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Securing Common Property Regimes in a Globalizing World

Synthesis of 41 Case Studies on Common Property Regimes
from Asia, Africa, Europe and Latin America



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This publication shares lessons from case studies on common property regimes from organizations and researchers in the International Land Coalition (ILC) and CGIAR Systemwide Program on Collective Action and Property Rights (CAPRI) networks. While the publication expresses the lessons learned by the ILC and CAPRI, the views expressed in the case studies are those of the case study authors.

The opinions and assessments made herein do not necessarily reflect the views of the civil society, governmental, bilateral or intergovernmental organizations associated with these activities or with ILC or CAPRI.”

Securing Common Property Regimes in a Globalizing World

Synthesis of 41 Case Studies on Common Property Regimes
from Asia, Africa, Europe and Latin America

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**INTERNATIONAL
LAND
COALITION**

Our Mission

The International Land Coalition is a global alliance of civil society and intergovernmental organizations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue and capacity building.

Our Vision

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



The System-Wide Program on Collective Action and Property Rights (CAPRI), one of several intercenter initiatives of the Consultative Group on International Agricultural Research (CGIAR), fosters research and promotes collaboration on institutional aspects of natural resource management between CGIAR centers and National Agricultural Research Institutes.

CAPRI contributes to policies and practices that alleviate rural poverty by analyzing and disseminating knowledge on ways that collective action and property rights institutions influence the efficiency, equity, and sustainability of natural resource use.



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List of acronyms

AFRA	Association for Rural Advancement, South Africa
CAPRI	CGIAR Systemwide Program on Collective Action and Property Rights
CLA	Community Land Association
CLRA	Communal Land Rights Act
CPR	Common-Pool Resource
ECA	<i>Empresas Campesinas Asociativas</i> (Farmers Cooperative Associations)
FAO	Food and Agricultural Development
ICRAF	World Agroforestry Center
IFAD	International Fund for Agricultural Development
ILC	International Land Coalition
IPRA	Indigenous Peoples Rights Act
LID	Land Improvement District
NGO	Non Governmental Organization
NRM	Natural Resource Management
PPSHK	<i>Program Pemberdayaan Sistem Hutan Kemasyarakatan</i> (Community Forestry Strengthening Program)
RDC	Rural District Council
RMI	<i>Rimbawan Muda Indonesia</i> (Indonesian Institute for Forestry and the Environment)
SAO	Sub-district Administrative Organization
UNDP	United Nations Development Programme
UNWMP	Upper Nan Watershed Management Project

PREFACE

Securing the access rights of the many millions of households who rely on common property for their livelihoods is one of today's biggest challenges facing poverty reduction efforts in rural areas. The commons fulfill religious, cultural and environmental functions, and are of particular importance for securing the livelihoods of poorer members of society, including women and the landless. Recent studies have also demonstrated that although significant levels of national income are derived from the commons, they are rarely recognized in national accounting.

The drive towards individual ownership of land, occurring in all regions of the globe, means that large tracts of historically commonly-held land are becoming privatized. This benefits the tenure security of a privileged few who are able to privatize land in their name, but it generally results in the dispossession of large numbers of poorer land users who previously had access to these resources.

This paper is the result of a joint effort by the International Land Coalition (ILC) and the system-wide program on Collective Action and Property Rights (CAPRI) of the CGIAR. It draws on the diverse experiences of ILC and CAPRI network members to identify lessons and interventions that can elevate the status of common property systems. Over 40 case studies were submitted from 20 countries in Africa, Asia, Europe and Latin America, written by civil society organizations, researchers and government officers. This has provided a particularly rich analysis that can assist organizations, such as those associated with CAPRI and ILC, in shared objectives of promoting the tenure security of women and men whose livelihoods are built on the use of common property. CAPRI and ILC wish to thank the case study authors and their organizations for contributing to this important initiative. We also extend our appreciation to Adriana Herrera of the Food and Agriculture Organization of the United Nations (FAO) for her contributions to developing the case study framework and the internet discussion forum, and to Charlotte Hess of the International Association for Study of the Commons (IASC) and Michael Taylor of ILC for their helpful review and insightful comments on an earlier draft of this paper.

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EXECUTIVE SUMMARY

Introduction

In many parts of the developing world, poor rural people depend on commonly-held resources for their livelihoods and to sustain their socio-cultural identities.

This paper presents a synthesis of 41 case studies on common property, written from both community and national perspectives, from 20 countries in Africa, Asia, Europe and Latin America. The studies considered a diversity of resources including forests, rangelands and fisheries.

While the paper is by nature quite broad, its purpose is to serve as a starting point for drawing out patterns and emerging concerns with regard to the broader goal of securing access and rights to resources through common property regimes. It also identifies policy-relevant lessons for poverty reduction strategies and sustainable management of natural resources.

Access to resources through common property regimes often sustains and enhances the livelihoods of poor families and communities. Secure access can:

- enable poor and vulnerable households to meet their basic needs, including resources for household consumption;

- serve as a 'resource safety-net' for vulnerable households during difficult times;
- provide a framework for generating income beyond the subsistence level, from small-scale commercial use of resources, and
- contribute to a more environmentally-sustainable use of natural resources.

At the same time, there are a number of threats to common property regimes, including:

- privatization for large-scale commercial development;
- expansion of smallholder agriculture;
- appropriation of common property regimes for conservation;
- ambiguities within legal frameworks, and
- non-recognition of customary law.

Access to Resources through Common Property Regimes

Common property systems remain a prominent means of providing access to resources by individuals, households and groups. Group membership, particularly based on lineage, plays a significant role in providing and managing access to the commons, although it may also be possible for non-group members to negotiate access to resources, provided they follow the rules of access. On the other hand, customary systems are vulnerable to non-recognition by the state and may fall short of being representative of the interests of all relevant community members. These are key issues to consider when evaluating options to improve tenure security within common property regimes, particularly the security of access rights for vulnerable groups and poor households.

The state can create, encourage or sustain community rights in various ways, with national legislation to recognize common property being one means. Through a more involved process of decentralizing authority and rights, states may provide a basis for creating or strengthening common property regimes. By mandating joint management, the state may also create access and legitimize local use.

However, access created through state programmes can also pose challenges. Without rules that are understood and

recognized by a majority of the population, opportunities can arise for powerful groups or individuals to exploit the commons for a disproportionate gain. For individuals or households, 'elite capture' may occur when tenure systems – whether customary or state-supported – fail to treat more powerful and less powerful community members alike, in terms of applying rules and sanctions for resource use, or in ensuring that rights to the commons (particularly access rights) can be claimed. In addition, during decentralization, overlapping sectoral laws and policies need to be harmonized to minimize the risk of cross-sectoral conflict.

Such failures increase pressure, not only on natural resources, but also on the tenure regimes that govern their access. Moreover, issues of affordability, accessibility and sustainability of tenure regimes should be considered more fully in discussions on common property tenure security, drawing on resource users' own perceptions of the tenure systems that exist.

Systems of common property may also emerge through organized action by communities. Several cases demonstrated how community action, including that undertaken in alliance with supportive outside organizations, expands access even where legal frameworks are not supportive of collective rights.

Communities are also increasingly pushed to organize themselves in the face of the threats of commercial resource exploitation, particularly by extractive industries.

Threats Facing Common Property Regimes

There is a range of pressures and challenges facing common property systems. Some of these are 'internal', i.e., coming from within a community; others are 'external', i.e., rooted in processes or institutions outside the control of local users. Often, these challenges – such as environmental degradation or privatization – reflect the interplay of both internal and external factors.

Individualization of the Commons

Rural areas are increasingly connected to regional and national markets, and in many cases opportunities to earn income through commercial use of the commons are expanding. While this trend may help rural households improve their livelihoods by drawing on resources from the commons, it can also lead to disputes among different user groups or between the poorer and the better-off families within a community. Local-level commercialization may in some cases create new incentives for joint management of the commons. Still, this is a process that appears to have more costs than benefits. Environmental costs, including long-term resource depletion and

degradation, may also result from the expansion of smallholder agriculture and more intensive commercial use of the commons.

Commercialization and External Investment

Increasingly, outside investments are competing with local residents for access to the commons. These include capital-intensive investments in commercial sectors such as mining, logging, and ranching and plantation agriculture. Often where commercialization is instigated by external investment, the lion's share of benefits is enjoyed by those outside investors. Without access to capital, and lacking skills specific to these sectors, investment and work opportunities for local residents are limited.

Demographic Pressures

Demographic factors such as population increases, migration and HIV/AIDS, are placing pressure on common property regimes. Population pressure is contributing to encroachment and degradation of forest resources, such as when migrant farmers compete for resources with pastoralist and indigenous communities; in these cases, newcomers may not respect local customary institutions, generating disputes. In regions where there are high and increasing rates of HIV/AIDS, access to land and resources managed as commons – particularly by women and female-headed households – is in jeopardy.

This creates or exacerbates food insecurity, making it all the more difficult for families hit by the disease to sustain themselves.

Elite Capture

The disproportionate use of and benefit from common property regimes by wealthier or more powerful households in a given area is not only a threat in areas where tenure regimes are weak or non-existent (as in open access situations). Elite capture also poses a significant threat where common property regimes are functioning, but in ways that allow more powerful resource users to gain control over the decision-making processes.

Legal and Governance Frameworks

It is important to consider the threats described above as having relationships with government policies and actions, rather than being exogenous trends. Government policies that encourage commercialization of natural resources, marginalize indigenous and customary institutions, or simply overlap and create confusion among resource users, are all contributing factors to the pressures on common property regimes.

