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NEEDS AND CHOICES IN LAND TENURE REFORM

INTRODUCTION

The basic pillars for agrarian reform may be framed in terms of the internationally agreed principles of sustainable development, thus making agrarian reform the process of defining who has the rights to use which resources, for which purposes, under which conditions and for how long. Until recently, much of the attention in land reforms has been focussed on individual private property rights; in many cases to the expense of common property resources.

For millions of rural poor people, the use of natural resources, governs their livelihoods. But the sustainable use of these resources to reduce poverty depends on the institutions that govern their use: property rights and collective action. Despite the abundance of property rights and collective action arrangements existing globally, making them work for the rural poor is not simply a matter of issuing new land titles or applying already-tested standards: it needs, among other factors, a sound understanding of local resource conditions and social relationships.

Land (farmland and rangeland, fishing waters, forests) encompasses many complex social, economic, cultural and political relations. The same territorial space can have very different meanings for different people and groups. We increasingly hear that “*Land is Life*,” reflecting the idea that land is more than just a commodity, an economic asset, or an investment opportunity. Land, in fact, is not merely a livelihood source; it is the basis of people’s identity, culture, social standing and helps to establish their power to represent and defend their interests in the formulation of public policy.

Land tenure systems govern the relationships that people have with land and land-based resources accessible through land. Just as there is a myriad of relationships that people have with the land, so too is there diversity in the kind of tenure arrangements that exist to manage these relationships.

Rangelands and water, for example, are often more effectively used on a collective basis rather than being divided into portions, invariably leading to ecologically unsustainable units. Even in agricultural systems where large amounts of land are allocated to individuals, very important common resources exist that:

- provide resources – such as water – that are not as effective when made available privately;
- provide fallback in hard times; and,
- allow people to exploit their private resources effectively.

Public debate on land tenure reform, however, does not consistently reflect the diversity of viewpoints on land and its role in development. This can have the negative, and often unintended, effect of excluding the concerns of poor men and women from policy consideration. Wider consideration and debate on the scope of land tenure arrangements that exist can help to develop and strengthen tenure systems appropriate for local and national contexts and, most importantly, increase the possibility for poor men and women to share in the benefits of secure land rights.

Common Property Resources

Common property refers to a tenure system in which a group, rather than an individual or the state, has rights to use and manage the resource. In this sense, a common property resource is any resource, such as land, forest, or water, used and managed by a group through its institutions, regulations and resource management practices. Common property systems often develop as rational approaches to manage resources, given the specific social, environmental or cultural context.

Common property is distinct from “open access”, in which there are no controls over who uses resources, with the result that they are largely left un-managed. It is also different from government-organized collectives, under which the state holds most or all rights to the land. In common property systems, people who use the resources are usually members of an existing family, clan or village group, or they self-organize, in order to manage the group’s resources.

Common property resources are found on all continents, but these vital resources are under threat. Part of this threat stems from the idea of the “tragedy of the commons”– the notion that the commons are inevitably over-used and degraded. This has led to policy recommendations for state take-over or privatization. However, where there are effective local management organizations, this “tragedy of the commons” is not inevitable. While state take-over often undermines local management without providing effective management of those resources, privatization excludes many users.

Forest Resources as Common Property in Kenya

A complex system of customary tenure existed in pre-colonial Kenya that regulated rights of land access and use through rules and practices. In many areas, particularly forests, these arrangements remain in use today.

In the Mau Forest area, common property arrangements were developed to provide equitable distribution of access rights to community members, and sustainable management of the properties for the current and future generations. Land has a deep social and cultural significance in Kenya; for the people it is most important – something that binds together social and spiritual relations, within communities and across generations. For many communities, land is not considered to be a commodity for transaction in the market place.

