for principles to be tested in Malaysia

for implementation in other countries. The International Islamic University of Malaysia is also a potential key regional partner in further development.

BOX 1: ISLAMIC PRINCIPLES

Islamic principles can offer authentic land solutions and can provide legitimacy to land interventions if adhered to. In particular, Islamic principles offer opportunities to enhance property rights because:

- Property rights protection is recognized in Islamic law.
- Women have the rights to hold, use, inherit and sell property.
- It is possible for individuals to pass on up to one third of property through a Will (for example to vulnerable children).
- Islamic society can promote access to land for marginalized groups.
- The Ottoman Empire included land registration systems, for the purpose of revenue generation and dispute resolution. These land registration systems were underpinned by much land-related information.
- Islamic approaches can enhance land administration, urban planning and access to credit.
- Endowment principles have the potential to enhance security of tenure for the urban poor (UN-Habitat, 2011).

5.2 TOWARDS IMPROVED LAND ADMINISTRATION AND MANAGEMENT

Much of the discussion during consultation focused on the importance of land governance, and the development of land tools. Secure land tenure rights for all and effective land-use planning and control will form a strong basis for managing the challenges of urban growth, climate change and increased inequality. Responsible governance of tenure and pro-poor, transparent and fit-for-purpose land administration are the tools that can secure and safeguard land tenure rights and underpin effective land-use planning. Responsible land governance should also consider the political and legal context, and the opportunities for organized civil society to engage in land issues under a civil and democratic process. There was consensus in the consultation that land governance was gaining more commitment and political buy-in from governments in the region. A key principle is that interventions at country level must be demand-driven and based on formal country priorities as outlined in UNDAF and other country strategies.

This section considers the responsible governance of tenure, policy and legal frameworks, land-use planning, valuation of land, and land-dispute resolution.

5.2.1 RESPONSIBLE GOVERNANCE OF TENURE

The Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGT) provide comprehensive guidance for all stakeholders on responsible governance of tenure of land, fisheries, and forests. Raising awareness and further implementation of principles of the VGGT, supported by more country-level assessment and monitoring through LGAF, was considered to be critical.

Increasing foreign and local investment in agriculture in developing countries comes with risks of environmental, social and community problems. Particularly vulnerable are Indigenous Peoples, ethnic minorities and those with poor tenure security. The Principles of Responsible Agricultural Investment (PRAI) is a global coordinated response by the World Bank and United Nations partners to these concerns.

The expected benefit of the PRAI is that their application to agricultural investments will reduce the generation of negative externalities and raise the likelihood of positive impacts. However, they need to be further refined, elaborated and operationalized (Bell, 2014).

Assessing implementation of the VGGT and PRAI will require monitoring at the country-level of adoption of the VGGT and other land tenure initiatives and practices. In-depth and context-specific assessment will be required at the country level. In-depth and context-specific assessment and monitoring of land administration and management will be required to strengthen land governance. Box 1 provides an example of country level work in Philippines under the Land Watch Asia programme.

The *Global Partnership on Land Indicators' Initiative (GLII),* as facilitated by UN-Habitat/GLTN, provides an opportunity to develop this important discussion further. The initiative is developing globally comparable, technically sound and feasible targets and indicators on land, including for consideration for the Sustainable Development Goals (GLTN, 2013). ESCAP is well placed to gather relevant data and to facilitate the discussion between GLTN partners on suitable targets and indicators for the region. In a discussion at the FIG Congress in Kuala Lumpur, the ILC argued that there is a role for grassroots organizations to develop their own databases on land use and land occupation in informal settlements to help them with advocacy.

Governance of tenure is a priority for FAO, UN-Habitat and UNESCAP, and is being mainstreamed in all relevant work of the agencies. For example, FAO is assisting countries to modernize and improve tenure of land, fisheries and forests in order to ensure food security and good nutrition for all. UN-Habitat, on the other hand, is promoting inclusive cities, climate-change adaptation and sustainable urban development. UNESCAP highlights the importance in addressing tenure security issues for sustaining social and economic development in the region (UN-Habitat/FAO/ESCAP, 2014).

A conclusion of the multi-stakeholder consultations was that responsible land governance should support:

- Good land policy formulation, land tenure policy review and associated programmes' implementation and at country level, and the development of innovative approaches in land tenure at country level.

- Promotion of the initiatives that help to reduce the need for urban migration and make rural areas more attractive.
- More effective and inclusive urban land system promoted in the region.

Gender responsiveness is one of the GLTN cross-cutting themes in developing land tools, and is one of the core principles for implementation of the VGGT. Clearly, adoption and enforcement of the VGGT at the country level will go a long way to responding to gender issues. The FAO Governance of Tenure Technical Guide No. 1: Governing land for women and men provides guidance on the implementation of VGGT with respect to gender equality. It provides guidance on how to mainstream gender issues to achieve more gender-equitable participation in the processes and institutions. It is structured with modules on policy-making, legal issues, institutions, technical issues and communication and awareness-raising. It outlines five practical elements in building equitable gender-responsive participation: context analysis, advocacy, sensitization and training, multi-stakeholder dialogue, and a long-term approach. The guide argues that a "key to ensuring responsible gender-equitable governance of land tenure is to start with a gender-equitable policymaking process in which all stakeholders, women and men, are equally included in formulating and implementing land policies".

5.2.2   LAND POLICIES AND LEGAL FRAMEWORK

Developing good land policies is an important step in the implementation of land tools at country level. Key issues raised as priorities for improving land policies in Asia and the Pacific included:

- Gaining more commitment and political buy-in from governments on land tenure issues.
- Recognition of the range of legitimate social and legal tenures that exist.

- Gender mainstreaming of land policies needs to be a priority.
- Specifically address the tenure rights of informal settlers.
- The need to scale up policies for the recording and recognition of communal lands.
- Better plans for preparedness and mitigation of future disasters for socioeconomic resilience to threats and crisis, and for sustainability.
- Implementation and monitoring of international agreements (VGGT, UNDRIP, CEDAW) and national law and policy on land tenure and rural development.

> '*Achieving fit-for-purpose land administration at scale cannot happen if the legal framework is based on colonial principles and works against informal tenures.*

Achieving fit-for-purpose land administration at scale cannot happen if the legal framework is based on colonial principles and works against informal tenures. Plurality of the legal framework across land and forestry and other agencies must also be addressed. The implementation of all the elements of fit-for-purpose land administration requires a flexible legal and policy framework that can accommodate mapping and recording of a range of tenure types, and can incorporate complex relationships between people and land.

Improving land administration and management will require addressing the overlaps and duality of the legal framework in most countries. Responsible land governance also requires that the legal framework be consistent with international obligations and conventions. The legal framework should require that

states recognize, record and respect all legitimate land rights. Equally fundamental is establishing the instruments to implement these frameworks. The existences of comprehensive frameworks on their own do not improve land governance.

In China, registrations of land, forestry, grassland and sea were separated into different departments. A top-design, uniform, property registration system is being designed with the aim of integrating those scattered registrations. To realize this ambitious goal, a new legal, institutional and technical system is needed in China, and lessons of good practice from developed countries are required. The guide for fit-for-purpose land administration being developed by GLTN partners will be very important and is a key prerequisite for setting up the uniform property registration system, which is widely regarded as an important step to modernize the cadastral system in the country.

The AusAID publication Making Land Work called for a resolution to the duality caused by formal and customary systems of governance (AusAID, 2008). It says that land policy reforms should respect and protect customary ownership and individual use rights as defined by social relations and customary laws, and notes five ways this had already been done:

- by creating legal mechanisms to recognize customary groups;
- by formally recognizing the landownership of customary groups through a process of recording or registration;
- by facilitating the leasing of customary land in a way that fairly distributes benefits between landowners and leaseholders;
- by establishing regulations and institutions that support, assist and protect customary landowners during negotiations with governments and investors;

- by supporting both customary and formal institutions in resolving different kinds of land disputes.

The 2010 FAO Pacific Regional Assessment called for the rights of Indigenous Peoples, women and customary landowners, including vulnerable groups such as youth and children, to be considered in policies for development and the use of land and other natural resources. Governments should recognize customary ownership and use rights of Indigenous Peoples. Governments that have ratified the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and other related international human rights instruments should ensure that these rights are enjoyed, protected, considered and reflected in guidelines, policies, regulations and laws for land and other natural resources.

Most countries in Asia do not have laws that give special recognition to Indigenous Peoples' land rights. Indigenous Peoples' property rights tend to come under forestry, land or agriculture policies. Where land registration systems recognize individual and corporate property, they often do not recognize communal lands (Quizon, 2013).

5.2.3 ADOPTING INNOVATIVE AND AFFORDABLE LAND ADMINISTRATION SYSTEMS

The continuum of land rights approach is based on recognition of the validity of a plurality of land rights lying on a continuum between formal and informal rights. These include a range of social land tenures, including indigenous and customary areas, and primary and secondary rights to land provide security of tenure to the majority of people. There was a clear message that it is necessary to formally recognize all legitimate land tenure rights across the continuum in order to improve tenure security, and to achieve this at scale land

Hillside settlements. Solomon Islands. Photo © UN-Habitat/Bernhard Barth.

administration systems must be designed to be 'fit-for purpose'.

As Enemark et al (2014) note: "benefits arise by achieving a functional system covering all land and people within a short time, for relatively low and affordable costs, and supporting incremental improvement when relevant and required". The key is to develop low-cost and fit-for-purpose land administration systems, which will require transparent legal and institutional frameworks, and adequate capacity. FFP land administration systems will support improvements to tenure security, effective land-use planning and control, and effective and fair valuation of land.

Without reform of the legal framework, the implementation of tools across the continuum is difficult and, in some cases, impossible. Legal frameworks need to be more flexible to allow the development of fit-for purpose land administration (Enemark et al, 2014).

Improvements are needed for all aspects of the legal framework related to vulnerable peoples (women, the elderly, children, Indigenous Peoples and ethnic minorities), as well as the recognition of legitimate informal settlements, land acquisition and compensation, and the treatment of resettlement of people.

