

## **Report on IASC 2008: Governing Shared resources: connecting local experience to global challenges**

**Cheltenham, England, 14-18 July 2008**

### **Introduction**

The International Association for the Study of the Commons meets biennially, as the foremost gathering of scholars and practitioners working on questions of common property. In 2008 it was held in Cheltenham, attended by 500 participants from 70 countries. At the previous IASC conference in Bali, CAPRI and other ILC members co-presented the outcomes of the global study on securing tenure in common property regimes.

ILC members and partners attending the 2008 IASC included LandNet West Africa, CAPRI, IIED, Kenya Land Alliance, World Initiatives for Sustainable Pastoralism, PLAAS, LEAP, IDRC, Oslo Governance Centre, RRI and Mboscuda.

Questions of rights to common pool resources lie at the centre of ILC's wider work to promote tenure security of the poor. It is on the commons that resource users often suffer least tenure security, made vulnerable by inappropriate policies and laws governing resource tenure. It is also on the commons that many of the 'bottom billion' live, drawing on the commons as a safety net from absolute destitution, as well as for social organization, cultural heritage and human dignity.

This report contains reflections on the discussions at the IASC of relevance to ILC members, and suggestions for the implications this has for the work of the ILC network.

### **Background and trends in studies of the commons**

Commons can be defined as *any set of resources that a community recognises as being accessible to any member of that community*. As stated by Liz Alden Wiley, the commons are important because *between one and two billion people on the planet today are, in land law, tenants of State (CLEP, 2008). They live on and use traditional properties on which in the eyes of the national laws of those countries they are no more than lawful occupants and users. When their expansive collectively-owned forest, pastoral and swamp lands are taken into account, no fewer than five billion hectares are involved, over one third of the world's total land area.*<sup>1</sup>

From its origins in the 1950s, research interest in common property widened in the 1980s with the coining of the term 'Common Property Resources'. These were applied to resources such as land tenure and use, water, wildlife, pastures, forests, fisheries, village and social organisation, and agriculture. However, in the 1990s, there was reaction against this term as an oxymoron. Resources in themselves are not common property, they are defined as such by the governance systems over them. There is now a clearer conceptual distinction between *common property regimes* and *common pool resources*.

In past 15 years, 'new' commons have become a focus, and now are subject of more research outputs than 'traditional' common pool resources. New commons include cultural, medical/health, neighbourhood, knowledge, market, infrastructure, and global commons. What is new about new commons? According to the synthesis work of Charlotte Hess, they may be new resources or institutions that arise through new technologies; they may be newly recognised or evolved commons; new laws or rules; new social groupings; or a product of sudden change. Many new commons are formerly public goods, but new technology/laws/etc allow them to be captured. They therefore also require management and protection. The study of new commons has brought new perspectives on common pool resources that in turn affect the way that 'traditional' commons are perceived and analysed.

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<sup>1</sup> *WHOSE LAND IS IT? Commons and Conflict States: Why the Ownership of the Commons Matters in Making and Keeping Peace*, paper prepared for RRI and presented at IASC2008.

A defining feature of the study of common pool resources is the link between research and action. The study of the commons can now be described as a movement, and carries a strong element of social action to affect change. This is exemplified by research-orientated partners of ILC at the IASC – CAPRI, IIED and PLAAS – whose research in this area is strongly policy and advocacy oriented. This also provides a strong motivation for the continued involvement of ILC in IASC activities, in that ILC members – and the coalition as a whole - are well-placed to develop and disseminate advocacy messages on the commons based on the high-quality research undertaken by members of the IASC.

### **Trends in rights over the commons**

The tremendous pressure on the commons, and likelihood of an increasing land grab over next few decades in a newly globalised world, indicate that conflicts over the commons are likely to increase. Rather than inter- or intra-community conflicts, conflicts over the commons are becoming increasingly between citizens on common land and their states and/or commercial investors.

The rapidly increasing global commercial pressure on land, as addressed in the issues paper prepared by ILC for the 16<sup>th</sup> session of the Commission on Sustainable Development, is likely to have a profound impact on rights in the commons. This was articulated most clearly at the IASC by RRI with a focus on forest lands. Rights and Resources Initiative (RRI) released a new report entitled *From Exclusion to Ownership? Challenges and opportunities in advancing forest tenure reform* that updates the 2002 landmark *Who owns the worlds forests?* Using data from 25 of 30 most forested countries, the report identifies a general **decrease** in public ownership of forests, and an **increase** in community and private (individual and corporation) ownership between 2002 and 2008,. Nonetheless, in these countries the total land area under community-owned forest remains less than the total land area under either state forest or plantations.

The report strongly emphasised the anticipated impact of Reduced Emissions from Degradation (REDD) schemes as likely to be an important driver for the **re-centralisation** of control over forest and surrounding lands. It is apparent that the slow trend towards community control over forests evident over the past decade may therefore rapidly be reversed.