Resource-based Conflicts

When disputes over the commons emerge, often the poor and marginalized are left with no or little access to vital resources – such as grazing areas, water, wood or fruits – thus becoming even more vulnerable. As conflict itself generates more insecurity, disputes

threaten to create a vicious circle in which pressure on the common property regime itself increases. For this reason, mechanisms to address conflict, including through facilitation by external organizations, are a necessary ingredient of strong common property regimes.

Reform and Innovation

Strengthening the security of access to the commons has taken different forms, including the development of new laws and policies, decentralization of state authorities, support to local-level institutions, and initiatives of collective action and local organizing. Other innovations seek to develop new socio-economic institutions or improve environmental sustainability.

Collective Action and Organizing

The most common forms of response to pressures and threats to the commons are collective action and community organizing. Often the goal is to create more supportive local structures, including the re-negotiation of power arrangements between communities, the state and other actors. Partnerships between communities and non-governmental organizations (NGOs) or project-related institutions can also significantly increase support to local collective action.

Legislative and Policy Reforms

Often state laws and policies do not provide adequate recognition of and support to common property regimes. At the same time, changes to the legal framework can create an 'enabling environment' in which rural people take part in decision making that affects them, including policy processes that concern the commons. Rural people's organizations and NGOs must have space to play a stronger role in policy and legislative reform, in ways that increase the leverage of those people dependent on the commons within such processes.

Decentralization and Empowerment of Customary Authorities

Adequate support to decentralization or devolution processes is needed so that local communities or customary authorities are able to perform the tasks and responsibilities for which they are being empowered. This support may come from the state, from NGOs or other civil society groups, from international organizations, or from a combination of different sources. While devolution is seen as important, it is often complicated by the conflict between customary and state institutions, particularly if there is a lack of clarity on their roles and responsibilities. Traditional leaders often command respect on civic and cultural issues, and could still form a basis for promotion of sustainable, community-based natural resource management, within the context of decentralization.

Conflict Management

For common property systems to effectively manage conflicts over shared resources there must be ways to enforce rules and provide all community members with access to dispute-resolution mechanisms. Negotiation processes must recognize the different users who have interest in common property, and that seek to increase the negotiating leverage of weaker or marginalized groups. Building the capacity of tenure institutions is critical for common property regimes to manage conflicts.

Conclusions

Many rural men and women rely on diverse products from the commons for subsistence, including during lean times. Access to the commons is particularly crucial for pastoralist communities, for whom food security is primarily, if not wholly, dependent on access to pastures and water sources. Few others rely on products from the commons to generate incomes beyond subsistence. However, these preferences are not uniform or static, and evolve when communities are faced with changing external and internal circumstances.

The incentives of governments with regard to securing common property rights are mixed. Most governments have a strong incentive to generate revenues through investment in extractive industries, or non-consumptive use, such as conservation and tourism.

Common property is often a casualty, as governments are pressured to provide these resources, including a system of property rights (usually private and individual) suited to investors. In several cases, however, community organizing has successfully thwarted top-down, external allocation of the commons.

Customary systems remain an important authority, backing and enforcing common property. There are fewer instances where state legislation is the main source of legitimacy for common property rights, when compared to customary systems playing this role, in part because numerous countries still lack legal frameworks to recognize common property regimes. Customary systems of common property can remain vulnerable when they are not recognized by the state, particularly when governments take actions or establish policies that undermine the authority of customary institutions.

There is also a recent trend towards decentralized forms of governance and the formal and non-formal recognition of community rights. Despite this often well-intended attempt at decentralization and/or devolution, ambiguities in cross-sectoral legislation in the roles of responsibilities of local and customary authorities, has resulted in further insecurity for the commons management that are outlined below.

The role of projects in creating access to common property regimes appears to be increasing. These involve various negotiated arrangements between communities, the state and other development actors. Partnerships with non-governmental organizations, development project facilitators and the state can all provide important support to local institutions that manage common property, and facilitate adaptation to pressures and threats facing the commons.

Collective action can be an effective and robust approach to addressing many of the challenges that common property regimes face. Still, new legislation and policy reform are also needed to support common property systems. The challenge of developing and implementing laws and policies that support common property reflects, at least in part, the need to increase the visibility and voice of rural people who depend on the commons for their livelihoods. Increasing not just participation in, but also leverage over the processes and institutions that determine land tenure and natural resource management policies should be an important element of efforts to strengthen common property regimes.

I. Introduction

In many parts of the developing world, the rural poor increasingly depend on shared resources for their livelihoods. A growing number of studies demonstrate the significance of commonly held resources to rural lives and livelihoods (Beck and Nesmith, 2001; Jodha, 1992; Adhikari, 2005). While community- and county-level studies have provided important snapshots of particular places and resources, assessments of a more global nature are also necessary to help establish the extent of reliance on resources from the commons both for policy makers concerned with poverty reduction strategies, as well as those interested in the sustainable management of resources, and to identify trends and adaptations relevant to tenure security in the commons.

Recent years have seen a steady increase in the interconnectedness of developing and developed economies. In addition, social, economic and environmental crises (such as armed conflicts, oil price shocks and climate change) are affecting communities and countries worldwide. There is need for

new cross-country comparisons to update our knowledge on common property and to provide some early insights in light of the rapidly changing social, economic and political conditions.

This synthesis paper gives an overview of main findings from 41 case studies on common property systems from 20 countries in Africa, Asia, Europe and Latin America. Between June and September 2005, the CGIAR's Collective Action and Property Rights initiative (CAPRI) and the International Land Coalition (ILC) sent out a call for case studies to contribute to a joint study on "Rural Common Property in a Perspective of Development and Modernization."¹ The main purpose of soliciting case studies was to enable a general assessment of the current status of common property and to begin identifying lessons and interventions that can elevate the status of common property regimes, particularly in policy debates.

¹ In addition, an internet forum on common property, involving case study authors and other participants took place in September and October of 2005.

A total of 41 case studies were contributed by researchers, civil society organizations and government project officers.² These discussed examples of common property as it relates to a variety of resource settings, including forest and agro-forestry areas, pastures and rangelands, agricultural lands, and freshwater and marine resources.

This synthesis paper seeks to provide an overview of findings from these case studies. While this study is by nature quite broad, it is hoped to serve as a starting point for drawing out patterns and emerging concerns with regard to the broader goal of securing access and rights to resources via common property regimes, across different settings as well as across a range of natural resources. The first section outlines the study methodology, provides a definition of basic terms and reflects on why common property matters. The second section considers how groups and individuals gain access and rights to commons resources. The second and third sections treat the problem of tenure security for the commons, first by discussing how tenure security can be assessed and second by identifying factors and processes that jeopardize such security. The final section provides examples of some innovations

intended to strengthen common property regimes. This is followed by a conclusion that distills the key lessons learnt from the case studies.

Methodology

Case study authors were asked to prepare their contributions based on a study framework that CAPRI and ILC prepared in collaboration with the FAO Land Tenure Service. In developing a common set of key questions, the case study analysis sought to allow for comparisons of cases across countries and resource-types. This framework identified two sets of questions related to common property regimes.³ The first set focused at the community level, and included:

- Which kinds of common property tenure arrangements exist, and what are their sources of legitimacy?
- How do households and communities define tenure relations and tenure security in the commons?

² Comments from this discussion were incorporated into this paper.

A list of cases and authors is available in Annex A. All case studies are available via the Internet at http://www.landcoalition.org/cd_ILC/CD%20commons/index.html.

³ The complete framework, as proposed to case study authors, is included in the Annex B section to this paper.



- What are uses of resources managed as common property, and to what extent are these related to livelihood or well-being?
 - What are forms of community organization or power dynamics, and how do these interact with common property systems?
 - What elements of common property tenure are performing effectively? What elements need to be improved?
 - Are there institutions responsible for implementing policies on common property? If so, how are they performing?
 - How does policy toward common property interact with national policy issues, e.g., agricultural production, urbanization, conservation?
 - What challenges exist in terms of developing or reforming the national framework toward common property? What are alternative proposals for reforming laws, policies, and institutional arrangements?
- The second set focused at the level of national laws and policies, and included:

- What are current state and policies, and how do they relate to common property systems?
- How what are rural people's associations, NGOs or other actors involved in efforts to reform common property arrangements?

Preliminary analysis of the case studies sought to identify and group together authors' key findings and recommendations, according to common themes from the proposed framework (i.e., forms of tenure arrangements, community organization and institutions, legal and institutional framework, resource use and management, changes and adaptations taking place, and opportunities or recommendations for policy reform). This qualitative information mapping formed the basis of the analysis presented in this synthesis paper. In addition, an internet forum on common property, involving case study authors and other participants, took place during September–October 2005, and comments from this electronic discussion were also incorporated into this synthesis paper.

Terminology: Tenure Systems and Resource Access via Common Property Regimes

This paper refers to a number of terms related to the study of tenure systems and access to land and resources via common property regimes.

Common-pool resources (also referred to as CPRs) refer to natural resources where one person's use subtracts from another's use and where it is often necessary, but difficult and costly, to exclude other users outside the group from using the resource (Ostrom 2000; Ostrom et al 1994).⁴ Common pool

resources refer to the attributes or characteristics of a resource. Common property is "a formal or informal property regime that allocates a bundle of rights to a group. Such rights may include ownership, management, use, exclusion, access of a shared resource." (Hess 2006) The term common property regime represents a set of institutions, regulations and management practices subject to collective decision-making. In this sense, the term refers to the kind of tenure institutions that exist, not the resources themselves (Dietz et al 2002; Ostrom 2000).

It is important to note that while common property regimes are defined primarily in terms of collective rights, they may also represent a range of different rights for both individuals and groups such as access, withdrawal, management, exclusion, alienation (Schlager and Ostrom, 1992).