Distribution of land rights is made possible through clans and households within a community, and it is through these institutions that communities can negotiate access to and use of common property. Not all communities, however, make use of these social organizations; there has been a gradual alienation of the community from existing resource governance structures. This creates room for local leaders and government officials to collude and appropriate common lands, or gain kickbacks for commercial exploitation of natural resources. Those who rely most on the commons for their livelihoods – landless households, hunter-gatherers, pastoralists and women-headed families – are losing out. Poor households are pushed to more marginal and fragile ecosystems and, with limited alternatives, they turn to poaching, charcoal burning and other less sustainable practices.

To address these challenges, forest management plans are needed to define roles and responsibilities of users, through planning approaches that allow for the participation of all stakeholders. Processes to reform national land and natural resource policy exist, but common property is not high on the agenda, even among civil society. There is a need to empower communities to participate in reform processes and for policy proposals to be presented in a language which is understood by the communities, in order to increase tenure security and strengthen local resource governance.

Source: Mau Community Forest Association (MACOFA), Kenya

Where group management of the resources is strong, common property systems can make important contributions to sustainable development.

- Common property resources are often used commercially by families or community groups, improving livelihood opportunities. In Nepal, more secure access to common forest land through 40-year community leases has increased food security and improved opportunities to earn cash income.

- Group access to common property can serve as a “resource safety net” for vulnerable households, particularly during times of greater scarcity. In northern Zimbabwe, fruit trees are an important source of nutrition during the dry season when they are managed as common property.
- Improved access to common forest resources can reduce the time needed to collect fuelwood, fodder, water and other forest products. This is a significant benefit for women, who often bear these responsibilities.
- Effective common property systems encourage strong group processes which can assist in other aspects of local development. In Japan, the management of collective irrigation by the community also helps water user groups to prevent and resolve conflicts among members.
- Common property systems can yield important environmental benefits, by providing incentives for collectively maintaining the natural resources. Forest user groups in India’s Himachal Pradesh state have contributed to reforestation through group resource management, with the poorest households in the groups showing the highest rate of forest conservation activities.

Secure rights to common property require that:

- the group has rights that are externally and internally recognized and protected, as is the case for private property;
- individuals are secure in their membership in the group; and,
- the group has effective mechanisms to regulate investment and use of the commons, to provide assurance that the resources will still be there in the future.

Communal Tenure

While common property systems are based on group rights, communal tenure refers more broadly to community-based tenure systems where a customary authority manages the distribution of land rights. In practice, land and resources in communal systems may be used and controlled *either* individually or by groups. In other words, individual land rights exist within communal systems, although they may be mediated by community institutions that manage the local tenure system.

Common property systems exist within communal tenure systems, such as grazing on common rangelands or on fallow crop fields, or group rights to access and withdraw forest resources. Individuals may hold certain bundles of rights, for example the use of land for cultivation, while group institutions possess others, such as allocation or transfer of land among group members. The right to alienate land is often maintained by the state, even when in practice sales or other forms of transfers to outsiders are occurring in what amounts to a “grey market” for land.

Pastoralist Territories

Extensive pastoral production occurs in some 25 per cent of the global land area, from the drylands of Africa (66% of the total continent land area) and the Arabian Peninsula, to the highlands of Asia and Latin America. It provides ten percent of the world’s meat production, and supports some 200 million pastoral households and herds of nearly a billion head of camel, cattle and smaller livestock.

While the demise of pastoral livelihoods has been regularly predicted, there is evidence that in many areas of the world, pastoralism represents the most important livelihood strategy of a growing number of households. Moreover, not only is the number of pastoralists increasing globally, but more sedentary societies are increasingly drawing upon pastoral concepts and ideas.

Pastoralist societies often live in highly variable and unpredictable environments. As a result, most pastoral communities have developed livelihood strategies based on mobility as their way to manage uncertainty (amount and location of rainfall) and risk (potential disease among herds). Managing natural resources collectively can provide an important buffer against risks from the ecosystem; thus

various forms of common property systems evolved to manage land rights in pastoralist territories, principally in arid and semi-arid environments.