Solutions at the national level will require upscaling of land administration solutions, with technology and tools embedded in pro-poor land programmes. A Spatial Innovation and Good Practices in Land Administration Forum at the 2014 Annual World Bank Conference found that, while spatial technologies are becoming pervasive and manageable, there are ongoing issues with standards and interoperability. Existing technologies provide potential solutions when combined with other technological solutions, such as mobile communication and computing, and volunteer geographic information. However, implementation should be fit-for-purpose and include the ability to

record rights for all types of formal and informal tenures based on a complete spatial framework.

For example, Indonesia's dual system of land administration means that rights cannot be secured over forest land which means that only around 40 per cent of the nation's estimated 90 million land parcels are titled. Forestry land is also where around 20 per cent of the population live, mainly Indigenous Peoples. In July 2012, the government announced a strategy to address these challenges by creating the One Map programme, which is designed to have robust geospatial definition, criteria and methodology and applies the latest geospatial methods to identify the position and size of forests across Indonesia. Other data sources are planned to include community stakeholders' mapping inputs (through crowd-sourcing), including indigenous communities' land maps. It is envisaged that eventually One Map will form the basis of government decision-making on land issues, will generate bottom-up support and assistance for participatory community mapping and will provide a basis for people to negotiate their rights (Enemark et al 2014; Srinivas et al, 2014).

> ' *A major bottleneck in the process of formalizing land rights is the complexity, cost and timeframes associated with high accuracy recording of land tenure rights.*

A major bottleneck in the process of formalizing land rights is the complexity, cost and timeframes associated with high accuracy recording of land tenure rights. High accuracy solutions are not scalable to the remaining 70 per cent of the population, even if the latest spatial technology is used. However, low-cost and fit-for-purpose approaches that also adopt spatial innovation

provide opportunities for implementing systems at scale. The focus should be on systems that can define physical boundary features as well as dimensions, and record the complexity and overlapping nature of property rights. There are opportunities to implement the Social Tenure Domain Model (STDM) in certain contexts in all countries in the region as a mechanism to record the complexity of informal tenures, supported by government protocols and standards for the acquisition and use of data.

The concept of fit-for-purpose (FFP) land administration provides an opportunity to record rights in land across the continuum and at scale. It requires the legal, institutional and spatial frameworks be consistent to allow the fit-for-purpose methods to be applied to land administration. In most countries, there is an opportunity to dramatically improve the spatial framework by using imagery techniques to develop the underlying spatial maps. The low cost of imagery and reduced complexity of software approaches means that this is possible at scale and can be affordable.

The Fit-For-Purpose Land Administration Guide is currently being developed by GLTN and Kadaster International in consultation with various institutions and land professionals and will be released in early 2016. These will provide all countries with a template for decisions on how to design a fit-for-purpose approach at the country or local level. The Guide for Fit-For-Purpose Land Administration will include advice on designing the three key components:

- The spatial framework of large-scale mapping of spatial units land use and occupation, based on aerial imageries, general boundaries and incremental improvements.
- The legal framework governing the rights, transfer and use of land compatible with the fit-for-purpose approach, and enshrined in law, and

- The institutional framework within the field of land administration. The Fit-For-Purpose approach includes good governance, participatory approaches and building from local strengths and norms.

The Fit-For-Purpose approach to land administration requires a flexible system for recording land tenure rights, and the GLTN publication Designing a Land Records System for the Poor provides guidance on this (Zevenbergen et al, 2012). This includes the development of innovative and affordable systems that allow for recording different types of land rights and tenure, and that can operate within a co-management framework with the community. It also outlines a range of elements that are critical for success in a pro-poor land recordation system, such as:

- an inventory of rights and/or claims and a simple map within a municipality;
- participatory adjudication approaches to accommodate social land tenures, including complex layered rights, that can accommodate less accurate forms of data and maps;

- establishing the system at community level to improve the accuracy of the records and their accessibility;
- delivering preventive justice;
- a co-management system whereby the state and the community share responsibility for the land records and for limiting injustices to the poor with regard to their land.

The Social Tenure Domain Model (STDM) is another key tool that allows the continuum of tenures to become part of land administration systems, including informal, customary and occupancy tenures. It is a tool that makes it possible for people outside of formal register to have some form of tenure security. STDM is based on an International Organization for Standardization (ISO) standard for recording the complex relationships between people and land, and enables all legal and social tenure rights to be

captured. The success of STDM pilot in Uganda resulted in the use and application of the tool in several countries aimed at improving tenure security, enhancing inclusive planning, addressing land disputes and improving urban and rural livelihoods (Antonio, et al 2014).

Sharing of lessons on how countries develop their unique fit-for-purpose approach to land administration will be important for these solutions to be implemented at scale. Grassroots civil society organizations will be critical for making sure the tools work at grassroots levels.

There is an opportunity in all countries to improve the tenure security of informal tenures through gaining an in-depth understanding of all the local land tenure systems. Most of humanity does not have legally and spatially defined land rights or digital cadastral maps. In their "Policy on Improving Access to Land and Tenure Security", IFAD (2008) argues that an assessment of tenure security is a prerequisite for designing effectively targeted programmes and projects. IFAD argues that even small incremental gains in secure access to land can "have a significant impact in enhancing food security and increasing the resilience of poor rural people to external shocks".

5.2.4   LAND-USE PLANNING

As discussed earlier, land-use planning is weak and poorly enforced across much of the region. Effective land-use planning, along with recognizing and recording land rights, is necessary in order to respond to many of the issues raised in this report. It is important for the effective management of urban growth, the prevention of settlement on hazard-prone land, effective governance of land concessions, protection of Indigenous Peoples and customary land, and the implementation REDD+ strategies. In many countries, women and men use land in different ways, so gender-equitable governance of land tenure requires gender-sensitive land-use planning.

Participatory land-use planning at the grassroots level is an effective way to achieve this.

Effective control of land use in both urban and rural areas is also recognized as being important. Output 1.4.4 of the UNDAF for Viet Nam calls for regulations and fiscal tools to be formulated and operationalized to enhance rights of the landholders, improve land use and water resources management, and enhance access to decent and social housing by the poor and vulnerable groups. The report notes that "Viet Nam is facing many challenges in land-use planning and management, especially land speculation and lack of user rights of farmers in relation to their farming lands. Addressing these key challenges will enable farmers, the poor and vulnerable groups to benefit more from development". In another example, the Lao Government has developed land-use plans that designate large-scale land uses at the national scale, such as the location and extent of national protected areas (NPAs), national production forests, national protection forests, industrial zones, urban areas and agricultural zones. This central-level planning is relatively well integrated with provincial-level planning of provincial protected, protection and production forests, and with provincial-level industrial and agricultural zones. However, village-level land-use planning occurs without consideration of national and provincial land-use plans. This is because the central government determines the location and size of NPAs, often without considering the land-use needs at village level within or nearby the NPA. Also, the way in which villages near the NPA use the surrounding land may not meet the conservation goals of the NPA.

Linking urban and territorial planning across different scales, as well as improving land-use planning can allow for better management of urban growth and improved protection of the environment. Many respondents commented that governments across the region

need to work with private landowners and customary landholders where relevant, to identify suitable land for urban expansion and agree on a master plan for the development that includes options for the people migrating to urban areas. There were several calls for governments to identify suitable alternative land for development and to work with stakeholders on acquisition and development design and approval. There are several options for improving tenure security, including construction of Economically Weaker Sections (EWS) or social housing, long-term leases or, where appropriate, the redistribution of public land to the poor and landless to ease the spread of informal settlements. There was also much discussion on the possibilities of using land consolidation and land readjustment for existing informal settlements.

In the Philippines, land proclamations provided assurances that squatters on public land would not be evicted and that local social services would be improved, with more than 645,000 families in 33 informal settlements benefitting between 2000 and 2002. While the policy does not apply to squatters on private land, this initiative provided a degree of tenure security, which encouraged many poor Filipino households to improve their homes and neighbourhoods (UN-Habitat, 2010).

One of the major challenges for Pakistan is planning and management of increasing urban growth and urbanization. Lack of planning and management is resulting in the spread of informal or unplanned settlements. One respondent argued that land-use plans based on reality should rather be developed based on a discussion of how to use the space, guide development and make rational decisions for infrastructure. The outcome of the process is the allocation and zoning of land for specific uses, regulation of the intensity of use, and the formulation of legal and administration instruments that support the plan. The respondent

argued: "How urban land is used will define its character, its potential for development, the role the city will play in the national, provincial and local economy, and how the city affects the natural environment. A land-use plan is used to rationalize the allocation and proper use of land resources. It projects public and private land uses in accordance with the future spatial organization of economic and social activities, while protecting resources for the future. It will determine what should be done and where. Through comprehensive land-use planning, urban areas can become more efficient, productive and inclusive. Inclusive urban planning is required so that low-income people migrating into urban areas find affordable housing and closer to the places of work."

In China, land-use planning is being used to try to address the emerging challenges brought by fast urbanization and industrialization such as urban sprawl, loss of agricultural land and sustainability of eco-environment. Recently, the new practice of delineating three red lines, namely, the red line for the permanent farmland zone, for the urban expansion boundary and for the eco-environment conservation zone, has been introduced into the new round of land-use plan revision, aiming to further tackle the challenges mentioned above. However, the absence of a sound legal and controlling system to monitor the implementation of land-use plans may to some extend weaken the effectiveness of the plans.

For regions at greatest risk of the impacts of climate change, the major adaption issue raised for the land sector was that climate change should be mainstreamed into land-use planning. Part of the process of climate change adaptation will be reducing the incidence of people settling on hazard-prone land, making decisions about existing settlements, and providing tenure security. Grounding risk considerations in development is

important. To achieve this, governments and partners will need climate and disaster data to inform the selection of priorities and development programmes. Precedence should be given to development initiatives that reduce vulnerability and adapt existing tools, such as land-use plans, building codes and environmental regulations. When hazard-risk is considered, local authorities have the ability to prevent dwellings being built in areas of high hazard-risk. Where the spread of urban growth can be managed, improved land-use planning can also incorporate tenure security into the process of releasing land for development. However, capacity building of local government will be needed for implementation to be effective.