As the case studies illustrated, these multiple rights to the same resource may also be exercised differently at different times; for example post-harvest access to farm fields by herders, or the breakdown of territorial borders among the Karamojong during wet seasons, or access to individually-controlled fruit trees during dry season in Muzarabani district of Zimbabwe, and the collection of bamboo on individually-owned land in northern Thailand.

⁴ See Digital Library of the Commons, via Internet at dlc.dlib.indiana.edu/cprdef.html.

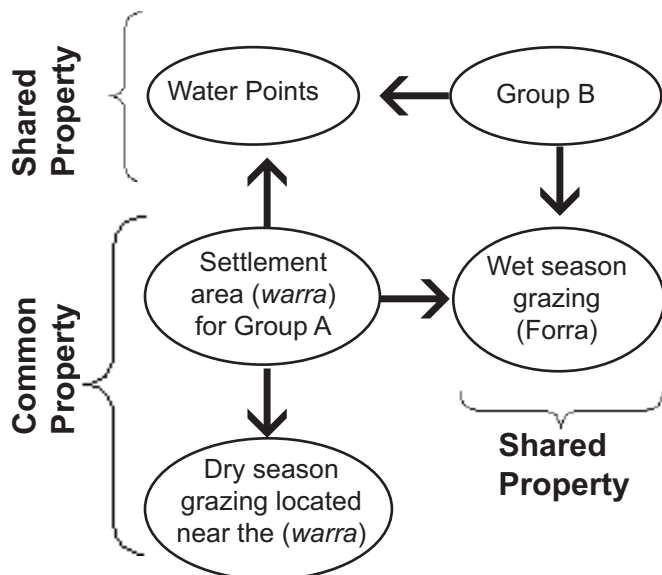
In some cases there is a distinct spatial element, such as when fallow land adjacent to private farmland is treated as individual property, while similar fallow lands, if contiguous, are treated as common property. This shifting in rights over time and space is captured by the 'tenure niches' concept (Bruce, 2000). In one case from Ethiopia, the author identifies the existence of "fuzzy access rights", in which hierarchies among different users are reflected in asymmetrical access rights, i.e., primary, secondary and tertiary rights to use rangeland and water that may vary depending on social and ecological circumstances (Aredo 2005a).

Common property regimes are also distinct from communal tenure, which refers more broadly to community-based tenure systems, in which some form of collective authority (e.g., an extended family, clan or other social grouping) holds allocation rights (Bruce 1999). Resources under communal tenure may, in practice, be used and controlled individually or collectively (Otsuka and Place, 2001). Within communal tenures, some portion of land and resources may be managed as common property, as was depicted in a number of the case studies.⁵

Livelihoods, Equity and the Commons: Why Common Property Regimes Matter

A large body of literature provides examples on the equity, efficiency and sustainability functions of common property regimes. Access to resources via common property regimes has been noted to sustain and even enhance the livelihoods of the rural poor, whether through domestic consumption or commercial use. Poor women in particular are important beneficiaries of access created via common property arrangements. In environments marked by seasonal and spatial variations in water and pasture, common property regimes allow recognized users to access these variable resources, but also to take advantage of economies of scale in the provisioning of services and infrastructure.

Fuzzy Access Rights in the Context of Seasonal Mobility



"Fuzzy Access in Pastoral Economies
Case Study from Southern" - Dejene (Ethiopia 2005)

⁵ The case of Segun Guillermo Valera, a *campesino* community in Peru, notes that common-use land managed as common property makes up 79 percent of the community's total area, with the remaining 21 percent managed by individual families. (Burneo 2005) Similar examples were provided by cases from Cameroon, India, Nepal, South Africa and Zimbabwe.

The case studies which were contributed to this investigation reinforce these functions of common property. First, the cases illustrate how common property regimes can improve access by poor and vulnerable households to basic needs, including resources for household consumption. Access to common property may also serve as a “resource safety-net” for vulnerable households during difficult times, such as in the case of fruit trees in northern Zimbabwe, which are treated as common property during the dry season when there are fewer alternatives to fulfill nutritional needs (Chidakwai 2005). In drylands areas, common lands are also a key resource for grazing and watering livestock. A case study of pastoralist tenure and livelihood in Ethiopia documented the heavy reliance on herds as a main source of food and nutrition. In such situations, where access to common grazing lands and water sources is lost, food security may be jeopardized (Unruh 2005).

**Access to basic needs:
Case from Saigata village, India**

In one case from Saigata village, in the interior of India’s Maharashtra State, common forest areas provide 100 percent of fodder, fuelwood and timber. The market prices of these resources are between 20 and 100 percent higher outside the village, meaning that without a common property system to access shared forest resources, many village residents would have difficulty to access the same goods via the market (Ghate 2005).

Second, common property regimes provide a framework for generating income from small-scale commercial use of resources. Close to half of the case studies identified the importance of resources from the commons in generating incomes above and beyond subsistence level. Marketable goods include products that have been traditionally cultivated, as well as new ones being introduced, including cash crops. In one case from Akok village in southern Cameroon, for example, new cash crops such as cucumber and cocoa are now grown along with traditional products, such as cassava and plantain, on common forest lands (Mala 2005).



Young girl from a forest-adjacent community that depends on the sustainable management of forest resources (FAO-Forestry Dept)

Common Property and “Livelihood Ripple Effects”

Access to resources via common property regimes may have “livelihood ripple effects”, in which access to the commons is linked to other aspects of local development. In one case of forest leasehold tenure in Nepal, some forest user groups have also become a point of organizing for microfinance and literacy activities, especially for women, providing a locus for community empowerment toward poverty reduction (Shrestha 2005). Other examples of how access to resources through common property systems has increased school attendance where children spend less time collecting fuelwood, or where families can draw on income from commercial production of resources from the commons to pay for school fees (Kumar and Nongkynrih; Shrestha 2005). By contrast, a case from Uganda notes that where communal land has become privatized, families may be forced to move to more isolated areas. This leads them to lose access to basic public services, such as health care, schools or roads (Obaikol 2005).

Finally, common property regimes may contribute to more environmentally-sustainable use of natural resources. Environmental degradation, such as deforestation, may take place where common pool resources are not adequately managed (i.e., de facto open access). Collective action, and supportive legal or policy frameworks, may contribute to more sustainable use of the resources from the commons (Swallow, et. al. 2005; Bruce, 1999).

In short, the case studies reinforce the common perception that vulnerable rural households benefit from secure access to the commons, particularly as a safety-net against extreme poverty. On its own, secure access to resources is not sufficient to reduce poverty, as access to other productive assets – human, physical, financial and social capital – is also critical. Nonetheless, given that the commons continue to play a primary role in the lives and livelihoods of the rural poor, common property regimes, especially if secure, remain significant to reducing poverty and sustainability of natural resource management. Whether and how common property regimes can perform this function effectively, including through adaptations to emerging pressures, will be the focus of this paper.



2. Access to Resources via Common Property Regimes

This section provides an overview of how individuals and groups are able to access resources via common property regimes, as well as the sources of legitimacy for these tenure arrangements, as presented in the case studies. In terms of access to resources, the cases indicate that access to the commons is often determined via group membership, through the state, or through organized community action and increasingly through projects. Customary law and practice continues to be the most common source of legitimacy for these access rights, although in some countries discussed in the cases, state legal frameworks also recognize collective resource rights.

Access through Customary Institutions

Customary law and practice forms the basis of group tenure and collective resource management in many parts of the world. According to a recent UNDP discussion paper, more than 90 percent of the rural population in Africa accesses land and natural resources via customary tenure systems; among this figure, there are an estimated 370 million people defined as poor. (Wily, 2006) A large number of cases demonstrate the authority of customary and

reciprocal institutions in the regulation of common property regimes. In at least 28 of the 41 cases contributed to this study, there are indications of some level of reliance on customary authority (both with and without state support) for regulating access to forests, fisheries and lands that are managed as common property.

Customary systems generally have a collective element to resource management, e.g., forms of group decision-making that determine access and use, or joint use and management of resources in common areas. In at least 14 of the cases, rights to access common property (as well as individual lands under communal tenure) are based on some form of group membership, including ethnicity, village affiliation or residency. In some cases, outsiders are excluded from accessing common property under all circumstances. In others, exclusion is seasonal, such as in pastoralist settings where exclusion occurs in the dry season. A few cases described the flexibility of customary authorities to negotiate access with outsiders, such as migrant farmers.

One common factor in customary-based common property regimes, according to the cases, is the significant role that group identity plays in managing access to land and resources. Group identity can be conferred in different ways, often based on lineage, clan-affiliation or long-term residency. In the case study from India's Meghalaya State, rights to communal lands are derived through residency, which is itself a function of clan affiliation. Land and resource allocation and distribution is the function of recognized customary institutions, often being restricted to members who share a common lineage. Individual rights of constituent families or individual members are recognized and allocated on a long-term basis, with limitations on land transactions.

Transfer is limited to inheritance in families and no sales are allowed, especially to outsiders. The duration of rights is often determined by evidence of continuous use (Kumar and Nongkynrih 2005). Lineage-based access to common property was most commonly described in cases from Africa – e.g., Cameroon, Ethiopia, South Africa and Zimbabwe – but also in studies from India, Peru and Scotland (AFRA 2005; Guzman 2005; Kumar and Nongkynrih 2005; Mbog 2005; Mgugu 2005; Seki 2005; Unruh 2005).

