

# research highlights

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## Land Policy and Administration

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**Is it possible to support poor people's livelihoods by improving their access to land? What legal rights to land do they already have and what obstacles must be overcome before these can actually be enjoyed?**

CARE's Rural Livelihoods Programme is exploring ways of improving poor rural people's access to land. This literature review, which summarises the findings of a longer investigation (see Box 1), introduces the legal framework through which rights to land are officially defined, and explains the structures and procedures through which they are administered.

The review is divided into three parts. The first shows how land law and policy have evolved, traces the origins of key institutions, and outlines the major features of contemporary land administration. The second explores how private ownership of land is established, transferred and recorded. The third examines the procedures governing access to public land and water resources.

Many of the issues covered are complex, and in the time available it has not always been possible to arrive at a definitive understanding. Different parts of the literature can convey conflicting impressions, and it is not unusual for contradictory statements to appear within the same article. What follows should therefore be regarded as no more than a preliminary attempt to map the territory.

### Policies and Administrative Structures

#### How policy has evolved

The first land revenue systems were introduced by early Hindu rulers and regular land measurement commenced under Sher Shah in the 16<sup>th</sup> century; but most of the key developments in which current practice is rooted may be traced back to the period of British rule.

#### Box 1: The series

CARE Bangladesh is transforming itself into a rights-based organisation that will identify and address the underlying causes of poverty. This is one of several studies designed to aid the transition by clarifying the nature of the context in which the organisation works and showing how this affects the activities undertaken. Further details of the series appear in Box 3

Colonial policy was designed to encourage the settlement of remote and marginal areas as a means of generating additional land revenue throughout the sub-continent. The 1793 Permanent Settlement Act, which vested control of land and water rights in a class of Zamindars (landlords), lay at the centre of the strategy, but rather than ushering in the more productive capitalist agriculture that had been intended, this was to lead instead to the creation of a highly exploitative form of feudalism with multiple layers of sub-tenants. Further important developments included the 1882 Transfer of Property Act, which laid the foundations for present land registration procedures; the Cadastral Survey (1888-1940), which created the first universal record of land rights; and the Registration Act (1908) that established land registers and introduced related fees.

The 1940s saw the first consolidated campaign for tenants' rights and the adoption of the principle of "land to the tiller" by the gathering independence movement. Following the establishment of Pakistan, this was duly reflected in the

East Bengal State Acquisition and Tenancy Act (1951), which was designed to create scope for major re-distribution though the appropriation of all holdings in excess of 33.3 acres. The ceiling was subsequently to be increased, but was then re-instated after the formation of Bangladesh in 1972; again, in principle, creating the potential for a large amount of government (*khas*) land to be re-distributed to the poor.

The Land Reform Ordinance (1984) attempted to deal with loopholes that had until then been used to avoid implementation, as well as recognising tenants' rights for the first time, and establishing share cropping as the only legally admissible form of tenancy contract. But in practice, the new legislation was still easily circumvented, and like its predecessors, its impact has only been slight. Other more recent measures, reviewed later in the paper, have promised landless access to *khas* land created by alluvion (accretion of land by movement of water), and to a range of water bodies. From the 1990s onwards, NGOs concerned with the land issue have tended to focus their attention on the different means by which these rights may be secured, and civil society organisations as a whole now show little interest in wider land reform issues.

### Contemporary land administration

Land administration in Bangladesh still carries the imprint of the elaborate system of surveys and registration introduced for revenue collection purposes by the British. The present structure comprises four major bodies, under two Ministries.

The *Directorate of Land Records and Surveys* (DLRS) in the Ministry of Land (MOL) conducts cadastral surveys, from which it produces *mouza* (revenue village) maps showing individual plots of land and *khatian* (individual land record certificates).

The *Land Reform Board* (LRB), which is also in the MOL, has a number of functions that it discharges through Upazilla Land Offices and Union Teshil offices. It administers *khas* (public) land, and manages abandoned and vested property. It updates maps and land records between surveys, and sets and collects the Land Development Tax (LDT).