There were calls for hazard-risk and vulnerability mapping to inform land-use planning. In Timor-Leste, since the Indonesian withdrawal there has no legislation regarding land-use planning, land development or land taxation. This lack of guidance in the legislation and overlapping claims to land limit the ability of the government to control the spread of informal settlements in Dili, and have resulted in people settling on steep, unstable slopes and flood plains. Improved urban and territorial planning, informed by hazard risk, would increase the ability of the government to control development on unsafe land. An "outcomes focus" is needed in Disaster Risk Reduction, requiring land-use planning to include hazard risk assessment. Resettlement decisions related to disaster risk are a key issue in the Pacific region. In many Pacific Island Countries, a large percentage of the urban population lives in coastal areas that tend to be densely populated, and which makes them more vulnerable. Careful consideration is being given to decisions about relocation away from the coast. These decisions are better made prior to the occurrence of natural disasters or rises in sea levels, rather than during disaster recovery or reconstruction. However, resettlement is inherently

complex and requires careful planning. There are many implications, including hazard risk, the protection of livelihoods, tenure security, land availability, the provision of infrastructure and social impact.

The UN-Habitat Cities and Climate Change Initiative regional strategy supports the development of national policies addressing cities and climate change with a particular emphasis on the revision of city development plans and land-use plans. For example, UN-Habitat supported a climate change vulnerability assessment of Sorsogon City in the Philippines in 2000. Among other vulnerability factors, this assessment noted that 45 per cent of households had informal tenure, and informal settlements were usually situated in coastal areas, riverbanks and roads, or they were illegally on state or private lands. Housing materials were inadequate to withstand the many natural disasters that regularly occur in the area. The locals noted that the sea wall had been damaged in the 2006 typhoon, and changes in sea level and the amount of storm surges had increased the number of households subject to inundation. This assessment was used to update the City Land-Use Plan, and informed policy discussions at many levels.

Effective land-use planning will be central in achieving the Global Partnership on Land Indicators Initiative targets and the Sustainable Development Goals. The International Guidelines on Urban and Territorial Planning (UN-Habitat, 2015) were recently adopted by UN-Habitat's Governing Council. These guidelines argue, among other things, that urban and territorial planning must support and facilitate sustained and inclusive economic growth through the provision of adequate infrastructure, the development of which should follow rather than precede the adoption of urban and territorial plans. The overall objective of these guidelines is to guide urban policy reforms, support the development of diverse planning approaches adapted to different

contexts and scales, complement and link to other international guidelines aimed at fostering sustainable urban development, and raise the urban and territorial dimensions of the development agendas of national, regional and local governments. Use of the guidelines will support improved policies, plans and designs for more compact, socially inclusive, better-integrated and connected cities and regions that foster sustainable development and are resilient to climate change.

Implementation of urban and territorial plans in line with the guidelines will require political leadership, appropriate legal and institutional frameworks, efficient urban management, improved coordination, sufficient capacities at all levels, and consensus-building approaches. Continuous monitoring, periodic adjustments and sustainable financial mechanisms and technologies will be required. National governments should ensure legislation is enforceable, ensure the rule of law, promote mechanisms for accountability and conflict resolution, and use geospatial technologies for data collection. This will underpin innovative and affordable approaches to land registration and property recording systems, and the implementation of urban and territorial plans. Local authorities are central to the implementation of urban and territorial plans and guidance is provided on their role. Civil society organizations should voice the concerns of the communities involved and give feedback to the authorities on challenges and opportunities that may emerge in the implementation. Planning professionals (and land professionals) should provide technical assistance for the implementation of plans (UN-Habitat, 2015).

The guidelines will contribute to the preparatory process for Habitat III, scheduled for June 2016. Once adopted, UN-Habitat and other development partners will support countries and cities that wish to use the guidelines at national and local levels, draft regulations

and test these tools in concrete planning exercises. It is likely that a set of tools could be designed to support development under the International Guidelines on Urban and Territorial Planning (IG-UTP) which will have to be monitored and documented. The guidelines note that implementation of urban and territorial plans require efficient urban management, improved coordination, consensus building, reduced duplication, continuous monitoring and periodic adjustments. It also requires an appropriate legal framework and sufficient capacities at all levels, as well as sustainable financial mechanisms and technologies.

In less developed countries land-use planning initiatives exist, but are not sufficiently linked with tenure security. Efforts are now underway to develop a tool on land use planning for tenure security including the development of an e-learning platform. GLTN, GIZ and Technical University of Munich (TUM) are collaborating to develop this tool aimed at providing guidance on how to better coordinate and integrate land-use planning and tenure security activities and highlights the benefits in both urban and rural contexts.

5.2.5 THE VALUATION OF LAND

While local governments are central to the provision of service and the management of urban growth, many have experienced declining central budgetary support. A major source of local government revenue is real property tax (RPT), and the collection of tax should be equitable and based on fair and current property values (Bell, 2014). In many countries, poor systems of property valuation mean that local government revenue is less than it could be. GLTN is currently developing land-based financing tools that can contribute to address some of these concerns.

For most economies, real property comprises between half and three quarters of all assets. Increasingly fair

Inclusive land use planning practices build consensus and ownership. Nepal. Photo © UN-Habitat.

and equitable market value is a basis for many decisions related to dealings with real property. This is due to increasing development levels, globalized capital markets, financial sectors and regulatory frameworks. Appropriate standards and regulation on the valuation of real property, and greater transparency are needed to protect societies. Bell (2014) argued that "inadequate and inappropriate valuations that are not cognizant of standards and regulations have been contributory factors in the collapse of property markets and the subsequent economic and financial chaos globally".

Land-value sharing involves public actions or public investments that result in the increased value of private land and therefore an increase in private wealth. This increased wealth should also accrue to the public to help defray the cost of the needed infrastructure investments and improved services. A priority should be to improve land valuation to support equitable land-based financing and property taxation so the poor benefit through the release of land for human settlement. Valuation of land is also important in establishing fair values for land that

has been acquired by governments, or as a basis for establishing fair compensation for people who have been resettled. Fair and accurate valuation of land is an important element of this process.

However, one of the challenges is to determine an estimate of market value for non-formal tenures such as communal and customary lands, rural indigenous lands and informal urban settlements. GLTN is currently working with the Royal Institution of Chartered Surveyors (RICS) and FIG to develop guidelines on the valuation of non-registered lands and this will be important when a fair and reasonable valuation is needed to determine compensation. Issues such as the "value" of cultural heritage and sacred sites are important considerations. Beyond that initiative, land agencies in most countries in the region would benefit from development of capacity to undertake valuation and to generate income for governments from land

> *However, one of the challenges is to determine an estimate of market value for non-formal tenures such as communal and customary lands, rural indigenous lands and informal urban settlements.*

taxation. Sound land values also underpin an effective land market. As there are multiple stakeholders in the process of land acquisition, ensuring sustainable and transparent land development is increasingly complex. The lack of a fair and transparent land and property valuation system in most countries is a significant factor in inadequate compensation being paid for land acquisition and compensation.

5.2.6   SUSTAINABILITY OF LAND SECTOR SERVICES

GLTN and partners are in the process of developing a land tool that can assist land agencies to modernize their budgetary approach through adopting appropriate methodologies that ensure the provision of land services in an efficient, cost effective and inclusive manner. The intended users are land-sector staff preparing proposals for reform for land administration systems, land-sector policy makers in assessing and proposing a case for land reform, and key government agencies reviewing land administration system reform proposals.

The first version of the Costing and Financing of Land Administration Services (CoFLAS) tool has been developed and validated by industry. This adopts a fit-for-purpose approach to land administration systems by making the reform consistent with the operational demands of land administration without sacrificing reasonable service quality, inclusivity, capacity and affordability. It involves a set of guidelines and a tabular framework for exploring, identifying and prioritizing land administration service delivery options.

5.3   ADDRESSING THE BARRIERS

Improvement to tenure security cannot be done successfully at scale without good coordination between donors, strong partnerships between key land stakeholders, capacity building, and continuous communication among governments, land professionals, civil society organizations, grassroots organizations, academic institutions and communities. The following section emphasizes capacity building, knowledge sharing and coordination and communication between stakeholders in the Asia and the Pacific region.

5.3.1   CAPACITY BUILDING, KNOWLEDGE SHARING AND AWARENESS RAISING

Improvements are needed in the capacity of governments with regard to policy development, recording land rights, land-use planning, land valuation, conflict resolution and implementation of laws and programmes. Capacity building will be needed for the successful implementation of land tools that address tenure security and land governance. It was thought that there is an opportunity for civil society organizations to contribute to capacity development of communities by sharing local knowledge and good practices at community, national and regional level.

Another key theme to come from the discussions was a desire for knowledge sharing. Stakeholders at country level would like access to the most relevant projects that have success in other countries. South-South exchanges were recommended as there are many good practice sites across the region. Online provision of good practices and lessons were seen as being important. There were also calls for an annual forum that would include funding to bring people together from across the region. The Annual World Bank Conference on Land and Poverty is a very strong

global event held in Washington D.C. and there would be great value in a similar forum held in the region that allowed for sharing of knowledge on regional issues and solutions. There was a clear call for an inclusive regional and subregional forum to share experience, improve knowledge sharing and support initiatives, and to set directions.

The Post-SDG Agenda will require assessment and monitoring to provide information related to indicators. Research will be required demonstrating evidence at country, city, municipal and community levels. Information from land agencies will need to be supported by further collaborative research and disaggregated data will be needed. Implementation of the VGGT and the development of land tools at the country level will require continuous learning and sharing of good practices and programmes. Civil society organizations will be central to the process of monitoring and assessing at the local level and the Land Monitoring Assessment Framework is a good example of this. Academic bodies also have an important role to play.