Cerro del Pasco - Mining

Beyond providing the basic rules that determine who can access what resource, when and with what responsibility, customary institutions are the basis of norms of reciprocity among subsets that have authorized access to resources. Land access in pastoralist areas of Ethiopia are cemented by reciprocal social practices, e.g., exchange of milk and animals for land access, or “bond friendship” in which households keep cattle on their land on behalf of herd owners, in exchange for keeping a portion of their products (Aredo 2005a). In some cases, this mutual exchange has such a long tradition that the source of livelihood for family groups has become highly interdependent.⁶

Customary institutions may also provide authorization for access to common property by non-community members. Because of the connection of common property rights to ancestral or lineage-based claims, migrants and other newcomers may face difficulty gaining access to land and other natural resources. In the Chabe community of Benin, migrant farmers and herders have gained access to common land following negotiation with the *agani*, the family groups which are native to the area and who control local decision-making institutions.

⁶ Reciprocity was also evident in a study of irrigation as common property in Japan, even though the common property institutions in this case based on a statutory framework rather than customary laws. Among Japan's collective irrigation associations, rules concerning common water resources are rarely violated, in part because reciprocity and group identity are strong norms in rural Japanese society (Sarker 2005).



Collective Pasture Land, Peru
Photo by: Stefano Di Gessa, ILC (2005)

Migrant farmers borrowed land from the Chabe lineages, while transhumant herders were provided with areas for seasonal settlement. However, any interventions on the land that may confer more permanent rights, such as tree planting, were restricted from migrants and farmers. Implementing negotiated agreements are difficult, however, in part because of different concepts of land rights held by migrant farmers and pastoralist herders – this creates need for *agani* to facilitate negotiation between the two groups as well (Dangbégnon 2005).

How do customary institutions manage access to resources as common property? As described in the examples above, the case studies illustrated that

group identity and the respect for customary authorities may play a role in deterring violations of collective tenure arrangements. Compliance is more often than not based on collective respect for local authorities over and above the possibility of punishment for infringements. However, among Somali pastoralist communities where clan affiliation is strong, grazing rights are also enforced via collective guilt and group deterrence. The idea of collective (clan) guilt as opposed to individual guilt and responsibility for infractions, along with the threat of punishment and retaliation by opposing clans, prevent clan members from breaking rules (Unruh 2005). In other examples, such as the case study from Saigata village in India, material sanctions serve to enforce the collective interest. The village forest committee set fines that are graduated to fit the nature of the offense (Ghate 2005).

Religious norms and beliefs also play a role in maintaining adherence to rules governing common property. In several cases, use and access to the commons is restricted by local religious institutions, both in terms of kinds of use, e.g., prohibitions in northern India on collecting leaves in spring season, or where resources may be accessed, e.g., delineation of sacred forests in the Halimun area of West Java, Indonesia and in the Himachal Himalaya region of India (Galudra 2005, Santosa et. al. 2005).

Violation of religious norms can cause an individual to be shunned, with social, economic consequences.

Dialogue between groups is also fundamental in establishing rules and resolving conflicts. In the Chabe case from Benin, local leadership encouraged the different groups to negotiate boundaries, which has led to an agreement and co-existence of hunter and herder groups in the area (Dangbégnon 2005). Among the Karamajong cluster in Uganda, dialogue between the elders of different groups allows them to define rules for conflict management. However, more and more pastoralists ignore the rules and decisions taken through this system, which leads to an increase in armed conflict (Mwebaza 2000).

Within customary systems of common property, balancing the rights of the individual and the group in an equitable manner may be a challenge. While group rights may serve to protect the rights of the group as an entity, women's rights or the rights of lower castes continue to be constrained. Women's access to common property is often indirect, through male relatives, i.e., husbands or sons (see for example Karangathi 2005). This form of secondary access may serve to protect and maintain minimal rights for women under two conditions: (a) as long as they are married/and their husband is alive, and (b) for as long as common property is not individualized.

Externally, customary systems often have little or no legal standing relative to state-backed systems. This creates difficulty for resource-users to defend their rights to common property as established under customary tenure, particularly if other groups or interests bring forth resource claims that have backing under state law.

Common Property and Roles of the State

In 14 cases, or about one-third of the total, the state plays some role in supporting or recognizing access to resources held under common property regimes. Only in some of these cases, however, do statutory laws exist that explicitly recognize common property regimes (Japan, Peru, Scotland, South Africa and Uganda are among these examples). In other cases, forms of state action have taken or are taking place, which also provide some degree of state recognition to common property regimes.

In the statutory legal systems described in the case studies, written titles are the most common form of proof of land rights. In some countries, though, there are now laws that allow for certification of communal property, through which the common property rights of community associations are recognized.

In Scotland, the 2003 Land Reform Act similarly provides for communities of small-scale farmers known as “crofters” to make collective purchase of land that has been cultivated under customary practice (Seki 2005). Uganda’s 1998 Land Act provides a framework for group ownership, including a process to form and register Communal Land Associations (Obaikol 2005). This does not mean, however, that resource users necessarily manage communal land as common property; communal titles may be provided for land that is, in practice, individually used and managed. Within communal lands, individuals have also established their separate parcels, in accordance with customary law and practice.

Some statutory laws recognize collective rights, but only of certain groups or in certain areas. In India a tribal rights bill has been recently proposed at the national level that would give ownership rights over land to tribal communities in India (Ghate 2005). In 1997, the Philippines passed a similar bill, the Indigenous Peoples Rights Act (IPRA), which recognizes the rights of indigenous communities to ancestral lands and provides for a framework through which these land claims are registered with the state.⁷

In several cases, under statutory law forest land is property of the state or the nation (e.g., India, Indonesia and Niger). Local residents may not have state-recognized ownership rights to forest land or other forest resources under these systems, but only usufruct and sometimes management rights at best. In practice, as the cases from Indonesia and Niger illustrate, there may be space for negotiation between communities and the state to establish rights claims and make them more secure (Bachir et. al. 2005, Galudra 2005, Santosa, et. al. 2005). Alternatively, as described in the case from India’s Orissa state, an “assumed commons” develops, in which communities use and manage lands as commons so long as government agencies remain inactive in the management of areas under state tenure (Singh 2002). In these cases, the state may create forms of rights for local communities through pieces of legislation, although these stop short of providing a state legal framework for recognizing common property nationwide.

⁷ For more information on IPRA and its implementation, see www.pafid.org, www.tebtebba.org, www.ncip.gov.ph.

Joint Forest Management in India represents a longer term effort by the Indian government to grant and provide statutory backing for local forest users. Under these programmes, local committees are registered as trusts and thus become recognized bodies. This is intended, at least in principle, to benefit forest resource users by allowing them to receive support services from the government and participate in benefit-sharing. However, communities' enthusiasm for joint projects with government is often coloured by a general distrust of forest departments. In the case from Saigata village, even though the forest department instructed all divisions to implement joint forest management, it took four years of negotiation before communities registered their committees. In addition, it was not until the state intervened that women were provided an opportunity to participate in JFM council meetings (Ghate 2005).

State action of a different kind played a key role in recognizing collective rights in Guatemala, where in 1984 the government established agrarian communities as a counter-insurgency move. In this case, farmers' cooperative associations (*Empresas Campesinas Asociativas* or ECAs) were created by government. Initially, the government sought to control their leadership and disassociate ECAs from the communities, leading to corruption within the associations. Five years later in 1989, at a time of political change in the country, a new ECA was formed by local farmers in the Santo Domingo



Common garden – Southern Africa

municipality. A more genuinely community-based (i.e., bottom-up) approach has helped address farmers' land access problems, and also has supported collective sales and actions to improve farmers' market strength (Vay Ganon 2005).

Devolution and Decentralization

Beyond recognizing local use and creating minimal usufructuary rights, the case studies indicate that the devolution of state functions to lower administrative units and, in certain cases, to communities is impacting common property regimes. Some cases illustrate how this form of state action, often in collaboration with local users, can serve to strengthen the rights of local communities and the basis for their organizing to manage the commons, including in building their

accountability to different groups of resource users. Other cases identify aspects of decentralization that may weaken common property regimes, particularly when the commons are managed under customary law and decentralization occurs via state action, but the linkage between the two is inadequate.

Under state devolution and decentralization programmes, such as those in Burkina Faso, Ethiopia, Mali, Niger and Uganda, specific legislation recognizes local management groups, committees or councils and accord them rights to use and manage the resource base (Bachir et. al. 2005; Hamadoun 2005; Obaikol 2005; Unruh 2005).⁸ Under its Ethnic Federalism policy, the Ethiopian government allows local customary authorities to assume a stronger role in managing conflicts over common lands (Unruh, 2005).⁹ Afari leaders are able to draw on the support of the national government for this effort, which has included the establishment of special committees to mediate land disputes.

Decentralization may weaken commons management by establishing a parallel local administrative structure whose authority undermines customary institutions. In Zimbabwe, the 1998 Rural District Councils Act provides natural resource management powers to rural councils – functions formerly carried out by local chiefs. This has contributed to the decline of customary institutions for managing the commons. The chiefs have no legal power to create and enforce rules on natural resource management in communal lands. It now rests with the Rural District Councils (RDCs) who can make decisions without consulting the chief. In Muzarabani, even low-level leaders from the Village Development Councils or councilors can challenge a chief's decision. Nonetheless, people have continued to apply local regulations, although in a very limited way (Chidawkai 2005).

By contrast, decentralization in Thailand has empowered local government authorities but without reducing the authority of existing village institutions to manage community resources (Kijtewachakul 2005).

⁸ In this paper, decentralization refers to the provision of state authorities, such as the power to establish laws or generate public revenue, to local government. Devolution refers to the transfer of management or implementation functions from central institutions to local institutions, such as resource user associations.