It is also formally responsible for the implementation of land reform legislation and the implementation of tenants' rights.

The *Land Appeals Board* (again in the MOL) is the highest revenue court in the land, serving as the final arbiter in matters of *khas* land, changes in records, plot demarcation and taxation. As such, it represents the last link in a chain running upwards from the Assistant Commissioner Land and the Nirbahi Officer at the Upazilla level, through the Additional Deputy Collector (Revenue) and the Deputy Revenue Collector at District level.

Finally, the *Department of Land Registration* in the Ministry of Law, Justice and Parliamentary Affairs records land mutations arising through sale, inheritance or other forms of transfer, reports changes to the Ministry of Land, and collects the Immovable Property Transfer Tax.

Other agencies playing a more minor part in the administration of land include the Ministry of Forests, the Fisheries Department, the Directorate of Housing and Settlement and the Department of Roads and Railways.

Some 6,000 staff are permanently employed in land administration. In addition, up to 3,200 may be recruited to work on seasonal survey teams.

## Administrative Practice

### Land surveys

The land survey process, which determines the boundaries and ownership of individual parcels of land, is referred to as land settlement and is administered by the Directorate of Land Records and Surveys (DLRS). The present round was initiated during the Pakistan period in 1965, but has proceeded extremely slowly, and is unlikely to be completed before 2015. In the meantime, the old colonial maps often continue to be used as a basis for adjudication.

At DLRS headquarters, there is a *diara* settlement officer who oversees surveys in riverine areas and major urban centres, where frequent changes of ownership take place. Otherwise, the system operates through administrative zones, each comprising 2-3 districts, some 10 of which

are under settlement at any particular time. Zones, in turn, sub-divide into smaller administrative units at Upazilla and *Mouza* (revenue village) level.

A series of steps must be followed in each location. First, a surveyor (*amin*) and two local chainmen conduct a cadastral survey (*kistwar*), revise the earlier *mouza* map, and mark boundaries on the ground. Next, interested parties are summoned to a local meeting, where claims are heard and, where possible, a preliminary record (*khanapuri*) is prepared showing the name of the owner and other details. All being well, the *amin* then uses the information to draw up a draft record of rights (*khatian*) and explains it to the identified owner. All of this typically takes 3-4 months.

About 40% of cases are, however, disputed and passed on to the union level revenue collector (*tehsildar*) for consideration. If satisfied, he will give his attestation, and a senior surveyor then finalises the draft *khatian* and presents a certified version to the owner. 10% of cases go on to appeal at higher levels. Ultimately, all resolved cases are subject to final checking (*janch*) by the permanent surveyors and their supporting staff. In more complicated cases, it can take up to two years to reach this point. Printing and publication of *khatians* (at zonal level) and maps (at national level) can now commence, but a lack of capacity means that up to ten years can elapse before the latter are ready. Once completed, copies of the Record of Rights are passed to district, *thana* and union land offices for land management with originals retained at district under lock and key, where they may then be updated as a consequence of sale and transfer through the mutation process described below.

Staff who administer this system are poorly paid and often highly dependent upon the assistance of powerful local interests in order to go about their work. Abuses are frequent and only the comparatively wealthy are in a position to pursue their claims through the appeals process.

### **Land transfers**

Transferring land ownership by sale is somewhat less complicated, but still far from straightforward. Buyer and seller first

agree a price. In a small and declining number of cases no further action is then taken and the transfer remains officially unrecognised. Normally, however, the buyer will arrange for a deed to be prepared, sometimes checking the *khatian* records held at the Upazilla first, and sometimes not. The buyer and seller must then go to the Upazilla Sub-registrar for the deed to be authorised, which first requires the payment of Immovable Property Transfer Tax (IPTT), levied at 10% of the sale value. The deed writers and Sub-registrar generally collude to ensure that this step only proceeds if a bribe is paid first, whilst the buyer and seller may also collude to reduce the amount of tax.