Also important is awareness raising among the people who hold legitimate but informal rights to land, in many cases for generations, but who are unaware of their rights. Tenure rights, which provide access to land and other natural resources, are fundamental for the realization of human rights, such as the right to a standard of living adequate for health and well-being, including food and housing. The people most affected by tenure insecurity are often unaware about their rights and it is important that these people are informed of their rights, the principles of responsible governance of tenure, how they can enjoy their rights, and the processes available to them if infringements or threats occur.

5.3.2 IMPROVED REGIONAL COORDINATION AND COMMUNICATION BETWEEN PARTNERS

During the multi-stakeholder consultation meetings and workshops in Pattaya and Kuala Lumpur, it was evident there is a great desire to consult and cooperate on land issues in the region. In each of the meetings, the importance of further multi-stakeholder and multi-sectorial consultation that includes country level consultation and that leads to the development of joint advocacy statements and agreement was raised. These may be used to engender high-level support at country level.

It was recommended that one of the next steps should be to establish multi-stakeholder mechanisms, or strengthen existing mechanisms, to promote mutual consultation and dialogue on land tenure at regional and country level. Dialogue with communities and civil society is essential to build consensus. Improved coordination is required between indigenous organizations and land agencies in relation to decisions about Indigenous Peoples' lands, and greater participation in decision-making processes.

The process could be managed through an inclusive regional forum under the guidance of a secretariat. It can be hosted ESCAP, UN-Habitat or FAO, and based in Bangkok, Thailand. There was also a strong desire for the creation of a technical working group under this regional forum that supports the implementation of VGGT and land tools in the region. Many said representation was important and should include government, bilateral and multi-lateral agencies, regional forums (e.g. ASEAN and the Pacific Islands Forum), international professional bodies, such as FIG, civil society organizations and grassroots organizations. However, improved coordination will require the provision of resources, including the establishment of a secretariat or coordinating body in the region.

Break-out session during the Multi-Stakeholder Consultation on Land Tenure in Asia and the Pacific, 11-12 June 2014. Pattaya, Thailand. Photo © UN-Habitat/Danilo Antonio.

The United Nations Regional Cartographic Conference for Asia and the Pacific (UNRCC-AP) and the Permanent Committee on GIS Infrastructure for Asia and the Pacific (PCGIAP) has worked on cadastral mapping and land issues, particularly in the last two decades. The United Nations initiative on Global Geospatial Information Management (GGIM) can be said to have grown out of UNRCC-AP and PCGIAP activities in this region. PCGIAP today is the Regional Committee on Global Geospatial Information Management for Asia and the Pacific (UN-GGIM-AP). At the 20th United Nations Regional Cartographic Conference for Asia and the Pacific and the 4th Plenary Meeting of Regional Committee of the United Nations Global Geospatial Information Management for Asia and the Pacific in October 2015, there will be a sub-theme and session on land administration and management. The theme of the conference and plenary meeting is "Geospatial Information for Global Development Agenda". The expectation is that UN-GGIM-AP will subsequently

include into its next work plan an agenda item related to land administration and management and will create a new working group on land administration and management. At the next level, technical interventions are required for implementing the VGGT and for developing gender-responsive and pro-poor land tools at scale so that they will have an impact on the ground. Global challenges of urbanization, urban growth, food scarcity and climate change impacts all require land tools. Coordinating this activity is the role of an inclusive regional technical working group or similar platform.

At a FIG Congress workshop in Kuala Lumpur, on the role of academic institutions in implementing the VGGT, it was noted that "academic bodies have a role to play in advocating and implementing the VGGT and includes those professional bodies which set educational standards for their members, undertake examinations, or who commission research". Several stakeholders raised the importance of having a consortium of

academic institutions working together to provide research related to the VGGT and improvements to tenure security, as well as to help with implementation through training and education. Relationships should be developed between regional universities, including in the 15 countries reviewed. The University of South Pacific is unique in that it has campuses in several Pacific Island countries. Broader twinning arrangements should be explored with international universities with strong land administration and management research and teaching centres (including several in Europe, Australia and New Zealand) that have strong alumni in the region.

The aim of developing consortiums of academic institutions and exploring twinning arrangements is to undertake joint research aimed at gathering evidence about the impact of land reform or to establish what the existing situation is on the ground, to inform future action. For example, several people mentioned the lack of disaggregated data with regard to land tenure.

5.3.3 STRENGTHENING LAND-DISPUTE RESOLUTION MECHANISMS

Across the Asia and the Pacific region, there has been a history of post-colonial conflicts and civil unrest. Many of the countries reviewed have had some form of conflict in the recent past, and land-related conflict is often the result of many of the issues raised above. Most of the countries reviewed require improved land-dispute resolution mechanisms. In 1975, Papua New Guinea, for example, introduced a three-tiered structure for settling disputes: mediation, arbitration and appeals. This was based on a combination of Melanesian (customary) customs, principles and practice, as well as the formal laws of British origin. This duality was important as Papua New Guinea has approximately 97 per cent customary land. When the system was introduced, it worked effectively until the

1990s, when it eroded due to inadequate funding. Land disputes in Papua New Guinea are now common and a key issue of land governance. Since the 2005 National Land Summit, there has been renewed interest in introducing the reform needed to improve dispute resolution and conflict management.

An important element of disputes over land is the response to evictions. One of the most effective ways to prevent evictions is through provision of secure tenure and onsite upgrading of infrastructure and facilities. Two early slum upgrading projects – the Kampung Improvement Programme in Jakarta, Indonesia, and the Tondo Urban Development Project in Manila, Philippines, demonstrate the enormous potential of secure tenure when it comes to generating better-quality housing and living environments for the urban poor (UN-Habitat, 2010). Countries such as the Philippines and India have adopted anti-eviction laws that regulate the landowner and occupier, improving the rights of both. Anti-eviction laws and identifying legitimate occupancy rights are major steps to improving the security of tenure of settlers (UN-Habitat, 2010). Where evictions are unavoidable, alternatives include participatory and inclusive land readjustment and slum upgrading, and ensuring the relocation respects international law and protects tenure rights.

IFAD (2008) argued for broad stakeholder participation (particularly of rural people) is critical in mitigating social conflict and land-related policy and institutional reform. It called for community-based conflict resolution mechanisms (including those within participatory land use planning, and multi-stakeholder user agreements) to be used as a first recourse, rather than the formal resolution mechanisms such as courts. For example, the impact of the overlapping claims to land in Timor-Leste mentioned earlier is compounded by a lack of legislation regarding land-dispute resolution and
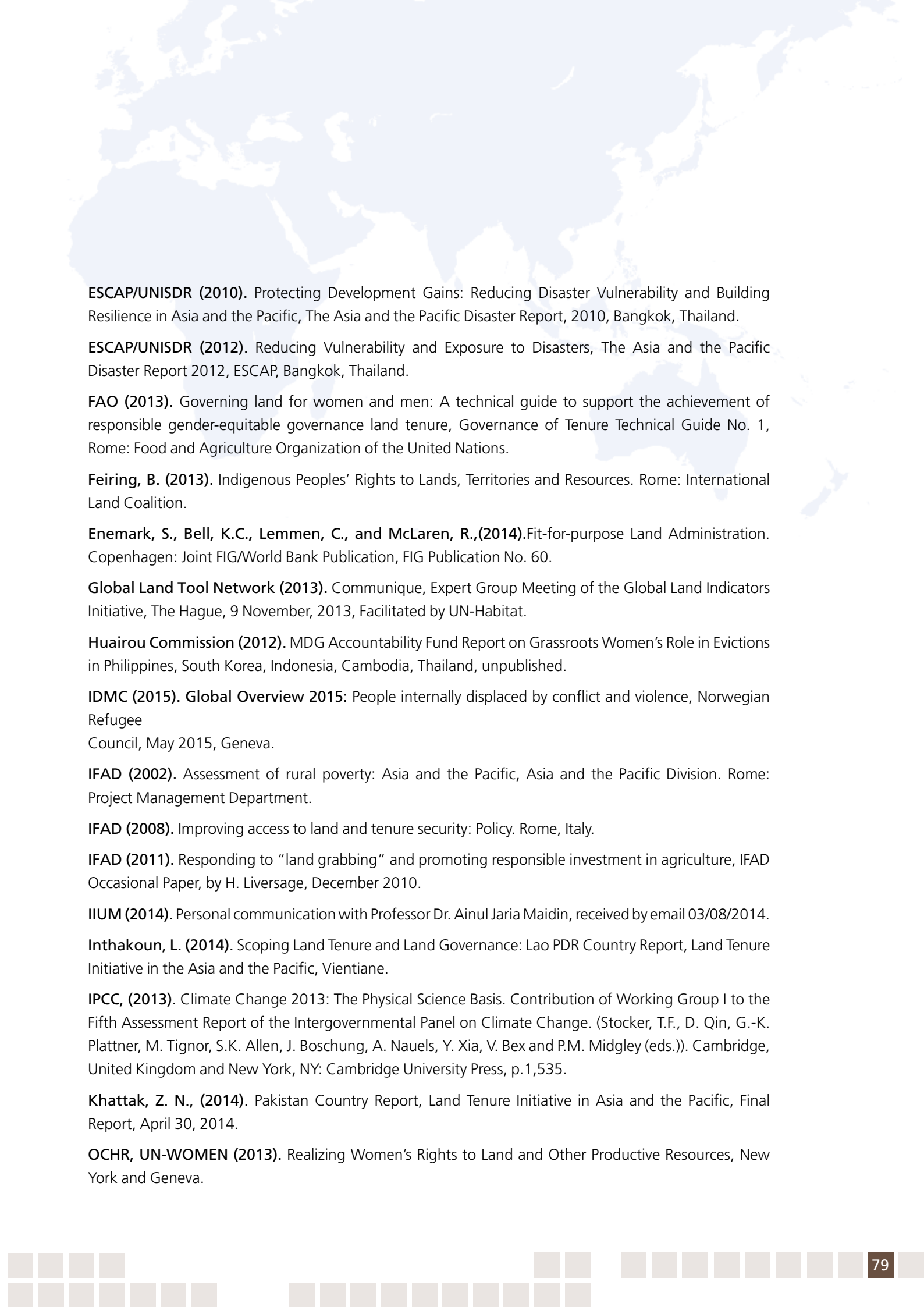
conflict management. In response to a backlog in the courts, the majority of disputes in Timor-Leste are solved through customary dispute-resolution mechanisms. People prefer the customary mechanisms as they are faster, more accessible and inexpensive. For a number of people, the customary dispute-resolution approach is the only one of which they are aware. Where requested, the National Directorate of Land, Property and Cadastral Services (DNTPSC) mediates land disputes.