⁹ "With the change in government in Ethiopia in 1991, the country has pursued an 'ethnic federalism' approach to governance whereby administrative boundaries (Regions) were redrawn along broad ethnic lines ... While the current Ethiopian constitution indicates that all land belongs to the state, much power has been given over to these ethnic regions to govern their own affairs ... The constitution also gives the regions the power to recognize customary dispute resolution mechanisms." (Unruh 2005)

The sub-district administrative organizations (SAOs) have the ability to tax land where *sor-por-kor* (a form of state-recognized land certificate) exists and to manage a budget for forest conservation activities. SAOs also allocate individually managed cropland. Village committees retain the authority to mediate and negotiate land access among villagers, particularly lands that are used for shifting cultivation.

Access through Projects

In at least three cases, state-sanctioned wildlife or conservation projects in national parks or forest reserves provide opportunities for communities to negotiate agreements with their governments to improve tenure security. One common element of these cases was the involvement of international organizations in the funding and/or implementation of these initiatives.

In Thailand, the implementation of the Upper Nan Watershed Management Project (UNWMP), a joint project between the Danish and Thai governments that began in 1997, has created a channel through which forest resource users can negotiate some recognition of their access and use rights (Kijtewachakul 2005). Through this project, villagers were able to negotiate for zoning forests between conservation and utilization areas to ensure recognition of their access and use rights to valuable timber and non

timber products. The project was able to facilitate this outcome largely by enhancing the bargaining power of communities with the state and providing space and opportunity for the users to interact with state officials.

Similarly the Takieta Joint Forest Management Project in Niger was started by SOS Sahel in 1995, with the aim of promoting processes that would lead to decentralized and sustainable management of the Takieta Forest Reserve, taking into account the needs of the different user groups. By the end of the project, the Forest Service signed an agreement recognizing and supporting participatory management of the forest by adjacent communities:

In the Takieta case from Niger, the forest user Association Kou Tayani, working with facilitators of the Takieta Joint Forest Management Project, outlined a process to identify resources, exchange information with other user groups, convene multi-stakeholder forums to determine common concerns and approaches and to elect representatives from among different users to serve on a commons management group. Over a five-year period, these processes – which were made possible in the first place through the state's agreement to devolve natural resource management – helped to bring about changes in social relations and improve the ability of user groups to manage and resolve conflicts over the commons (Bachir et al. 2005).

Projects have played a similar role in Nepal, where the state claims ownership rights to forest areas. Through a partnership with the International Fund for Agricultural Development (IFAD), the Nepalese government now leases forest lands to community groups, targeting poor people, women and the disadvantaged. In this case, with support via an international development project, the state has re-created group rights in areas where common forest lands previously existed and is still recognized and understood by local residents. Leasehold areas are degraded forest lands, so there is less competition for their use by more powerful people (Shrestha 2005).

As will be discussed further, state-driven conservation may also be an obstacle to strengthening common property regimes, particularly where there are now channels for communities to participate in projects and for local tenure systems to be recognized and incorporated. While the positive examples were few, they nonetheless illustrate how state action and projects may, with the appropriate design, interface to create more secure tenure and access opportunities for local communities that manage resources as common property.

Community Action and Common Property Regimes

Systems of common property may also emerge through organized action by communities, either for management and regulation of resource use, or action aimed at defending the resource from unwarranted incursion. In Saigata village, in the interior of India's Maharashtra State, the self-organization of a forest users association in the 1970s, in response to deteriorating forest condition, established clearer rights and responsibilities to common forests (Ghate 2005). Active collective management of forest resources has prevented resources from being treated as open access, facilitated by strong leadership from within the community:

In this case the growing denudation of the forest disturbed Mr. Suryabhan Khobragade, a resident of Saigata... He had witnessed the changes in land-use patterns since the days of the 'Malgujar', when he was working for him as child labourer. Between 1955 and 1975, the forest around Saigata had changed from thick canopy forest to degraded land. Yet, he was also aware of the fact that it would be difficult to dissuade the fellow villagers from giving up their income generating pursuits without offering them an alternative. After many discussions with like-minded people in the village, it became clear that asking the fellow villagers straightforwardly to stop anti-forest activities would not yield the required response.



Wetlands – Zambia (ICRAF)

Instead, something positive needed to be done circuitously, to bring the community together... Community action first began with setting up of 'Krishak charcha Mandal' (farmers' discussion group) where majority of the farmers shared his concern about the deteriorating condition of the forest, resulting in scarcity of fuel wood and fodder. After many rounds of discussions, it was thought that a plan was needed to start the process to rejuvenate the forest. Mr. Khobragade initiated an effort to first identify the dependence of each household on forests. (Ghate 2005)

This process led to the establishment of a local forest protection committee, which is now elected by the forest users' association. The committee has taken steps to make common property rights more secure through more sustainable use of the forest. It established, for example, different forest zones and regulations such that harvesting could take place in one zone, but not in all simultaneously. Uses were also restricted – in one zone, fresh

wood cutting was prohibited; another was set aside for cutting grass to use as fodder (Ghate 2005).

In Laid village in Scotland and among *campesino* communities in Peru, proposals for mining exploration generated self-organized community mobilization (Seki 2005; Burneo 2005). In the case from Peru, poverty rates are higher where mining takes place – 50 percent and 77 percent in the two regions of the country where gold production is highest. *Campesino* communities are not able to oppose concessions, but according to the laws, they may receive compensation. In recent years, this situation has pushed communities to organize themselves in defense of collective rights, in the face of the threats and conflicts posed by mineral exploration, such that collective action may increase the security of their rights (Burneo 2005).

Collective action is also taking place in Indonesia with communities reclaiming common lands that lie within national park space, often working together with non-governmental organizations (Galudra 2005; RMI 2005).

In West Kalimantan, Indonesia, the NGO-facilitated Community Forestry Strengthening Program (*Program Pemberdayaan Sistem Hutan Kemasyarakatan – PPSHK*) has complemented local collective action, such as community mapping, with an advocacy campaign in the provincial capital. In the absence of a statutory framework that recognizes indigenous rights to land and territory, this combination has provided some improvement in tenure security for common property users, via informal agreements between communities, their NGO partners and provincial officials. These examples demonstrate how collective action by communities, including that undertaken in alliance with supportive outside organizations, can contribute to expanded and increasingly secure access.¹⁰

Summary

On the one hand, customary systems remain a common means of providing or managing access rights to the commons by individuals, households and groups. This may include groups and individuals that are not necessarily 'members' for as long as the

non-members are willing to negotiate and follow the general rules of access, particularly those rules that discourage the creation of permanent rights that may compete with legitimate members. On the other hand, customary systems are vulnerable to non recognition by state systems and often fall short of being representative of the interests of all relevant community members. As this paper will discuss further, these are key issues to consider when evaluating options to improve tenure security within common property regimes, particularly the security of access rights for vulnerable groups and poor households.

Meanwhile, the state can create, encourage, or sustain community rights and access to resources in various ways – national legislation to recognize common property is one means, but not the only state action being observed. Through a more involved process of decentralizing authority and rights, states may provide a basis for creating, and strengthening common property regimes. By mandating joint management, the state also creates access and legitimizes local use. In other cases, tension may still remain between local bodies and the state, even though state recognition has been given.

¹⁰ For more information on PPSHK's activities in West Kalimantan, see www.jeef.or.jp/EAST_ASIA/indonesia/PPSHK.html, www.landcoalition.org/partners/ppppshk.htm.

2. Access to resources

Access created through the state programmes can also pose challenges. While having the potential to strengthen common property regimes and secure the rights of women and the poor, there is the risk that decision-making and benefit flows may be captured by more influential groups. Yet, this situation might also provide a chance that would otherwise not exist, for the poor and marginalized to access natural resources. In addition, there is need to harmonize overlapping sectoral laws and policies during decentralization processes to minimize the risk of cross-sectoral conflict.

In summary, access to common areas can be created and sustained in several ways: through customary systems and institutions, including those based on group identities, through the state's recognition of common property claims and provision for use and/or management rights, through project-based innovations, and also through community organizing, whether self-organization or with some form of external facilitation.



3. Tenure Security under Common Property Regimes

This section discusses tenure security under common property regimes, how rights to resources are guaranteed and/or secured under common property, and what challenges exist in situations where tenure is not secure.

As discussed earlier, the potential benefits of managing resources through common property regimes may be possible so long as tenure is secure. Practitioners and scholars often consider tenure security as a function of the breadth of rights, the duration of those rights and whether the rights are assured, i.e., can be exercised without disruption or threats into the future (see Place, Roth, et. al. 1994; Schlager and Ostrom 1992; Wilusz 2006).¹¹ While breadth and duration are important features of security, some scholars suggest that the assurance of the rights or whether the rights can be exercised continuously without threat or disruption is a superseding aspect (Ostrom, 2000)

In the context of common property regimes, assurance can be broken down further and considered from at least two standpoints: (a) the ability of a group to exercise its collective right to resources, vis-à-vis competing claims from other interests (including the state), and (b) the ability of individuals, households or other sub-units of the group to exercise their rights – particularly access rights – to common property, vis-à-vis other members of the group. This section will address these two elements of tenure security, drawing on the findings of the case studies.

In addition, communities and households that use natural resources have their own perceptions of what tenure security means in practice. Among these, affordability and accessibility of property rights regimes are two key concerns that were identified.

¹¹ Wilusz defines these further: "Breadth of rights refers to the range of rights held, such as right of use and withdrawal, right to decide who may access the resource, right to decide the manner in which access and withdrawal should take place, and the right to transfer ownership (Schlager and Ostrom 1992). Assurance of rights refers to the degree of certainty people have that their tenure rights will not be violated today. Duration or rights refers to the degree of certainty people have that their tenure rights will not be violated in the future."

This is significant when considering ways to assess changes over time in tenure security (including, but not limited to, common property settings), and to identify measures through which communities and state institutions may improve tenure security in ways that protect both livelihoods and environmental sustainability.