The estimated monetary value of standing forests under carbon trading mechanisms is 10billion USD annually. In a context of hugely increasing economic value, it is concerning that the question of who has carbon rights has not been adequately examined. The competition for the global commons is increasingly being played between governments and private companies, to the exclusion of communities.<sup>2</sup> It is clear in this context that there is biased allegiance in competition over land allocation; land administrators are more often influenced by the demands of private companies than the voices of local communities.

Climate, as one of the ultimate global commons, is unsurprisingly bringing into focus a new set of global commons vulnerable to privatisation in mitigation strategies to climate change. Carbon markets in tradable emissions are currently worth 30billion USD annually. There is increasing interest in new asset classes, such as global soil, air and carbon, likely to be classified as either private or state assets. New Zealand is the only country which has legally recognised landowners rights to carbon.

Without doubt, the rising wave of commercial demand for land, driven by the converging factors of carbon trading schemes, increased food and commodity prices, and agrofuel production, will have a profound impact on the commons. The amount of research being undertaken on forest commons, and data that is evident in reports such as that released by RRI, and others by Forest Peoples Programme, makes it clear that attention and analysis (and thus lobbying capacity) of the global trends of forest commons is far more advanced than that of rangelands, which occupy a similar proportion of the global land surface as forests (25-30%). However, it is clear that the pressures on the commons, particularly

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<sup>2</sup> The economic – and increasingly political - power of large global corporations is evident in the statistic presented by Charlotte Hess in her workshop on the new commons, that 51 of the world's 100 wealthiest bodies are corporations, and the other 49 are countries.

considering the demand for land for new agricultural production, will affect non-forested areas as much as forested areas.

**Action:** work with organisations within the ILC network such as WISP to bring attention to impacts of commercial pressure and possible responses in rangelands and other non-forested areas, so as to complement the good stocktaking of RRI in forest areas.

#### *A resurgence of 'the tragedy of the commons' on a global scale?*

Forty years after Hardin published his influential motivation for the privatisation of commons in 1968, his influence on scholarship of the commons was declared at the IASC as 'dead'. Academics and practitioners on the commons have been able to successfully demonstrate that in many circumstances commons are not 'open access', and under what conditions collective management of commons has social, economic and ecological benefits over fragmentation and privatisation.

Nonetheless, the ascendancy of global capital and the globalisation of commons such as carbon, air, genetics, global land resources and the electromagnetic spectrum raise the possibility of a neo-'tragedy of the commons' approach to management of the global commons. Rights to manage and derive benefits from carbon sequestration, genetic seed resources, food production, and agrofuel production are overwhelmingly presented as belonging primarily to the state and private companies rather than the local communities who live on, use, and protect such commons.

**Action:** This trend gives added impetus to several approaches that characterise ILC's work. The first is to continue to target policy makers with informed and accessible arguments for community-based control of the commons. It is apparent that good research results are often not made available to policy makers in an accessible manner. The second is to continue to build the capacities of local stakeholders to represent their interests in local, national and global debates on the use and management of their resources. The third is to continue to open up public space for debate and influence policy. In the words of one commentator, there is increasingly of a 'tragedy of the public' – a diminishing public sphere in which it is legitimate for citizens to comment on and influence public policy, and an increasing influence on public policy of private interests.

#### *Challenges of delineating complex rights in the commons*

Scholarship on the commons has over the past two decades brought a greater appreciation for the complexity of rights over common pool resources, particularly the implications of recognising 'bundles of rights' over assets. The continuum in rights between rights to access – use – management – withdrawal – exclusion – alienation is now clearly recognised, but its implications need greater attention. An example is found in the increasing use of participatory mapping as a tool for empowering local communities, used by many ILC members.

Maps carry inherent limitations: the boundary itself, the overlapping of resources and right-holders, fluidity and questions of who holds which rights. It is necessary to go beyond participatory mapping or other forms of land registration to reflect the complex rights and management systems, beyond demarcating boundaries. Resources on the same piece of land may be subject to state, collective and individual rights. In our analyses it is therefore important to disaggregate property rights, such as over land, water, saline, electromagnetic resources. As rights are often allocated sectorally, this may disadvantage communities' attempts at management and use. For example, communities who have gained management rights over common pool resources are now finding themselves unable to claim carbon sequestration rights from the same land.

**Action:** Recognising the complexity of overlapping rights on the commons emphasises the importance of a rights-based approach to resources in the commons. This means working, for example in participatory mapping initiatives, towards a greater appreciation of the different rights that may exist over resources on a particular piece of land. It also means being willing to address not just tenure rights *per se*, but the other rights also necessary for wellbeing, such as citizenship, human, and gender rights. Rights to access, use, own and control land and

other natural resources still need to be placed at the centre of development initiatives in the commons.