There is no requirement to check the legality of the transaction and it is not uncommon for the same plot to be "sold" to several different buyers, although this practise is much more frequent in urban areas. Once tax has been paid, the authorised deed is supposed to be released within a month, but frequently takes a year and the payment of a further bribe. At the same time, a land transfer record is sent to the Teshildar for checking. This should take place immediately, but is also subject to delays of several months, and may not happen at all as notifications are frequently illegible. The final step is for the AC Land to update the *khatian* record, but again this will not normally be done without another bribe.

### **Land registration and recording**

The complexities and associated abuses of land survey and transfer by sale create severe difficulties in the registration and recording of land ownership, and these are compounded by the fact that land is also transferred through inheritance. As has already been noted, disputes are frequent.

Where these arise, an informal solution will often initially be sought through local consideration at a *shalish*. Where this fails, a series of steps may then be set in motion. The first of these is an appeal to the local revenue collector (*teshildar*) within the Union. If this does not achieve an agreed resolution, the matter will then normally pass on to the Assistant Commissioner of Land at the Upazilla, and thence to the Nirbahi officer, the AC Revenue and the Deputy Commissioner at

the District Level, the Divisional Commissioner, and ultimately to the national Land Appeals Board.

Cases entering the formal system entail considerable cost and may take 15-20 years to resolve, with contesting parties often each in possession of apparently valid documentation from different official bodies. Only the rich and well connected are able to exhaust all of the possibilities which the appeals process, in principle, provides.

Where a settlement survey is in process, appeals passing beyond the *tehsildar* are

supposed to be heard by the Assistant Settlement Officer, and if not resolved, should then pass on directly to the District level. All civil court proceedings relating to land should formally be suspended when a settlement is in process, but this would lead to even further delays and is thus generally ignored, adding further confusion by leaving two channels in operation at the same time.

Box 2 provides an illustration of how complex disputes may become and how the powerful are able to manipulate them for their own advantage

### Box 2: An escalating land dispute

Parmesh, a Hindu, was the wealthiest person in his *para*. He had a daughter but no sons, and as he grew older he relied increasingly upon his sister's son, Arwin, to look after his seven acre holding for him. This led Arwin to expect that he would inherit at least a part of the land. In the meantime, however, Parmesh's daughter had a son, Biplab, and Parmesh decided that he should be the recipient.

When Parmesh eventually died and the land duly passed to Biplab, Arwin felt a strong sense of injustice. He approached Parmesh's widow (his aunt) who expressed sympathy with his position, and encouraged by her support, he obtained a document that falsely registered ownership of the land in his own name. Next, in an attempt to legitimise his position locally, he called a *shalish*, made up of local influential people, to make a ruling on the matter. In an attempt to affect a compromise, the *shalish* determined that he should receive three of the seven acres. Biplab, however, refused to accept the ruling and proceeded to sell all the land to a third party, another Hindu named Mohan; the transaction duly being registered at the land office.

Arwin countered by drawing in the largest landowner in the area, a Muslim who was known colloquially as "Shuri" (miser). Aided by a relation who was a lawyer, Shuri had built up considerable expertise in matters of land administration that he had then employed to effect a series of

land seizures by intervening in precisely these types of intra-familial conflict. Drawing on his expertise, Shuri now entered into a compact with Arwin, where further false registration documents for the land were first obtained in the latter's name, on the basis of which the land could then be sold on to Shuri himself.

With the original protagonists removed from the stage, the scene was now set for a showdown between Mohan and Shuri, the two new claimants to the land. Shuri first attempted to take possession of the area by force, using a gang who were indebted to him. Mohan was able to mobilise some supporters of his own to offer resistance, but in the ensuing fight a number were injured, one seriously.