Assurance at Group Level

The right and ability to exclude “outsiders” (those who are not considered members of the group or community that holds rights to common property) is a key concern in a number of the cases. This is particularly evident in communities that face encroachment – such as migration into customary lands in Zimbabwe, exploration by mining companies in Peru, or memory of apartheid-era land seizures in South Africa – such that assurance of resource rights at the group level is a critical dimension of tenure security for communities (AFRA 2005; Burneo 20005; Chidakwai 2005).

One reason that this assurance at the group level is such a concern in many of the cases is that the local, customary-based systems of authority – which underpin many of the common property regimes presented in the cases – are losing power as state administration, markets, increasing populations, migration and other pressures increase. This is noted by the Mau Community Forest Association (MACOFA) in its case

from Kenya, where there has been a gradual alienation of the community from resource governance by existing forest administrative structures. This alienation has created opportunities for the collusion of local leaders and government officials to appropriate common lands and monopolize benefits from the commercial exploitation of the natural resources (Karangathi 2005). Sometimes, customary control may be so challenged that land and resources previously managed as common property have deteriorated or are deteriorating into an open access situation, in which there are limited or no group controls over resource use. Even though several countries examined in the cases recognize some forms of collective natural resource management, most statutory systems do not treat customary norms and rules as legitimate sources of rights to land and other resources. This weakens the assurance of group claims vis-à-vis other parties, particularly in cases where competing claims have been supported (both legally and extra-legally) by the state.

Several case studies noted that state policy and laws are based solely on systems of state or individual ownership, excluding the possibility of common property rights.

After independence, the Malian state claimed a tenure monopoly in the country and modern law took precedence over customary practice (Hamadoun 2005). In this and other cases, the problems associated with the imposition of “modern” rules are: a different logic to rules and regulations other than that known and practiced by local users; difficulties in applying and enforcing the state’s rules; and no provision for multiple uses of resources (e.g., conservation is equated with stopping of any exploitation).

In other cases, the state backed the privatization of commonly shared resources, excluding customary claimants and undermining customary systems. In Botswana, state policy after independence has favoured privatization of common pasture lands (Taylor 2005). The 1975 Tribal Grazing Lands Policy (developed through a World-Bank supported process), followed by the 1991 National Policy on Agricultural Development, created leasehold ranches to reduce grazing pressure. The exclusion of extensive tracts of lands for private interests has increased pressure on remaining communal rangelands. At the same time, rights to pasture are better protected at the level of the individual citizen than at an aggregated level of social organization,

such as tribe. This has served to break down traditional management systems to the extent that many pasture lands are now characteristic of open access systems. Similar government-led programmes in Burkina Faso sought to establish ranches and encourage sedentary use by pastoralists and their herds (Nelen et al. 2004).

Where laws recognizing common property do exist, competing claims to territorial resources may still emerge, as was seen in case studies from Peru (Burneo 2005, Guzman 2005) and Indonesia (Galudra 2005, Santosa et. al. 2005). These situations can arise when laws and policies are in conflict, when different state institutions have different jurisdictions over territorial resources or are providing tacit support to commercial or other interests, or when there is a lack of implementation of laws that recognize common property rights.



■ Peru – Wagner Guzman – case study 32 –
Common forest resources in Peruvian Amazon

Assurance at Individual, Household and Sub-Group Levels

Common property regimes are also subject to internal problems, including the risk of “elite capture” or situations in which some group members are not assured access to common property. Under both customary and state-supported systems, local elites may get away with circumventing rules and evading sanctions, as in cases from India and Nepal (Prasad 2005; Shrestha 2005). Although local councils in Himachal Pradesh in India have the power to enforce rules, local elites very often circumvent these rules as they can afford to pay for court cases (Aggarwal 2005).

In similar cases from Nepal’s leasehold forestry initiative, these actions generated disputes and led to conflict within communities. The forest leasehold groups – which targeted the poorest households – had to negotiate some form of shared rights with non-group members, in order to avoid elite capture (Shrestha 2005). These examples illustrate the challenges of designing equitable policies that allow poorer households to also benefit from the use of commons resources.

The status of women and their participation in decision making is another concern. Despite their established role in commons management and use women are rarely

involved in important decisions, creating a gap between those making decisions about common property and those responsible for its use and management. Although women are taking on increasing responsibility for agricultural work in Peru’s campesino communities, but have little say in community decisions concerning land and collectively managed natural resources – despite recent advances in gender equality in other areas (Burneo 2005). In the case of community forests in Kenya the decision-making structure is male-dominated, even though women constitute the majority of users (Karangathi 2005). Here, as in most other areas in Africa, access to land by women mostly is through male family members, i.e., husbands and sons. This makes their access to land difficult, especially if they do not have influential people to assist in negotiating with customary institutions. The same situation prevails during land inheritance.

Where women do participate in decision-making, the process is not necessarily tolerant of dissenting views, or sensitive to gender dynamics. In one case from Uganda, women suggested that fast-growing trees be planted, so their fuelwood needs could be met. This suggestion was ignored, and instead the focus was on commercialization of forest resources, purportedly for community benefit (Obaikol et al. 2005; Obaikol 2005).

However, the situation is changing in some places, especially where there are clear affirmative action rules that require the inclusion of women in decision making. The IFAD-supported forest leasehold programme in Nepal is targeted at poor women, providing them a window for influencing commons management in the participating villages (Shrestha 2005). Similarly, the village forest committee in Saigata, established in 1979, provides for gender balance on its executive committee – three women and three men. Through this concerted effort to involve women and other marginalized groups of the community gender disparity in decision-making has been gradually reduced (Ghate 2005).

Affordability, Accessibility and Sustainability of Tenure Regimes

The availability of methods to document rights and tenure relations that are affordable, accessible and readily understood by common property users is yet another dimension of tenure security for communities. In cases from Mali, South Africa and Uganda, the processes, mechanisms and certifications required to register land via the state administrative system are not always understood by or not familiar with local residents. High costs, complicated processes and, in the case from Mali, the signature of the president are some of the requirements for legal ownership.

Consequently, people do not follow those rules but find their own ways of securing access to land, including both individually and as common property land (AFRA 2005, Hamadoun 2005, Obaikol 2005).

These examples suggest that the concept of tenure security can and should be broader than conventional definitions used by scholars and practitioners. The cases suggest that, in practical terms, resource-users are concerned not only with the range, duration and assurance of benefits, but also with accessible and affordable methods for documenting those rights, as well as the problem of representing multiple interests or rights claims in the same territorial area.

Among residents of Ekutheleni, South Africa, a key concern is that documenting rights to common property via the state's land administration processes is too costly for local residents. Professional surveys also fail to capture the range of interests represented by the customary tenure system in place. Realizing the benefits of secure access to resources is also perceived as an indicator of tenure security. Access to credit and other support services depend on public recognition of rights to land and property and, in practice, are thus signals to communities that tenure is secure.

Ekutheleni residents, working with the non-governmental Association for Rural Advancement (AFRA), have sought to bridge these local practices with the state's administrative processes in order to increase security of tenure over community lands. AFRA describes the existing system in Ekutheleni as one that "provides a functional tenure security for most people in the community", but which operates with neither state support nor connections to public institutions and the services that they provide.

Ekutheleni has a system around land that works, most of the time, for most people. It's cheap (food and alcohol for the boundary witnesses and R40 a year to the Inkosi), it's very local (walking distance at any time for a new allocation, access to dispute resolution) and it relies pragmatically on a mix of historical practice, environment and specific social need. AFRA thought that if the system - its mechanisms, rules, practices and institutions - could be described very clearly and a paper system created to reflect and support it, such records would begin to meet household needs (AFRA 2005).

Thus far, the residents of Ekutheleni have yet to succeed in their efforts to gain recognition for their rights, leading AFRA to conclude that "the institutions that uphold registered property rights and the way they are arranged and link to one another are part of a structure that excludes the poor" (AFRA 2005).

Community mapping is increasingly being used to link communities both to state processes for documenting land rights and linking maps to participatory land-use planning and territorial development. The case from the Parinari district in the Peruvian Amazon describes how mapping is used to identify the best uses and limitations of a territory and can serve as the basis for establishing rules on resource use. This second point is especially important considering the lack of clarity of rights to common property, and given that the establishment of norms and sanctions are important options for the sustainable use of resources (Guzman 2005). In this way, community mapping exercises are playing multiple functions: (a) strengthening the ability of resource users to document group claims and systems of managing resources as common property, (b) serving as catalyst for collective action, through which communities can increase the likelihood that their claims will be acknowledged, and (c) increasing the long-term sustainability of the resources being managed as common property and, thus, the sustainability of the tenure regime itself.

Summary

In instances where customary systems of common property are not acknowledged by the state, assurance at the group level will be at risk if competing claims emerge, particularly if they are supported either legally or tacitly by state institutions.

While legislation to recognize and support common property may improve this dimension of tenure security, threats to tenure security may still arise if there are conflicts between different laws, policies or state institutions.

At the level of individuals or households

within groups, elite capture (as will be discussed further in Section 4) may occur when tenure systems – whether customary or state-supported – fail to apply rules and sanctions for resource use fairly, or in ensuring that rights to the commons (particularly access rights) may be claimed. Finally, issues of affordability, accessibility and sustainability of tenure regimes should be considered more fully in discussions of common property tenure security, drawing on resource users' own perceptions of the tenure systems that exist.



4. Threats to common property regimes

This paper has argued the importance of common property to the poor especially women in pursuing their livelihoods and serving as safety nets. Almost all case studies show, however, that the existence or at least the functioning of common property regimes is threatened.