The VGGT attempts to address dispute resolution. The United Nations Interagency Framework Team for Preventive Action also produced a Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict in 2012. Opportunities exist for exploring how customary or cultural approaches to dispute resolution can be integrated with formal dispute-resolution processes and local alternatives to formal mechanisms. FAO has produced guidance material, Land Tenure Alternative Conflict Management, on alternative dispute resolution at the local level, and has recently released the VGGT online e-learning course Addressing Disputes and Conflicts over the Tenure of Natural Resources. This gives guidance on managing competition over the use of land, analysing the underlying causes of disputes and conflicts, and illustrates dispute-resolution mechanisms and options to prevent disputes and reduce vulnerability to conflict.

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APPENDIX:
CASE STUDIES
OF FOUR COUNTRIES

INTRODUCTION

A balance was required between the depth of analysis at individual country level and the difficulty in reviewing all countries in the region. The decision to focus on 15 countries was a result of this. Another outcome was the decision to review four countries in detail as a basis for deeper understanding at country level. These four countries were Lao PDR, Pakistan, Papua New Guinea and Timor-Leste. Each represents a different sub-region and has significant differences and challenges.

For each country, detailed country case study reports were commissioned and these studies have informed this review. All of them are too long to include in this report and a brief summary of the key challenges for each country is provided below.

1   LAO PDR COUNTRY STUDY

COUNTRY BACKGROUND

Lao PDR is located in the centre of mainland South-East Asia and borders onto China, Viet Nam, Myanmar and Thailand. It has a population of 6.3 million people comprising 48 ethnic groups, divided into three main groups. These are the Lao Lum, who are predominantly in lowland areas, the Lao Theung living between elevations of between 300 and 900 metres, and the Lao Soung living in the highland areas. The country is mainly rural with 62 per cent of people living and working in rural areas. Infrastructure used to be concentrated in the capital, Vientaine, but in recent years has expanded into other parts of the country. The Lao economy has grown rapidly over the past decade with GDP growth rates of between 7 and 8 per cent in 2013/2014.

HISTORY OF LAND REFORM

After the 1975 revolution, the Lao government sought to develop the country along socialist lines. In 1986, the government began to orient the country towards a market-based economy, including opening up the country for foreign direct investment in mining, hydropower and plantations. An important component of this change is that the government began to emphasize individual and private land use and tenure over collective rights. Throughout the late-1980s and mid-1990s, the government implemented a number of different development-oriented policies that impacted on the way in which land allocation occurred. In 1989, a programme of village relocation and consolidation sought to alleviate poverty in remote rural areas by resettlement to lowlands areas.

In the same year, the Shifting Cultivation Stabilization Elimination Programme allocated permanent plots of agricultural and forest land. The 1995-1996 Village Land-Use Planning and Land Allocation Programme delineated the boundaries of villages and allocated land to the village and individuals for forest preservation and agricultural production. This programme created a path for providing land tenure certificates and eventually land titles for agricultural and residential land. The Lao Government implemented two phases of land titling in urban and peri-urban areas commencing in 1997, with funding and technical assistance from the World Bank and AusAID.

TYPES OF LAND TENURE

According to the Constitution and Land Law (2003), the land of Lao PDR is owned by the national community and the state is charged with managing the land and allocating it for use, leases and concessions. As a result, the state plays a central role in the ownership, control and management of land. The following types of tenure exist:

1. State-owned and used land. This includes much of the forest land, national defence areas, national cultural areas, and government building land in urban areas.
2. State land leased to domestic or foreign investors. This was estimated in 2012 to cover 1.1 million hectares. Concessions have been awarded for agriculture and forestry plantations, mining, hydropower, tourism, infrastructure and manufacturing. There are a number of studies that have shown the negative economic, social and environmental impacts and that a lack of definition of the boundaries has caused land conflicts.

3. Lease of agricultural private land. This is widespread with an estimated 8 to 10 per cent of farming households reported to have leased farmland.
4. Private ownership and use – through the land titling programmes and is estimated to cover 540,000 parcels in urban and peri-urban areas.
5. Land-use right. A significant number of rural land users have been issues with temporary land-use certificates that confer rights for three years.
6. Communal and customary lands. Much of the land in Lao PDR is communal or customary and plays a major role in village communities. Much of this land is used for forestry or agro-forestry.

URBAN GROWTH

Lao PDR has had an annual average rate of change in population of 3.1 per cent in the period 2010 to 2015. The urban population has grown from 3.6 million in 1990 to 4.3 million in 2014. The State of Asia Cities 201-2011 Report estimated the slum population in 2005 to be 1.23 million. Informal settlements develop on state land due to rural-urban migration or displacement from government development projects. Poorer urban residents are less likely to have land titles because of the cost involved in attaining them.

IMPACT OF CLIMATE CHANGE AND NATURAL DISASTERS

Climate change and disaster risk have had a profound impact on land issues in Lao PDR. Efforts to mitigate climate change through reduced deforestation have important implications for land tenure security of rural villagers with impacts for non-timber forest products,

timber harvesting and agricultural production. Also, the land targeted for these projects is part of the swidden cultivation cycle on communal or state land and farmers do not have secure tenure. Targeting this land without addressing tenure security would increase the likelihood that farmers would lose access to land. Increases in temperature and reduction in rainfall associated with climate impacts will also affect food security and livelihoods. Another consequence may be an increased incidence of typhoons, floods and droughts. These events can be devastating for agricultural production.

VULNERABLE GROUPS

Vulnerable groups such as women, Indigenous Peoples, ethnic minorities, children and the elderly are much more likely to experience unequal access to land and it is important for land-related projects to address their needs. Although women traditionally have an important role in property ownership, most land titles are written in the name of the husband. In rural areas, women often collect non-timber forest products from communal or state forest land, to which they have insecure tenure. Indigenous groups and ethnic minorities are particularly vulnerable to losing land as they practice shifting cultivation, a practice the government is trying to eliminate. Children and the elderly are reliant on the household and those with access to land are more likely to do better than those who do not have secure tenure.

LAND ADMINISTRATION

In 2011, a Prime Ministerial decree created the Ministry of Natural Resources and Environment (MoNRE). The land-related departments within MoNRE include the Department of Land-Use Planning and Development,
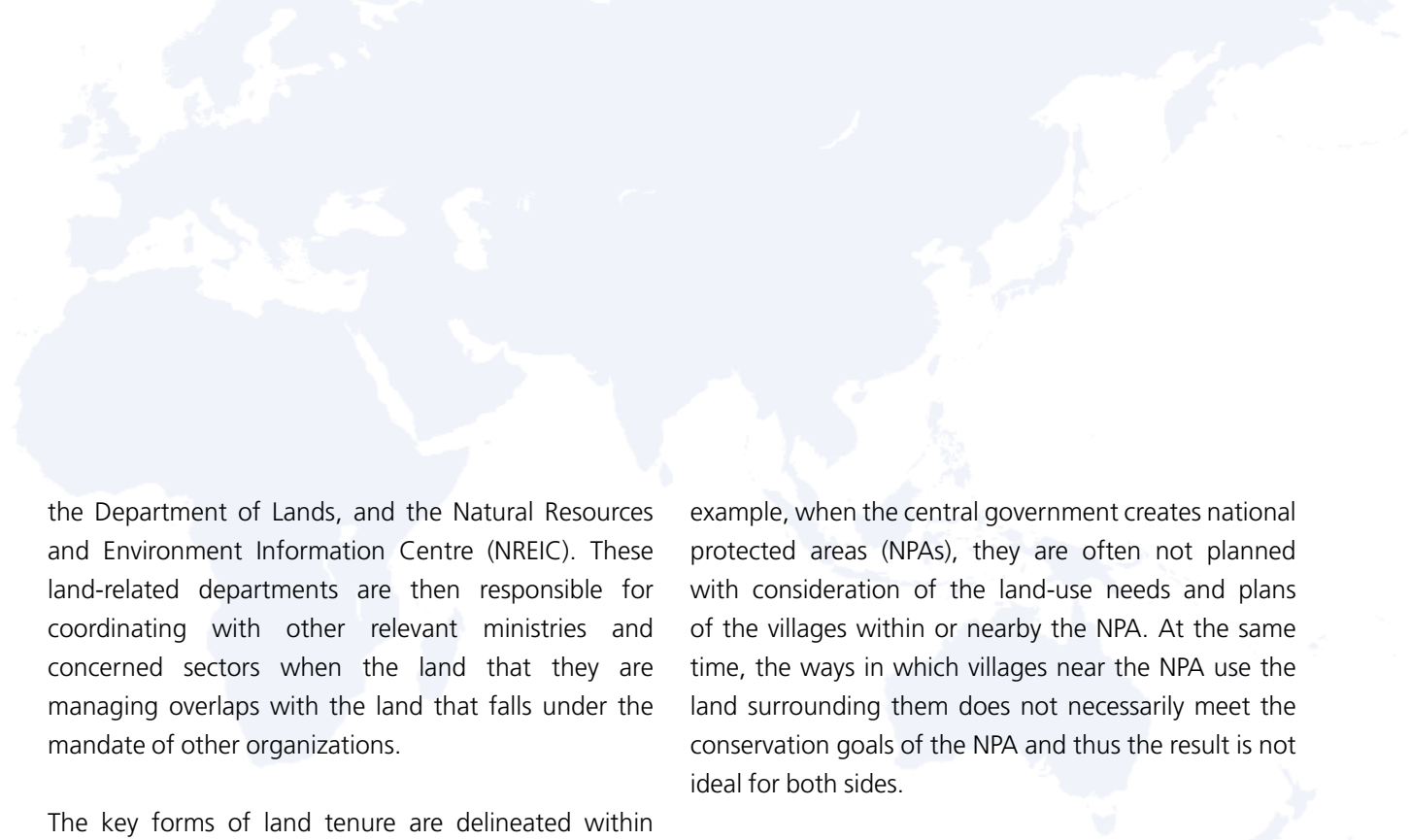
the Department of Lands, and the Natural Resources and Environment Information Centre (NREIC). These land-related departments are then responsible for coordinating with other relevant ministries and concerned sectors when the land that they are managing overlaps with the land that falls under the mandate of other organizations.