Mohan now filed a case with the criminal court and the police embarked upon an investigation. Shuri was able to stall the process for a time by paying the police off, but eventually a trial was called. As a result, he was found guilty and sentenced to three months in prison, but after a month he was able to bail himself out by paying a further bribe.

In an attempt to formalise their claims to the land, both Shuri and Mohan now filed cases at the civil court. These dragged on for several years, but eventually Mohan died. With their father gone, the sons were then unable to pursue the case further, and having obtained a further set of papers conforming his "ownership", undisputed control has now passed into Shuri's hands.

## Administering State Owned Land

With regard to the private land discussed in the previous part of the paper, the primary issues are how the ownership rights of small and marginal farm households may be retained in order to prevent them from descending into the more extreme forms of poverty, and how the rights of tenants may be protected.

With the government (*khas*) land considered in this section, what matters is poor people's capacity to secure their legal entitlement to land controlled by the state that becomes available for distribution.

### **Khas land**

#### *Categories*

*Khas* land falls into three broad categories: non-agricultural, agricultural and water-bodies. Non-agricultural land includes forest and urban areas, and is not discussed here since neither are likely to become the focus of future CARE activity. Water bodies are administered separately from *khas* land and will be explored later.

Agricultural *khas* land sub-divides into a further series of categories. A considerable area is, in principle, available from holdings exceeding the land reform ceiling of 33.3 acres, but in practice, for reasons discussed earlier, this potentially *khas* land remains under the effective control of its original owners. There is also land that government acquires through cancellation of ownership, auction and other channels, but this only accounts for a relatively small area. This leaves new land created by alluvion and former agricultural land subject to diluvion (loss of land by river or sea erosion) as the key area for consideration.

There are grounds for supposing that a significant amount of land falling under this category has not been identified in government records, and it might be useful to conduct pilot local surveys to test this proposition. Of the identified portion, some will already have been distributed and therefore be of little interest. Of the portion that has not been distributed, part is immediately available for allocation, and offers the most straightforward prospect for those pursuing a pro-poor agenda. The remainder is under illegal occupation, which potentially might be exposed and

reversed, although the practical difficulties involved would be considerable.

#### *Priorities*

*Khas* land is legally reserved for distribution to landless households, with priority being given in descending order to: diluviated tenants; martyred or crippled freedom fighter's families; widowed or divorced women with working sons; families without homestead or agricultural land; landless families with homestead land only; and families with homestead land and less than 0.5 acres of agricultural land. The quantity of land to be distributed to individual households ranges from one acre where high intensity cropping can be practised, to two acres where productivity is less.

#### *Procedures*

Access to *khas* land is officially secured via a series of steps, beginning with identification. If the land is under settlement, the *amin* should record it in the cadastral survey. In non-settlement areas, the *teshildar* is responsible for identifying and recording any new *khas* land arising. Identification is followed by notification that distribution is about to take place, for which a number of public media are supposed to be used. Next, interested parties fill out an application form, stating what type of landless household they are and providing various other details, which two members of the local elite (typically a UP chairman, member or school teacher) must sign. The qualifications of applicants are then checked by the *tehsildar*, and a list of all suitably qualified people is prepared.

Following this, the most qualified candidates should be selected by the *tehsildar*, UP chairman and AC land, using the established criteria, with details posted the same day on Upazilla noticeboard. The *amin* then surveys the land and registers it with the AC land, after which the holding number of the *khas* land is placed on the application by the AC Land and Upazilla Nirbahi Pfficer (UNO), and the file is sent to the Deputy Commissioner (DC) for approval. Deeds (*kabuliyat*), granting title to the land for 99 years, may then be issued by the AC Land and the recipient can start to cultivate. If obstacles are subsequently encountered, the case goes back to the *shalish*, land office or court for resolution.