In this section, the paper discusses threats common property regimes are facing and that are identified in the case studies. Threats mentioned in the cases can be categorized as follows:

- market-related threats linked to agricultural expansion and related individualization of the commons, and a trend towards commercialization and increasing external investment;
- demographic factors such as migration and population shifts, and the HIV/AIDS epidemic;
- inadequacies in legal and governance frameworks, including: weakening customary institutions and elite capture; state support for privatization; ambiguous national-level policies; and the states' role in managing national parks

- the role of conflicts and conflict management in changing the way common property is managed.

In some examples, these pressures have threatened or are threatening the viability of common property systems, contributing to greater tenure insecurity. In other instances, as will be discussed further in Section 5, common property regimes are changing or adapting to address new challenges, such that tenure security can be maintained or even improved.

The case studies identified a range of threats to common property systems. Some of these may be considered as either "internal", i.e., coming from within a community of CPR users, or "external" i.e., rooted in processes or institutions outside the control of local CPR users. In other instances, the challenges seen – such as environmental degradation or actions to privatize the commons – are a combination of both internal and external factors. Finally, pressures may not generate only challenges, but also opportunities to empower poorer households to enjoy more secure access to common property resources – as will be discussed in the final section of this paper.

4.1 Markets

Numerous cases discussed an increasing trend of extracting resources from the commons for commercial purposes. This includes both expansion of smallholder agricultural into the commons, which is pushing an individualization of land and resources, and large-scale exploitation of the commons, such as through extractive industries and plantation agriculture. These two trends were the ones most frequently cited as threats to common property regimes.

Agricultural Expansion and Individualization of the Commons

Rural areas are increasingly connected to regional and national markets, and while domestic use of common-pool resources still plays a significant role in supporting rural livelihoods, at least nine cases also identify an increasing reliance on cash income and an expansion of opportunities to earn income through commercial use of the commons, including through small-scale agriculture (see cases from Benin and Niger, Bachir et. al. 2005 and Dangbégnon 2005). While this trend may provide rural households with new chances to improve their livelihoods by drawing on resources from the commons, it may also lead to disputes among different user groups or between the poorer and the better off families within a given community.

Increasing commercialization of commodities derived from common areas often increases the value of the resource and encourages privatization. In some cases, producing for the market may challenge or disrupt customary institutions that are the basis for the management of common property. This is seen in the case from the Muzarabani district of Zimbabwe, where the value of masawu trees is increasing and leading to an increase in private claims to trees. Common lands adjacent to individual farms are being claimed, by clearing and fencing land around the area (Chidakwai 2006).

Ultimately, land use priorities may shift, especially if resources managed as common property are not accurately valued. In Benin, the introduction of cashew nuts (a cash crop) led to demands by farmers to individualize the commons. This undermined existing agreements between farmers and herders for joint and sequential resource use. Herders no longer had access to migration corridors across cultivated lands in their regular transhumance, which increased the potential for disputes between pastoralists and farmers. Negotiated agreements between the two groups, facilitated by local customary institutions, were in some cases able to manage these disputes (Dangbégnon 2006).

In some cases, new tenure arrangements are emerging with the spread of agriculture, to support mixed production systems, e.g., agro-forestry or agro-pastoralism. These systems do not necessarily emerge as a “natural” outcome of changing production systems, though. The case from Benin illustrates that negotiation among different groups may be needed for the initial tenure regime to evolve and support “hybrid” production systems effectively.

Whether such an outcome may be possible is related to the scale of production associated with a given agricultural product, particularly cash crops. In the area near Akok community in Southern Cameroon, the introduction of improved palm oil varieties over the past 15 years has created large plantations, generally owned by urban investors. This process includes purchases of land that had been treated as common property by local users. As a result, the institutional rules governing common land and resource management have been disrupted more by the commercial palm oil sector than by other cash crops, such as cocoa, the production of which can be managed on a smaller scale (Mala 2006).

Local-level commercialization may in some cases create new incentives for joint management of the commons, such as in the case of Nepal’s leasehold forests where user groups of poor

households are restoring degraded forests, replanting timber and growing herbal plants for sale in local markets (Shrestha 2005). Still, this is a process that appears to have more costs than benefits for common property and those that are dependent on it.

Environmental costs, including long-term resource depletion and degradation, may emerge through more intensive commercial use of the commons, as one case from India illustrates:

Laitsohpliah village . . . used to be known as a major supplier of fuelwood at the local market of Sohra (the local name of Cherrapunjee). On every local market day a truck load of fuelwood would be sold.

The situation today is different. Uncontrolled felling and commercialization of timber has brought about large-scale depletion of the protected forest. The village council did not anticipate the crisis and local user groups are facing the consequences of this depletion. The trees in the forest are insufficient to meet their livelihood needs, which are compounded by a lack of alternative employment opportunities. A forest-based dependent village is today faced with critical livelihood problems. People are now unable to keep the children in school, leading to high dropout rates. Young and adult members of the village migrate from the village in search of employment. Some individuals started to mine the land to extract stones, sands and coal to sustain their livelihoods (Kumar and Nongkynrih 2005).

Changes in the purpose of resource and broader economic change are, in some cases, also contributing to decline in customary controls and regulations. Social regulations are more relevant for households that rely on resources from the commons for subsistence and may become irrelevant in the context of broader economic change. The case from Kumaun in northern India describes how increased participation in the market economy is threatening the continued functioning of local, customary institutions for voluntary work (shamdran). Villagers are now expecting compensation for communal work and there is now less reciprocity and a greater reliance on direct state intervention. As a consequence, irrigation and water catchments are declining for lack of maintenance (Aggarwal 2005).

Endogenous processes of privatization and informal but permanent boundary demarcation may often mark the encroachment of individuals into community spaces. In the Himachal Himalayas of India there is a tendency towards privatization of common grazing lands in the villages. Here, open lands are increasingly being bounded by stonewalls and iron poles by users. For a large number of users, this is a preemptive strategy against anticipated future land pressures due to an increasing population (Gupta 2006).

Commercialization and External Investment

Commercialization is also taking place on a larger scale, as presented in numerous cases where outside investments are competing with local residents for access to the commons, particularly in capital-intensive sectors such as mining, logging or plantation agriculture. (Kosovksy 2005; Burneo 2005). In at least 15 of the case studies, outside investments are competing with local residents for access to the commons. These include capital-intensive investments in commercial sectors such as mining, logging, and ranching and plantation agriculture. Often where commercialization is instigated by outside investment in resource exploitation, the largest share of benefits is enjoyed by outside investors, although there may be some trickle-down benefits to local residents depending on the case.

Without access to large-scale capital, investment opportunities for local residents in these sectors are limited; this creates economic leverage for outside investors when negotiating agreements with local CPR users. Elite capture within communities may be associated with increased commercialization.

In Indonesia, where village heads were responsible for distribution of benefits received from investors, natural resource benefits are not shared equally within communities. Better-off migrants who live in areas where common property regimes are present may benefit more greatly than members of indigenous communities.

Outside investment is most often associated with greater access to state institutions, policy- and decision-making processes, as well as outright corruption and abuse of power. Non-compliance with regulations and partial (or non-existent) implementation of laws may contribute to both elite capture of benefits from commercial use of the commons, as well as environmental degradation. The cases from Indonesia, Kenya and Peru's Amazon region illustrate these challenges (Guzman 2005, Karangathi 2005, Santosa et. al. 2005).

Commercialization of collectively managed forest resources, in particular, may not benefit women. In the Indonesian example women play important roles in agriculture and forest management, but timber and logging industries tend to be male-dominated. Capital-intensive commercialization in the forestry sector therefore shifts benefits out of women's hands and into men's.

Improving the security of tenure over common property resources may therefore contribute to poverty reduction, by limiting encroachment and strengthening local residents' bargaining position vis-à-vis outside interests, as well as tenure security within communities as a means of preventing elite capture. Access to other resources besides land (e.g., water along with grazing land) should also be ensured in areas where these are complementary in local production

4.2 Demographic Factors

Demographic factors such as population increases and migration are among social trends that are placing pressure on common property regimes. In some parts of the world, the HIV/AIDS epidemic is impacting women's rights to land and resources, including those accessed through common property, as one case study from Southern Africa describes.



■ Open pit mining

¹² This point was raised by Carol Colfer, CIFOR-Indonesia, during the Internet Discussion Forum on the case studies. See Appendices for summary of this discussion session on the theme of CPRs and Poverty Reduction.

Population Pressure

In seven of the case studies, population pressure – i.e., population growth that feeds an increased need for natural resources – is indicated. In several cases from India, population increase is contributing to encroachment and degradation of forest resources.

In addition, in cases where local elites are not sanctioned for rule breaking, community controls for joint resource management break down, creating a near open-access situation in some community forests. In the central Himalayas in India, user groups were primarily responsible for encroachment in the respective community forests (Aggarwal, 2005).

In this case, most community forests had adequate resources within them to meet user needs and neighbouring community forests were typically less accessible in terms of distance. Moreover, violations by non-members were more easily detected and reported by all users. The rise in encroachment can be explained by the increasing size of the user groups due to rise in population, as well as greater pressures on women to engage in practices that were time saving but destructive to the forest.

Encroachment is often linked with population pressure on resources, but may also reflect power dynamics within communities and changing roles (or absence) of the state.

One case from the Patha region of India's Uttar Pradesh state suggests that land grabbing is linked to population pressure but facilitated by lack of good governance to safeguard access by poor community members to the commons:

With the abolition of Jamindari system, government created common property resources like ponds, grazing spaces, plantation area play grounds under the GramSabha (a village-micro-unity governance). With the increases in the population pressure on land, the village started encroachment and grabbing of these common property resources as well as the land of illiterates and poor community... [Although the] government has well structured administrative system to maintain the existence of common property and a good governance system ... it has been alleged the land grabbers have a knot with these officials (Prasad 2005).