Today, rangelands represent arenas in which many different interests interact and increasingly come into conflict. Statutory legal frameworks generally do not recognize pastoralists' resource rights and, by encouraging competing claims by both state and private interests, add to the pressure facing customary institutions that manage land rights and land disputes. The results include shrinking frontiers, declining productivity and resource degradation – all matters of serious concern for pastoralist livelihoods. Indeed, as 2006 marks the International Year of Deserts and Desertification, the threats to pastoralist territories encompass many of the international community's broader concerns about the accelerating rate of land degradation globally.

Land rights of the Karamojong Pastoral Minority in Uganda

Karamojong pastoralist territories in northern Uganda cover about ten percent of the country's land area. Under national law, the entire area is state property, in the form of state forests, wildlife preserved or state-controlled hunting areas. Pastoral groups lack state-recognized rights to the lands that they use. Community wildlife management is allowed, but prohibits grazing, settlement and resource use.

While the Karamojong are agro-pastoralists, they depend on a system of herder mobility, driven by grazing needs. In this agro-pastoral system, grain cultivation takes place during the short rainy season; there is high dependence on livestock during the rest of year. Productivity greatly depends on the ability of herders to keep moving to new areas.

Land access in pastoral territories is seasonal. In the wet season, there is common grazing by all groups, and pooling of resources to discourage over-grazing. One area is deliberately kept vacant as a reserve. In the dry season, group borders become meaningful; mapping exercises have shown that groups share recognition of these borders, and can avoid disputes by respecting dry-season boundaries

For much of the year, the area around Matheniko wildlife reserve is inhabited and used by pastoral communities. For the Ngimatheniko pastoral group living inside the reserve, this land is a source of livelihood and cultural identity, and their rights are evidenced by presence of shrines and ancestral burial grounds. The community has regulations to manage its territory to protect certain resources, such as trees. Other pastoral groups know it is the Ngimatheniko area and do not enter during the dry season, preventing over-consumption of resources.

The divergence between state law and actual land-use practices contributes to increasing difficulty for pastoralist groups to maintain access to land. This now forces groups to cross into neighbouring territories in search of water and pasture land. This has led to conflicts with neighbouring communities.

Conflicts, or the threat of conflict, will continue where governments seek to impose control over large areas of land and where the communities who have traditionally used these lands, do not accept the state's actions as being legitimate. Alternatively, establishing a "grazing reserve" that recognizes existing land use would be a better basis for engagement between pastoralists and the state. In such a system, certain restrictions could still exist, but use and control would be vested in the Ngimatheniko (and other groups), rather than the state.

Source: Uganda Land Alliance (ULA), Uganda

Rights at Risk

The land tenure and management systems of both common property users and pastoralist are increasingly under threat from encroaching interests, the expansion of the agricultural frontier, extractive industries (oil and minerals in particular), tourism-driven conservation policies, and the bias toward private/individual property ownership derived from abroad and promoted as the way to attract foreign investment. Changes in central governments' land tenure administration add to the poor people's existing uncertainties about their resource access. In many areas this a major source of conflict, deprivation, vulnerability and insecurity.

Collective Action and Individual Property Rights

Collective action and other forms of cooperation in land and resource management, often comes about when land users share common interests, such as to gain access, enforce the rules determining use, or resolve conflicts. The importance of collective action for these purposes is evident in both common and individual property systems.

Land tenure reform takes place not in a vacuum, but in contexts where there are often great differences in political, social and economic power between smallholders and large-scale landowners. When smallholders act collectively they are more able to level these power imbalances and thus increase their joint capacity to gain and protect their property rights. Poor men and women are more likely to benefit from land tenure reforms if they have opportunities to empower themselves – politically, socially, economically, legally and culturally – through collective action.

Securing Land Rights via Collective Action in The Philippines

In The Philippines, the agrarian reform programme, underway since 1988, has included distribution of land to poor and landless farmers. In many cases, owners of vast private estates have resisted the land-to-the-tiller campaign and blocked farm labourers from gaining ownership as provided for by law.