In practice, however, all of this is open to abuse by local influential people acting in collusion with officials, and much land does not end up in the hands of those for whom it is formally intended. The powerful may offer bribes to allow them to occupy land illegally and much *khas* land is either not properly surveyed, or not surveyed until occupation is well underway. As a result, it is often unclear whether land is *khas* or not. Where distribution does take place, those responsible for notification often only pass word to contacts, friends and relations. Some eligible and potentially interested parties may not find out at all, or only after it is too late to do anything. Uneducated people cannot fill out application forms themselves and are either deterred from applying or incur obligations to people who help them. Elite signatories will frequently demand bribes or a share of the land produce for supporting applications. The *teshildar* and other more senior officials may demand fees for providing, completing or accepting forms. Legitimate applications are often rejected on the grounds that they have been filled out incorrectly, when actually nothing is wrong, and false applications from larger land owners may be improperly accepted.

### ***Khas water bodies***

The delta, which covers the greater part of Bangladesh, contains a number of different types of water body, most of which greatly expand in size and depth during the annual flooding. With the exception of small private ponds, and the relatively unimportant category of the *Wakf* estates and *Debottar* properties owned by religious institutions, all of these are officially *khas* and fall under state control. Their administration has proved far from straightforward. To make sense of the contemporary situation, it is helpful to trace the historical evolution of policy.

#### *Evolution of policy*

As with land, the Permanent Settlement Act of 1793 again provides the starting point. This granted rights (*jalmohal*) over rivers and other waters to a class of *zamindars*, which were first sub-divided among *jotedars*, further sub-divided among individual lessees (*ljaradars*), and ultimately, in most cases, actually operated by low caste Hindus, the most able of whom themselves became informal

managers, collecting tolls and taxes on behalf of the *jotedars*. Muslims generally did not fish themselves, but some became traders.

Important elements of this system have remained in place through the various reforms taking place during the Pakistan and Bangladesh periods. The first of these saw the official abolition of the *zamindari* in 1951 under the East Bengal State Acquisition and Tenancy Act, with the Department of Revenue, which subsequently became the Ministry of Land (MOL), assuming responsibility for all *jalmohal* outside Reserved Forest areas. Further measures were then introduced in 1965 and 1974 which attempted to secure better rights for poor fishermen by first giving preference, and then entirely restricting access to *jamohal* to co-operative societies registered with the Department of Cooperatives. But these provisions were easily circumvented by former *ljaradars*, who established their own front organisations, through which they were then able to retaining effective control by taking *jalmohals* on sublease.

In 1980, under a presidential order, all *jalmohals* were transferred to the Ministry of Fisheries and Livestock (MOLF). Initial attempts were now made to move to more sustainable systems of management where less emphasis would be given to short term considerations of revenue generation. But before these could come to fruition, a new government in 1983 introduced further administrative changes, under which *jalmohals* of less than 20 acres were transferred to the newly formed *Upazilla parishads* as a means of augmenting their income; and where those exceeding 20 acres reverted to Ministry of Land control, although with 50% of the income accruing earmarked for *Upazilla parishads*.

The New Fisheries Management Policy (NFMP) of 1986 saw a further attempt to restrict access to genuinely poor fishermen and promote conservation. Under development projects initiated with this end in mind, *jalmohals* reverted to the direct management of the Department of Fisheries (DOF) and annual licences replaced leases for producers, with MOLF itself holding the lease with MOL. At the same time, credit was made available and different institutional arrangements,

including NGO management, were explored. Initially, progress was slow, with MOL unwilling to give up its major source of income under circumstances where net revenue from land was very small, but over time, some 400 water bodies, representing about 20% of the total, have passed into this kind of joint administration. Opinions, however, differ as to how successful this has been.

The 1990s saw additional minor revisions in administrative arrangements. In 1991, further changes in the method of leasing *jalmohals* were introduced, with sealed tenders replacing lease by auction, and decisions handed to a committee dominated by the DC and his assistants, at district level, but it is not clear how extensively this has actually been implemented. Also in 1991, with the abolition of Upazilla Parishads, water bodies of less than 3 acres were transferred to the supervision of the Union Parishad for use as open access resources by poor local people, whilst those of 3-20 acres were transferred to the administration of the Ministry of Youth at Upazilla level, under an employment creation scheme where training was provided. Finally, 1992 saw the final granting of registration to the National Fishermen's Association (NFA) that had been in existence since 1946, and now represents the interests of the fishing community on national, district and Upazilla NFMP committees.