### **Building a paradigm change on tenure rights**

In a roundtable on land tenure in post-conflict settings, Patrick McAuslan, who has been involved in drafting the land laws of many francophone African states, mentioned some of his initial thoughts on the need to shift towards humanitarian rather than market-oriented land laws:

*All international and donor pressure on countries in the developing world is to 'modernise' their land laws and modernisation means a land law fit for a market purpose which does not concern itself with matters of equity or pay much regard to the social dimension of land relations*<sup>3</sup>

He noted that international pressure for law reforms have been oriented at enabling international trade rather than international justice. He promoted instead his idea of a *Humanitarian land law*. This would prioritise the needs of family over individuals. It would grant direct community and women's rights, for example, rather than as third party rights. It would grant tenure security to communities over the key assets that can lift them out of poverty, using more diverse approaches than simply land registration.

There were also several calls to work towards the *crafting* rather than the *production* of legal and policy frameworks on land tenure. This is to emphasise the iterative, participatory, and at times organic, process that best suits the development of land law (as has been the approach, for example, to some extent in the formulation of Niger's *Code Rural*).

There are conceptual continuities between McAuslan's idea of a humanitarian land law and the wider movement by Via Campesina and related organisations towards household food sovereignty. Both present alternative visions of enabling locally-based livelihood patterns as opposed to building industrial-scale agricultural production by trans-national capital. These are important and pertinent alternative paradigms in the current context of growing commercial investment in large-scale agricultural production, and are particularly relevant to the work of ILC members in Latin America on Free Trade and commercial pressure on land.

These emerging paradigms emphasise the importance of placing local resource users at the centre of debates on the future of common pool resources. Initiatives by outside agencies in the commons should ensure that they are enfranchising of local stakeholders, rather than disenfranchising. This emphasises the importance of ILC's strategic focus of promoting collective voice and action at the local scale.

**Action:** ILC should more clearly position itself in current debates on increasing market pressures on land. This would involve supporting, and being a part of, the development of new paradigms on agricultural production and natural resource use (food sovereignty) and of the land laws that would support this (a humanitarian land law).

### **Next steps by ILC Members/partners**

What actions to address tenure insecurity in the commons could ILC facilitate collaborative action on by members? CAPRi, Landnet West Africa, PLAAS, TERRA Institute, LEAP and WISP convened one evening to discuss this.<sup>4</sup>

There was general agreement that increasing commercial pressures on the commons is an issue that ILC should give attention to within the broader ILC focus on new commercial

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<sup>3</sup> *Globalisation of Land Markets and the Homogenisation of National Land Laws*. Paper presented by Patrick McAuslan at 'Does International Law Mean Business: A Partnership for Progress?' International Law Association: British Branch 2008 Conference.

<sup>4</sup> This was attended by Stephan Dohrn (CAPRi), Koffi Allinon (LNWA), Ruth Hall (PLAAS), David Stanfield (Terra Institute), Tessa Cousins (LEAP) and Nikola Rass and Susette Biber-Klemm (WISP). Separate meetings were held with Andy White and Jeff Hatcher (RRI) and Marcus Colchester (FPP).

pressures on land. In South Africa, for example, although the government has undertaken that no agrofuels would be grown on land used for food, large extents of grazing lands are being earmarked for jatropha production. In addition, extraction of low-value minerals such as sand and clay, high value minerals and conversion of land to game farms and golf course estates. Concern over the impact of agrofuel planting in West Africa on women's land rights was also expressed at the recent IDRC-sponsored workshop in Senegal on women's access to land.

**Action:** Following the successful case study approach employed by CAPRI with ILC on common property and WISP with ILC on defence of pastoralist land rights, it was suggested that ILC invite submissions of case studies on responses to new commercial pressures on land. This should be guided by a template to guide how the case studies should be constructed. It was emphasised that as international trade and investment are central to new commercial pressures on land, that this should receive adequate attention in the study. Case studies should also be sought that include the role of the private sector.<sup>5</sup> The invitation to submit case studies should be circulated as widely as possible through the secondary networks of members and partners.

Preliminary findings by case studies in Africa could be presented at the IASC regional meeting in Cape Town in January 2009. ILC members could organise a panel on threats of commercial pressure and learning on strategy responses. Early experiences of the Women's Access to Land in Eastern and Southern Africa project relevant to the commons could also be presented. Similarly, case studies could also be presented at European and other regional meetings of IASC.

Complementing the collection of case studies on new commercial pressures, a number of experts, preferably from within the ILC network, should be identified to undertake a global study to identify trends, impacts and possible responses to new commercial pressures.

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<sup>5</sup> The Centre of International Environmental Law in Washington has worked with communities in Ethiopia (including pastoralist) to define their own terms for going into joint venture partnerships with the private sector.