The key forms of land tenure are delineated within the Land Law and are further explained in the Prime Ministerial Decree No. 88 on the implementation of the law. The Land Law additionally provides a number of articles describing how land is to be managed and administered, such as different types of land zoning, the authorities responsible for land management, the registration process for different types of land tenure, and settlement of land conflicts. The management and use of specific types of land are governed by other sectorally based laws, such as the Agriculture Law (1998) and the Forestry Law (2007).

The central government has developed land-use plans for large-scale land uses at the national scale, such as the location and extent of national protected areas (NPAs), national production forests, national protection forests, industrial zones, urban areas and agricultural zones. Such central-level planning is relatively well integrated with provincial-level planning of provincial protected areas, protection forests, and production forests and with provincial-level industrial and agricultural zones. However, it does not connect well with village-level planning, which is carried out by the district government. Village-level land-use planning occurs for every village without consideration of larger land-use plans at the provincial and central level. For example, when the central government creates national protected areas (NPAs), they are often not planned with consideration of the land-use needs and plans of the villages within or nearby the NPA. At the same time, the ways in which villages near the NPA use the land surrounding them does not necessarily meet the conservation goals of the NPA and thus the result is not ideal for both sides.

The valuation of land is done differently depending on the type of land. Land that is held, transferred, or leased by private landowners is evaluated by the landowners themselves, and is a negotiation with buyers or renters about what they are willing to pay. The cost of registering the land depends upon the size, location and estimated value of the land by the Department of Lands. For leasing state land, the value is pre-set by the government, depending on the type of investment project and the location of the land, as lands in areas with greater infrastructure and closer to transportation links are more expensive than those in more remote areas.

The government does not manage land-related information in a systematic and uniform way. Each department responsible for work related to land manages its own information. For example, the Department of Lands maintains data on registered land and property taxes within its various national, provincial and district offices, while the Department of Forestry (within the Ministry of Agriculture and Forestry) manages information about the areas and location of different types of forest land. Thus, land-related information is stored within different departments and is not combined in one location.

APPENDIX: CASE STUDIES OF FOUR COUNTRIES

2   PAKISTAN COUNTRY STUDY

COUNTRY BACKGROUND

Pakistan borders Iran, India, Afghanistan, China and the Arabian Sea. The great mountain ranges of the Himalayas, the Karakorams and the Hindukush form Pakistan's northern highlands of the Khyber Pakhtunkhwa Province and Gilgit Baltistan. Punjab province is a flat, alluvial plain with five major rivers dominating the upper region, eventually joining the Indus River flowing south to the Arabian sea. Sindh is bound on the east by the Thar Desert and the Rann of Kutch, and on the west by the Kirthar range. The Balochistan plateau is an arid tableland, encircled by dry mountains. Pakistan is susceptible to wide-ranging hazards from landslides to floods and droughts, earthquakes and cyclones.

The total estimated population of Pakistan is 186.5 million. Almost all Pakistanis belong to the Indo-Iranian ancestral group. Punjabis are the largest ethnic group, Pashtuns (Pakhtuns) are the second largest group and Sindhi the third-largest ethnic group. Saraikis make up 10.53 per cent of the total population. The remaining large groups include the Urdu speaking and the Balochis, who make up 7.57 per cent and 3.57 per cent of the total population respectively. The state religion in Pakistan is Islam, which is practiced by about 95 to 98 per cent of the total population. Muslims are divided into two major sects: the majority of them practice Sunni Islam, while the Shias are a minority who make up an estimated 10 to 15 per cent.

Pakistan's economy has faced many serious challenges. In recent years, there have been many domestic and external shocks to the national economy, including devastating and repeated natural disasters, internal security hazards and a growing energy crisis. Pakistan's economy has grown at an average growth rate of 2.9 percent per year for the last five years. Deterioration in the power sector is the main constraint on growth. Gross domestic product (GDP) growth has remained at half of the level of Pakistan's long-term trend potential of about 6.5 per cent per annum and is lower than what is required for sustained increase in employment and income, and poverty reduction.

HISTORY OF LAND REFORM

The land administration system in the India-Pakistan sub-continent is very old. There were attempts to reform the system by ruler Sher Shah Soori (1534-1545), whereby land was categorized, measured and a schedule of crop rates fixed. The system was also reformed during the Mughal King Akbar reign of Pakistan (1556-1605). Todar Mal, as an adviser to King Jalal-ud-din Muhammad Akbar (he third Mughal emperor of India), initiated the regularization of land record management for the first time and devised elaborate methods for agricultural tax assessment. The subsequent colonial rule by the British then implemented the system scientifically, whereby large-scale cadastral surveys were conducted to demarcate the boundaries and the extent of each individual landholding. Soil fertility was also classified to formulate and rationalize the levy and collection of land revenue from landholders in every village. The British set up a proper administrative hierarchy with a deputed relevant administrator in each administrative zone. The British improved and formalized the system of land administration by introducing legislation pertaining to the rights and responsibilities of landowners vis-a-vis the state, the relationship between land owners and their tenants, the rights and responsibilities of various categories of tenants, a system of adjudication of disputes in matters pertaining to land, and also set out in detail the powers and duties of various categories of Revenue Officers.

Major land reforms for "distribution of land" were made under the land reforms laws of 1959, 1972 and 1977. The land was surrendered to the government under these reforms or acquired by the government from private owners of the lands for re-distribution to the existing tenants. The regulations introduced under these three land reforms progressively imposed restrictions on maximum land ownership and introduced equitable treatment of any resumed land by giving it to the occupant tenants, small farmers or the ones who did not own any land at all.

URBAN GROWTH

Pakistan is rapidly urbanizing and, by 2030, will be most urbanized country in South Asia. Currently, there are many challenges to planning and managing growing urbanization resulting in informal and unplanned settlements. According to UN-Habitat's State of the Cities Report 2012/13, 49 per cent of the urban population lives in slums. Current informal settlements are not only growing, but peri-urban areas are also being sold as plots and many new informal settlements are added. At the present pace of growing informal settlements, and in the absence of planning and management of urban development, the number of informal settlements and people is increasing, which is creating many problems, especially with their tenure rights.

Land-use planning as a public policy tool is important for designing physical development plans. Currently in Pakistan, there are no land-use plans and therefore urban development is far from being sustainable. Globally, physical development plans have moved beyond the creation of designs or maps to a more participatory, broad-based strategy that becomes a tool for managing urban change. Land-use plans are based on realities and should be developed through discussion on how to use space, guide development and how to

make rational decisions for infrastructure. The outcome of the process is the allocation and zoning of land for specific uses, regulation of the intensity of use and the formulation of legal and administration instruments that support the plan.

TYPES OF LAND TENURE

All land in Pakistan can be divided into three basic categories:

- **Privately owned land.** Private owners have full rights to sell, gift, exchange or dispose of their private land in any manner they wish, subject to some legal limitations. Privately owned property is subject to automatic inheritance under personal laws.
- **Village common land** is called shamilat or shamilat deh. Common land may be used for purposes such as graveyards, community buildings, mosques, schools, dispensaries, playgrounds, village ponds, village roads, grazing grounds, firewood collection, passages for the movement of cattle, etc.
- **State owned or "crown" land (sarkaarizameen).** Ownership or legal entitlement belongs to the federal, provincial or local government.

LAND ADMINISTRATION

The Local Land Governance in Pakistan is organized on the traditional system of land registers and maps. The Board of Revenue (BOR) at provincial level is mandated with all matters connected with administration of the land, collection of land revenue, preparation of land records and other matters. The BOR is also the highest court of appeal and revision in revenue cases within the province. The Chief Land Commissioner is responsible for recovery of government dues / agricultural income tax, land revenue, water rate, ushr (religious tax), mutation fees, stamp duty, registration fees, copying

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fee, and arrears. There are several laws and acts that deal with the land, the relationship between landlord and tenants, mortgagor and mortgagee, assessment and collection of land tax, agriculture income tax, local rates, and land acquisition for public purposes. Various Shariat Application laws and the Constitution of Pakistan recognize the principle of application of personal laws to a deceased's property as per his/her religion.

There are many challenges faced by the land administration system. Land governance in Pakistan is fiscal in nature and it is mainly used for tax collection and as means for generating revenue. The land records show information on who the taxpayer is, how much the tax value is, the size and cost of the land, and where it is. The record does not clearly define the nature of rights in land for landowners which means that legal security of land rights is not guaranteed. The stakeholders are not satisfied with the performance of the present governance. The majority of the stakeholders said there are opportunities for malpractices and unofficial changes in the land records due to heavy dependency on patwaris (government land officials) for land transactions and other processes which affect the efficiency and effectiveness of the present Land Governance System, such as the process of mutation. The present system is inaccurate and its complex nature exacerbates land-related disputes. This creates doubts about tenure security in landowner's minds and so they cannot use their property for any mortgage and loans from banks. Moreover, land transactions are relatively expensive and disputes about the correctness of land rights are caused by, among other things, an inefficient and dispersed land record system. The present system of record keeping is in paper format. These are outdated and there is a lack of updated geographical information data. There is no latitude/ longitude information on cadastral maps, which creates gaps between maps and registers in presenting the reality on the ground. Information about the record-of-rights is originally established on the basis of a detailed field survey and includes a map of each village showing the position and boundary of each parcel. All this graphical information is intended to be updated every 25-35 years, which is not fast enough to keep pace with the rapid changes and development.