Whilst the various changes that have been outlined have created an apparently clear

basis for determining who is responsible for what (see table below), the situation on the ground is often far less straightforward. The extent of a water body may differ from one year to another according to the level of flooding, creating uncertainty as to whom is allowed access at the margins. A number of small water bodies, which might individually have been registered for local access, may sometimes be combined into a larger *jalmohal* over which the MOL can retain control. Bodies of a certain size may silt up over time and move from one category to another.

#### *Allocation procedures*

Formal procedures for awarding *jalmohals* on areas exceeding 20 acres administered by the MOL start with the DC in each district preparing a list (*sairat*) of all bodies under his management, copies of which are maintained at District and Upazilla Headquarters. Next, a tender committee comprising DC, ADC (revenue) District Fisheries officer, District Cooperative Officer, and the Revenue deputy Collector is formed. Details of upcoming tenders are then notified in national and

local newspapers, through display on local notice boards and other types of local announcement, and on the radio. Application forms are made available at Upazilla and District offices and have to be submitted to the UNO or DC. Initially, only Fishermen Cooperative Societies can apply, but a contract is only awarded in the event of a bid exceeding the previous year's lease value by 25%. If no such bid is received anybody can apply in the second round. If a bid of a suitable size

#### **Administration of water bodies**

Area (acres)	Administered by	Access allowed to	Access Determined by	Typical duration
< 3	Union Parishad	Poor people In locality	Common property resource principle	Indefinite
3 - 20	Youth Ministry	Unemployed youth	Tendering	1 year for seasonal and 3 years for perennial bodies
> 20	Ministry of Land (80%)	Fishermen's cooperatives	Tendering	4 – 10 years
	Department of Fisheries (20%)		Tendering or negotiation	

has not been made by a third round, then lower bids can be entertained in a fourth and final round. Any complaints must be lodged with the Committee within 10 days of a decision and any appeals must be made to the MOL within 30 days. The DC must be notified within 15 days of a decision having been made. Where special circumstances arise (e.g. when a closed water body is connected to a river) lease settlements must be submitted for MOL approval. Payment is due annually in advance. 3 year leases are automatically voided if instalments for ensuing periods are not made a month before current arrangements expire. If an open *jalmohal* changes its course due to siltation, the *jalmohal* is considered closed, and a new listing must be prepared.

As with *khas* land, however, there is much scope for these procedures to be manipulated. Decisions are made behind closed doors, making it difficult to detect malpractice and successfully lodge complaints. Water bodies may be left out of lists and then privately leased by officials. Some water bodies may appear on the list but are then not put out for tender and privately leased out. Where officials find it convenient, larger bodies may be split to avoid certain procedures, or smaller ones combined so that others can be invoked. Lease fees may be under-recorded with the difference being pocketed by the officials. And as noted earlier, tendering co-ops generally serve as no more than front organisations for former powerful lease-holder interests.

The procedures for allocating leases under development projects differ in certain details, and may be awarded for longer periods, of up to 10 years, if the MOL agrees.

No literature has been identified regarding procedures for water bodies of less than 20 acres, but understanding what happens on the larger areas may at least help to identify what questions should be asked here. Some indication can also be obtained from item 3 in this series, which documents some of CARE's own early experiences of working with water bodies (see Box 3) and explores what happens where the administrative processes that have been described in this paper interface with local power structures and systems of resource management.

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### Box 2. The series

1. Institutions and Rights
2. Social Capital in a Rural Community
3. Securing Access to Water Bodies
4. Land Policy and Administration
5. The Changing Role of Women
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