Through linking provincial and local farmers' organizations to national NGOs, the People's Campaign for Agrarian Reform (AR Now!) has assisted small farmers to defend their legal rights to land. The campaign's direct legal assistance is supported by strong media work, network-building, policy dialogue and direct action. This combination has forced the government to respond to the violations of farmers' rights to their lands. As a result, 19 of the 22 cases targeted were resolved in favour of farmers' groups. These network activities also increased the ability of smallholders to engage in legal processes and organize public campaigns. Furthermore, they worked collectively to develop their farming skills and to improve their land use planning and farm management, thus broadening their livelihood options.

The economic and social empowerment of smallholders is also an essential part of reform under individual property rights systems. Having regained control over former plantation lands, sugar farmers in Capiz province now face new challenges to making a living from their land, including changes in production and the need to reform long-standing social structures in order to make the transition to being farmer-owners.

Action research with agrarian reform communities demonstrated that group production and marketing through farming cooperatives can support higher capital build-up than individual efforts, on the same individually-owned lands. The group process of cooperatives has also helped farmers to acquire the skills needed to manage their lands, diversify crops, and build strength to compete in open markets. These findings illustrate the importance of collective action, including access to support services in order for smallholders to profitably manage their individually-owned lands.

Sources: Center for Agrarian Reform and Rural Development (CARRD) and People's Campaign for Agrarian Reform (AR Now!), Philippines

Issues for Consideration in Land Tenure Reform Processes

- Systems to manage land rights can and do exist locally, even where state land administration or state-recognized titles do not. Identifying (a) what local systems exist, (b) how they function, and (c) how and whether they are adapting successfully to changing internal and external conditions, can create a stronger basis for developing and implementing other land policy reforms, including reforms to statutory tenure systems.
- In considering existing local systems, it is important to be aware that the same land or set of resources may have multiple users, and may be used and managed by groups as well as individuals. An evaluation of existing land tenure systems should begin by the identification of the different households or groups that live in a given territory and are likely to have legitimate claims over some of the lands and resources.
- If land rights are to be secure for poor men and women, they must be affordable. Local methods to document and register land rights may provide lower-cost alternatives to state registration processes, and also better reflect the range of rights that exist locally.
- It is not necessarily helpful to have an overly idealistic view of communal tenure or other community-based systems.
- The absence of local structures for accountability may result in poor households being exploited by local leaders or other local elites.
- Both communal systems and state systems often discriminate against women and limit their rights to land.
- Nonetheless, common property systems, communal tenure and pastoralist tenure arrangements can and should adapt to changing environments, just as state systems must do. Where local institutions are strong, this adaptation is more likely and can yield more effective results.
- Support to organizational development and collective action is an important corollary to land tenure reform. The potential advantages of common property systems are made possible by well-managed group action; otherwise, there remains the risk of conflict, environmental degradation, and other negative outcomes. Collective action can be equally important in individual property systems, particularly where there is a disparity in power between small- and large-scale landowners.
- There should be more opportunities for direct participation in land tenure reform processes by poor men and women who rely on land and natural resources for their livelihoods. This not only demonstrates respect for their basic human rights, it can also improve the results of land tenure reform initiatives by strengthening the base of information available about existing land rights claims.

This issue brief is based on the experiences of the International Land Coalition and its partners worldwide, including a collaborative study on common property that was co-facilitated by the CGIAR's Collective Action on Property Rights initiative (CAPRI), and an electronic forum on pastoralist land tenure that is currently ongoing. Public reports based on these studies will be available from the Land Coalition in June 2006.

The International Land Coalition is a global alliance of inter-governmental, governmental and civil-society organizations. The Coalition works together with the poor rural men and women to increase their secure access to natural resources, especially land, and to enable them to participate at local, national, regional and international levels, in the policy and decision-making processes that affect their livelihoods.

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