ACCESS TO LAND FOR VULNERABLE GROUPS

While adhering to the legal framework, the Sindh Government took a number of decisions and issued a number of guidelines to make the land distribution process transparent, participatory and sustainable for the poor land grantees, especially the women. Also, it was decided that unencumbered state land will be allotted to the landless haris (farmers) preferably to women haris. This is a departure from previous policies as a priority was placed on the allocation of agriculture land to women. The Council of Elders of the Federally Administered Tribal Areas (FATA) rejected adoption of Land Administration System (LAS) of Pakistan as they think that their centuries-old system of verbal dealings is much safer with regard to tenure security. They think the Federation's LAS is inefficient and corrupt compared to their own system. The land revenue record is not documented, however, land tenure security is ensured by the Council of Elders of each tribe. There are more than 0.75 million IDPs in different parts of the country, with the vast majority living in Khyber Pakhtunkhwa, as 100 per cent of these people belong to FATA, their land tenure security is protected through the Council of Elders and the political administration of their agency.

3   PAPUA NEW GUINEA COUNTRY STUDY

COUNTRY BACKGROUND

Papua New Guinea consists of eastern New Guinea, New Britain, New Ireland, Bougainville, and 6,000 small islands and archipelagos. A central mountain chain extends the length of the island and is covered in tropical rainforest, with few pockets of land suitable for agriculture. Fast-flowing rivers descend to the coast through some of the world's largest swamps, with swamp forest in the poorly drained lowland areas. Around Port Moresby and in drier areas to the west are grassy plains and savannah woodlands. People are dispersed throughout the country and live in family, clan and tribe units. Each tribe has their own cultures and traditions. The country has more than 800 local languages and they are spoken by different ethnic groups throughout the country. More than 95 per cent of the people are Christians but some still have traditional beliefs. The economy is mainly based on extractive industries, agriculture, fisheries and forestry and has steadily improved due to a significant resource boom, mainly in the extractive minerals and energy sector. Gross domestic product increased from 5.5% in 2009 to 11.6 per cent in 2014. The informal economy is a major component of the economy; it employs more than 60 per cent of the people and is growing at a rapid rate. The government has recently introduced a Small-Medium Enterprises' policy (SME) aimed at graduating the informal into formal.

HISTORY OF LAND REFORM

Prior to colonization in 1883, all the land in Papua New Guinea was held under customary tenure. The customary land tenure system differed considerably across the country. Broadly speaking, ownership rights to a piece of land rested with a group identified via lineage, while use rights to individual plots are held by individuals and families. Within this framework, land ownership can be classed into two systems - patrilineal and matrilineal. Under the patrilineal system, land is inherited along the male line along the female line in the matrilineal system. During the colonial period from 1883 and then from 1885-1975, the German and British (and later the Australian) colonial governments pursued policies that protected land for the Indigenous People. Land alienation (conversion from customary to freehold) was selectively permitted only in areas where the need arose, with payments made to customary landowners defined by the customary land tenure law of the area. The general principle was that land was deemed to be held under traditional tenure unless it was deemed waste and vacant by the colonial administration. There have been a number of failed attempts to reform customary land tenure and, 39 years after independence, most of the land in Papua New Guinea (95 per cent) is still under customary tenure.

LAND TENURE TYPES

As mentioned above, 95 per cent of the land is still under customary ownership. Of the 5 per cent under formal administration, 2.5 per cent is owned by the state, approximately 0.5 per cent is owned by private people as freehold under statutory tenure. The remaining 2 per cent is estimated to be land owned by customary landowning social units leased to private enterprises as business and agricultural leases using the Lease-Lease-Back process defined by the Land Act (1996). Under this scheme customary owners can transfer their land to the State and then lease it back. Therefore, in terms of ownership, 97 per cent is owned by customary landowning social units defined by the customary law of the area. Land disputes are common all the country's provinces and causes social and economic disruptions. Disputes may go back several generations and solving

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them is a complex issue. The countries Land Disputes Settlement Act (1975) created a three-tiered structure for settling disputes – mediation, arbitration and appeal - based on a combination of Melanesian customs, principles and practice, and formal laws of British origin. However, the system is struggling to operate effectively. Since 2004, and especially the National Land Submit of 2005, there has been renewed interest in land policy reform and dispute settlement, with major structural and operational changes proposed.

URBAN GROWTH

Papua New Guinea is predominantly rural with only 13 per cent of the population urban by 2014. However, this is likely to change rapidly with the urban population predicted to grow from 971,000 in 2014 to 3 million by 2050. Informal settlements are mushrooming everywhere in the cities and towns in the country. Most of them are in Port Moresby and Lae, with Port Moresby alone having 97 informal settlements. However, the local authorities do not recognize the existence of these squatter settlements in their plans. Informal settlements exist both on state and customary land, with people settling without approval on vacant state land. Approximately 50 years ago, customary land was given away by customary landowners to foreigners through marriage or trade linkages, and those settlements have had three to four generations living on them. A mature, informal land market coexists with the formal land market in many cities and towns. In the informal land market, the customary landowners sell their land to foreigners but the legal framework on land transactions does not recognize such sales; it is an informal arrangement between the seller and the buyer. Buyers construct houses illegally and settle permanently, and as time goes by further developments

occur, and the settlers gradually develop a degree of social legitimacy for their occupation. However, in other cases they are at constant risk of eviction. In order to improve tenure security of settlers and better manage urban growth, the government created a new "Office of Urbanization (OoU)" in 2007, which formulated a National Urbanization Policy that aims to work with customary authorities to release customary land for urbanization. UN-Habitat is currently undertaking a project to legalize all illegal settlements in the country.

CLIMATE CHANGE AND NATURAL DISASTERS

Papua New Guinea is particularly prone to natural disasters, including earthquakes, volcanic eruptions, tsunamis, cyclones, river and coastal flooding, landslides and droughts. Many thousands of small villages in the highlands are subject to weather extremes of heavy rainfall and drought, and increasingly, landslides are occurring due to population pressure and uncontrolled land use. The coastal areas and the many coastal atolls are low lying and nearly 500,000 people in 2,000 coastal villages are vulnerable to weather extremes and inundation. Effective and sustainable risk reduction is limited by the lack of clear governance with respect to the allocation of responsibilities across all at-risk sectors in government. Better understanding is needed of the hazards and the risks arising from them. In the absence of recovery support following a disaster, communities are forced to pick themselves up with meagre resources and to continue from where the disastrous event left them. Cycles of disasters in vulnerable communities negate government objectives to alleviate poverty and these are big challenges for the government. The most vulnerable areas in the country are villages along the north coast and the island provinces (New Guinea Islands). In the urban

areas, informal settlers living in flood-prone areas and drainage reserves are the most vulnerable. The quality of their buildings are inadequate to respond to climate change impacts. Land reforms aimed at addressing climate change-related effects are yet to be made. A draft climate change policy has been developed that identifies land-use planning as an important tool in mitigating and adapting to climate change impacts, but it is not yet implemented.

LAND ADMINISTRATION

The Department of Lands and Physical Planning, the government agency responsible for land matters, has still (in 2014) to formulate a National Land Policy to bridge the gap between departmental goals and objectives and the aspirations of the higher order government policies. The land held under customary tenure supports the livelihoods of more than 85 per cent of the country's population, and most people living in rural areas are engaged in subsistence production. Customary land tenure law of the area defines and enforces property rights, including ownership, access and use rights. This operates outside the formal law and administration systems. Legally, however, the Constitution, the Land Act (1996) and the Underlying Law Act (2000) recognizes customary land tenure law. Land alienation is selectively permitted only in areas where the need arises for the delivery of public services or to facilitate private enterprise development, with fair payments made to customary landowners. All land held under formal tenure is administered by the Department of Lands and Physical Planning (DLPP). This land includes all the land under state ownership and with freehold and lease-lease back titles. However, the poor capacity in the department impacts their ability to protect land rights, and the individual land titles issued are therefore insecure. The outcome is a poor

investment as financial institutions refuse to accept any of these land titles as security for loans.

The Land Titles Commission is responsible for converting customary land to freehold titles under the Land Tenure Conversion Act (1962). Land ownership disputes are addressed by the Magisterial Services, which is also under the Ministry of Justice and the Attorney General. Land agencies are decentralized and provincial land authorities maintain cadastral maps but records of land ownership are paper based and kept by the Registrar of Titles Office (ROT). Initiatives to convert these land records from paper records to digital records to increase the security in the event of a disaster have been unsuccessful. Analysing market data is difficult in because of (i) inadequate legal frameworks that do not allow for the efficient functioning of the property market; (ii) a lack of published information required for proper valuation; (iii) volatility of property markets; (iv) a lack of adequately trained profession valuers; (v) outdated (or lack of) national standards; (vi) external pressure and excessive or insufficient government interference. This challenge for valuers is a major issue for the country. Land-use planning is under the control of the Physical Planning Division of the Department of Lands and Physical Planning. Though most cities and towns have land-use/zoning plans, it is extremely hard to monitor implementation of these plans because of a shortage of manpower and logistics, but there is some compliance in some towns and cities. Land-use planning is not extended to rural areas yet.

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4   TIMOR-LESTE COUNTRY STUDY

COUNTRY BACKGROUND

Timor-Leste is mountainous with steep slopes that cover close to half of its surface area. Mount Ramelau is its highest point at 2,960 metres. About half of the country's area is covered by forest and upland areas are characterized by high precipitation, cooler temperatures and stronger winds, while lowland areas are generally warmer and drier, with long periods of little or no rainfall. According to the World Risk Report 2013, Timor-Leste ranks 10th on the list of countries most at risk of disaster. This high exposure to climate change is aggravated by the lack of adaptive capacity. Timor-Leste has a million people and consistently high population growth; the population is young, with a median age of 18.3 years. The economy is one of the most dependent on natural resources in the world. In the last six years, government spending has been almost entirely funded by oil exports, which has driven rapid non-oil GDP growth, but also high inflation, a loss of competitiveness, and very weak employment generation. The Timorese are mainly agricultural people, with 63 per cent of households engaged in agriculture production and 80 per cent rearing some kind of livestock.

HISTORY OF LAND REFORM

Timor-Leste has a strong history of colonization and is a post-conflict state. The Portuguese arrived at the beginning of the sixteenth century and, initially, few attempts were made to establish administrative control over the territory. However, between 2,709 and 2,850 land titles were issued during the Portuguese administration. As the small numbers of land titles show, land titling was used mostly to give elites access to agricultural land, as well as to regulate access to land in urban areas. In 1975, Indonesia took control and caused large-scale displacement of the urban population, especially from Dili to the mountainous interior. During the Indonesian administration, at least 34,966 land titles were issued, but allegations of corruption, violence and unlawful procedures undermined the legitimacy of Indonesian land titles. It is estimated that during the Portuguese and Indonesian administrations, only 3 per cent of the rural land was ever under a land title; the other 97 per cent remained under customary tenure. With independence in 1999 and the withdrawal of Indonesian troops, an estimated 250,000 people were driven over the border into Indonesian West Timor, and some 300,000 fled their homes in urban areas, particularly Dili. It is estimated that more than 70 per cent of public buildings were destroyed and the registry of virtually all Indonesian land titles was also destroyed. After independence, the widespread violence caused by the political crisis of 2006 resulted in the displacement of up to 150,000 people and the destruction of approximately 1,650 buildings. This new wave of destruction and displacement further complicated the existing complexity of land tenure with another layer of dispossession and arbitrary occupation. Although the 2006 crisis was triggered by the dismissal of 591 soldiers from the army of Timor-Leste, unresolved land conflicts were directly related to the violence in Dili and the districts. The displacement caused by the Indonesian occupation is also a source of grievances in areas held in customary tenure. During the occupation, the Indonesian military forcibly resettled many communities on other communities' lands. Although the newcomers were generally accepted due to the shared crisis, the end of the conflict raised debates about the return of resettled communities to their traditional lands. In some

cases, communities managed to agree on solutions for their grievances but there are many other cases in a state of real or latent conflict.

TYPES OF LAND TENURE

A primary challenge for Timorese land governance is the approval of a clear national land tenure policy. The various waves of displacement have created several layers of overlapping land claims based on different sources of legitimacy: customary-based land rights, Portuguese land titles, Indonesian land titles, long-term occupation, and improvement made to destroyed and abandoned property by occupants. Since independence, some land-related legislation has been approved, but this legislation has not yet established a clear legal framework that untangles these layers of land claims. Consequently, a considerable proportion of land parcels are still under dispute, and there is no legal mechanism to adequately address them. Moreover, and despite some progress, even the holders of parcels not under dispute have difficulties safeguarding their rights. Threats to the tenure security of these landholders include the reduced area covered by the land registry, the current unclear status of the land registry, and the unclear legal status of temporary land use rights issued during the Portuguese and Indonesian administrations. Despite some attempts by the government, by 2014 it was still not possible to approve legislation that effectively addresses these challenges. Different forms of insecurity can be felt by various stakeholders: (i) squatters have no safeguard mechanisms to protect them from eviction; (ii) customary land tenure has almost no legal protection and no legal clarity; (iii) the holders of land-use records issued during the Portuguese and Indonesian administrations are not sure of the legal value of these titles; (iv) the lack of clear legal tenure legislation causes land market informality with almost no legal protection; and (v) tenants in lease contracts with private parties cannot be sure of the property rights of the landlord.

URBAN GROWTH

Timor-Leste is still predominantly rural (68 per cent) although it is estimated the urban population will triple between 2014 and 2050 from 370,000 to 1 million people. The percentage urban (urbanization) is estimated to grow during this period from 32 to 48 per cent. The unclear land tenure status, combined with the current high rates of urban growth, is especially concerning for a considerable contingent of squatters, especially those among the poorest parts of the population. These squatters currently live in abandoned buildings or impoverished shelters built on empty parcels of land. Their lack of legal protection and the growing pressure for land access for the construction of new buildings and infrastructure exposes them to threats of eviction without suitable resettlement alternatives. The unclear land tenure status also brings difficulties to the less poor newcomers: commercial investment and population growth are an incentive to the informal land market, especially in the urban area of Dili. But the informal land market exposes those acquiring land to all kinds of insecure transactions and arrangements with little or no legal security. Since the independence of Timor-Leste, no legislation regarding land-use planning, land development, or land taxation has been approved. The lack of urban planning regulations, combined with the current uncertainty over land tenure, difficult access to land, and rapid urbanization are compelling parts of the population – normally the poor and landless ones – to informally settle on hazard-prone areas, such as steep, unstable slopes (like those that surround Dili) and flood plains.

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The concerns regarding evictions are also extended to the rural areas, or "the districts". The unclear status of customary land tenure and community land also exposes rural communities to threats of eviction or loss of land due to agricultural projects and the construction of infrastructure. Despite the low density of the Timorese population (75.1 people per square kilometre), the threat of the loss of arable land cannot be disregarded, considering the low percentage of arable land available; the nation's relatively unproductive, fragile and unfertile soils; current population growth; and the dependence of rural populations on subsistence farming.

LAND ADMINISTRATION

The Ministry of Justice is responsible for the administration of the state's immovable property and the creation of the national cadastre of land. Inside the ministry, these two competencies are attributed to the National Directorate of Land, Property, and Cadastral Services (Direcção Nacional de Terras, Propriedades e Serviços Cadastrais, or DNTPSC). The Secretary of State for Land and Property (SSLP) is responsible for overseeing the land-related responsibilities assigned to the ministry, on behalf of the Minister of Justice (Decree-Law 41/2012 and Decree-Law 2/2013). The Constitution of Timor-Leste regulates the basis of land tenure and explicitly establishes that everyone has a right to private property. Law 1/2003 is the only law regarding land tenure and was part of a package of laws that was only partially approved. The two main features of Law 1/2003 are the definition of state land and the creation of a land-claims process. This law established that all the land that belonged to the Portuguese Administration will be considered state land. The law also determined that all the immovable property acquired or built during the Indonesian occupation also belongs to the Timorese state. The lack of any reference to customary land rights in this law left doubts regarding the adopted definition of state land, especially considering what is established in the colonial Portuguese legislation.

In 2011, considerable progress was made by the DNTPSC and the Strengthening Property Rights in Timor-Leste (ItaNiaRai) project in systematically surveying urban areas, the general support of the population regarding land titling. The Department of Cadastre, Information and Valuation of DNTPSC conducts valuations both for land acquisitions by the state and also for the value of rents to be paid in leases of state and abandoned land. However, the department has limited capacity for valuation and there is no legislation regarding the profession of land valuators. There are no legal criteria established for the valuation of land for acquisition purposes. There is also no institutionalized mechanism to record previous land valuations and no legislation regarding land taxes. Currently, there is no specific legislation regarding land-dispute resolution and conflict management, nor any other legislation regarding disputes in general. While the courts are the only legally established mechanism for the resolution of land disputes, the great majority of land disputes are solved through customary dispute resolution mechanisms.

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME (UN-Habitat)

UN-Habitat helps the urban poor by transforming cities into safer, healthier, greener places with better opportunities and where everyone can live in dignity. UN-Habitat works with organizations at every level, including all spheres of government, civil society and the private sector, to help build, manage, plan and finance sustainable urban development. Our vision is cities without slums that are liveable places for all, which do not pollute the environment or deplete natural resources. More information at www.unhabitat.org.

THE GLOBAL LAND TOOL NETWORK (GLTN)

GLTN aims to contribute to poverty alleviation and the Millennium Development Goals through land reform, improved land management and security of tenure. The network has developed a global land partnership. Its members include international civil society organizations, international finance institutions, international research and training institutions, donors and professional bodies. It aims to take a more holistic approach to land issues and improve global land coordination in various ways. For further information, visit the GLTN web site at www.gltn.net.

RMIT UNIVERSITY

The Land Administration group within the Geospatial Sciences Discipline at RMIT University undertakes research into the impact of climate change and natural disasters on land tenure, land administration and responsible land governance. This includes how securing and safeguarding land tenure rights, and effective land use planning, can enhance land governance and climate resilient pathways. More information at www.rmit.edu.au.

UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC (UNESCAP)

ESCAP is the regional development arm of the United Nations and serves as the main economic and social development centre for the United Nations in Asia and the Pacific. Its mandate is to foster cooperation between its 53 members and 9 associate members. ESCAP provides the strategic link between global and country-level programmes and issues. It supports Governments of countries in the region in consolidating regional positions and advocates regional approaches to meeting the region's unique socio-economic challenges in a globalizing world. For further information, visit the ESCAP website at www.unescap.org.

INTERNATIONAL FEDERATION OF SURVEYORS (FIG)

The International Federation of Surveyors (FIG) is the international organization representing the interests of surveyors worldwide seeking to collaborate and to work towards the effective planning and efficient administration of the land, the seas, its natural resources and any structures thereon. Founded in 1878, FIG today is an internationally recognized non-governmental organization aimed to ensure that the disciplines of surveying and all who practice them are relevant and meeting the needs of the markets and the communities that they serve. More information at www.fig.net.

ABOUT THIS PUBLICATION

This publication provides an overview of the findings of a review of land tenure security in Asia and the Pacific region in collaboration with key partners. It highlights the major land challenges, barriers and opportunities as the basis for future decisions about partnerships and engagement in the land sector at sub-regional and country level.

The findings are based on an extensive literature review, interviews, a questionnaire, validation at several multi-stakeholder meetings and peer review. It is aimed at a general audience involved in policy and decision-making in the land sector, as well as the broader development sector.

For more information please contact us:

United Nations Human Settlements Programme
UN-Habitat
Land and Global Land Tool Network Unit
P.O. 30030, Nairobi 00100, Kenya
Tel: +254 20 76 23120
Fax: +254 20 762 4266
Website: www.unhabitat.org

Global Land Tool Network (GLTN) Secretariat
Facilitated by UN-Habitat
P.O. 30030, Nairobi 00100, Kenya
Tel: +254 20 762 5199
E-mail: gltn@unhabitat.org
Website: www.gltn.net