Migration and Population Shifts

In addition to population growth, migration and other shifts in population are noted as a demographic factor in six of the case studies. Rural out-migration is another development associated with the increased links between rural communities, surrounding regions and urban centers. In several cases, rural out-migration – particularly of working-age men – has become a factor in the management of the commons. In the Kumaun region of India, the high rate of male out-migration has left much greater responsibility for resource management on already overburdened women. Women increasingly lop oak leaves in summer, despite local bans, because of household labour shortage and time needed to collect leaves and fodder (Aggarwal 2005).

Migration of families within rural areas, i.e., in-migration, may also influence the common property arrangements, particularly where migrant farmers begin competing with other groups for resources or, as in the Zimbabwe case, do not have knowledge of or respect for local customary institutions that manage the commons.

HIV/AIDS Epidemic

While only one case focused on the links between HIV/AIDS and common property regimes, the need for attention to this issue, particularly as related to women's rights to land and resources managed as common property, is reinforced by other assessments of land tenure issues in areas where the epidemic is widespread. In regions where there are high and increasing rates of HIV/AIDS, such as southern Africa, access to land and natural resources – particularly by women and female-headed households – is in jeopardy. This, in turn, creates or exacerbates food security and nutrition challenges, making it all the more difficult for families hit by the disease to sustain themselves. This is illustrated in one of the cases from Zimbabwe:

Due to the high death rates, and the amount of time needed to care for the sick, the orphans and vulnerable children, little time is left for the management of CPRs at community level, yet the same CPRs are a source of medicines for the sick and also provide nutritious foods to assist the depleted immunities of the poor and vulnerable. This means that the pandemic has reduced the capacity of the communities to sustainably manage the CPRs, which are important for their livelihoods (Mgugu, 2005).

4.3 Legal and Governance Frameworks

It is important to consider these first two sets of threats as being related to government policies and actions, rather than being exogenous trends.

Government policies that encourage commercialization of natural resources, marginalize indigenous and customary institutions, or simply overlap and create confusion among resource users, are all contributing factors to the pressures discussed in this section.

Elite Capture

“Elite capture” of the commons – disproportionate use of and benefit from common property regimes by wealthier or more powerful households in a given area, was noted as a pressure on common property regimes in three case studies. While this is a relatively small number, it is worth noting, as the cases illustrate, how elite capture is not only a threat in areas where tenure regimes are weak or non-existent (as in open access scenarios), but also where common property regimes are functioning in ways that allow more powerful resource users to gain control over the decision-making processes and develop resource management provisions that can exclude poorer members of the user group.

The case from the Patha region of Uttar Pradesh described earlier in this section, illustrates how encroachment may reflect existing power dynamics within communities, such that better-off families or individuals with connections to local institutions may appropriate individual claims to the commons.

(Prasad 2005) Establishing costs to accessing the commons may also contribute to the exclusion of the poorest households from the commons.

User fees in Raid Mawbuh village in India’s Meghalaya state are acting as a form of “indirect privatization”.

A fee of 150 rupees was imposed for felling trees in community protected forests, replacing customary rules for how and when trees in this area could be cut. While this fee is not a burden on wealthier members of the community, poor villagers are complaining that they are not able to pay this amount, as household budgets are only around 300 rupees per month (Kumar and Nongkynrih 2005).

In Nepal wealthy families that have been excluded from a leasehold scheme targeted specifically at strengthening poor families’ rights and incomes, have sometimes encroached on the scheme either by grazing livestock or planting trees (Shrestha 2005).

This example might be considered a kind of elite “re-capture” or “partial capture”, in the sense that poor households still retain access to the commons, but these rights – envisioned to be vested in poor and marginalized households – are shared with non-poor community members as the outcome of a negotiation process.

Weakening Customary Institutions

At least eight cases identify trends of weakening customary institutions as a pressure on common property regimes. In some, such as Zimbabwe, customary institutions for natural resource management are not legally recognized. The Communal Areas Forest Produce Act of 1987 allows only limited use; limited to subsistence as opposed for economic benefit. There is little in the existing legal framework that supports community control and/or management of land and land-based resources – 12 laws and several government institutions govern natural resources, most of which were established in the colonial period and retained after independence. In this regard, pressure on common property regimes is also rooted in the supremacy of statutory law over customary institutions.

State Support for Privatization

State policies are contributing factors in generating some of the pressures on common property regimes described above. Policies around natural resource tenure have not been exempt from the global trend to promote economic liberalization, creating pressure for the privatization of land and other natural resources. Earlier, this paper discussed the case from Botswana, where national agricultural and rural policies since the 1970s have resulted in the privatization of tribal communal lands and a concentration of pastoral resources in the hands of the wealthiest cattle owners. While cattle herders lost access to common pasture lands through these processes, there is no evidence that rangeland has improved following privatization policies; instead environmental pressure on common pastures that remain are on the rise (Taylor, 2005).

Peru’s 1920 constitution recognized *campesino* communities and guaranteed their collective property rights. In 1933, these communities gained juridical person. Until recently, under this framework community lands were inalienable. With a new land law (*Ley de Tierras*) introduced in 1995, this inalienable character was reversed.

The law sets out processes through which land can be sold to persons outside the community group, opening them up to land markets. Despite this change, common property remains protected by the 1993 constitution, and counter-proposals to re-establish the inalienable character of community lands are under development (Burneo 2005).

Privatization policies are also increasingly linked to the state's promotion of foreign direct investment in extractive industries such as mining and logging. Mining may pose difficult conflicts because sub-soil resource rights are often vested in the state, even where people's rights to common property are recognized by statutory or customary laws. Mining concessions may take up great swaths of land area: in the area around Matheniko reserve in northern Uganda, about 22,000 out of 24,000 hectares has been licensed to mining companies (Obaikol et al., 2005). The possibility of new mining activities often spurs collective action to defend common property rights, as is shown in the cases from Laid village in Scotland and the *campesino* communities of Peru (Seki 2005; Burneo 2005).

Ambiguities in National-Level Policies

In three cases, ambiguity in national laws and policies was identified as a pressure on common property regimes, in the sense that it creates room for competing claims to resources, and the involvement of (and competition between) multiple state institutions in recognizing these claims or in directly managing resources.

Kenya lacks a clearly defined national land policy to provide some coherence between different land-related laws, as well as some procedural constraints for access and management of collective resources. The Trust Lands Act (Trust Lands are lands held for local communities in trust by elected representatives) for example, in its current form, provides local councils with excessive discretion—they can change tenure systems on trust lands without community consultations (Karangathi 2005).

In spite of an early recognition of village forests in India, as established under Forest Act of 1927 and subsequent legislation providing for the governance of the village forests, more recent revisions of the Van Panchayat Act in 1937 reduce the autonomy of forest councils by requiring that they consult with district administration in the governance of forest resources (e.g., when changing rules, or adding/changing forest guards). This limits the responsiveness of local councils to changing needs and environmental conditions. Similarly, revisions of the Forest Conservation Act of 1988 prohibit local forest councils to undertake reforestation without permission from the central government (Aggarwal 2005). These revisions contradict practices of local forest councils (e.g., auction of dead trees, etc), and

undermines longer-term resource governance, because local councils do not have the ability to effectively use local information to meet changing needs and environmental pressures. The lack of legal support and trends towards curtailing the power and authority of local councils to govern resources reduces incentives for longer-term decision making and planning by local forest councils (Aggarwal 2005).

States' Roles in National Parks

In four case studies, state-led conservation efforts increase pressure on management of resources as common property, particularly where the creation of national parks and forest reserves has removed large tracts of common areas from prior users and vested control and ownership in state agencies. In Uganda, close to 36 percent of the Karamoja area is gazetted as protected area permitting very limited use by Karamojong pastoralists (Mwebaza 2005). The remaining 64 percent of Karamoja is designated a controlled hunting area and permits grazing, settlement and resource use. In 1996, part of this area was given under concession by government to marble and gemstone mining companies.



■ Africa – Enclosure fences

Also the wildlife statute of 1996 upgraded the controlled hunting areas to protected areas, bringing them under complete state control.

Similar processes led to the creation of Lake Mburo and Kidepo Valley national parks in southwestern Uganda where the Ankole pastoralists reside and the Awash national park in Ethiopia where Afari pastoralists live (Obaikol 2005; Unruh 2005). In Indonesia two waves of nationalization in 1979 and 2003 saw the government transfer large portions of high valued (biodiversity and watershed) forest land from community control to the Natural Resource and Conservation Agency (Galudra 2005). The government took over land that had prior contested claims. In the Sopsai watershed of Thailand most of the forests were demarcated as forest reserves under the 1964 Forest Act (Kitewachukul, 2005), resulting in more than one million households today residing within national forest reserves. By removing land from the management of communities, however, governments undermine the efforts of users at creating effective management regimes. Pastoral and other systems are disrupted, significantly changing resource access and use, while legitimacy and conflict resolution mechanisms are negatively affected.

4.4. Conflicts and Conflict Management

In many of the cases, changes that are occurring – both internally and externally – affect the way that land and other resources are managed as common property. When disputes over the commons emerge, often the poor and marginalized are left no or little access to vital resources – such as grazing areas, water, wood or fruits – and left more vulnerable.

Many case study authors indicate that recent changes and emerging trends are the most important reasons for an increase in conflicts, and the decreasing ability by most communities to solve and manage conflicts. As conflict itself generates more insecurity, disputes threaten to create a vicious circle in which pressure on the common property regime itself increases. For this reason, mechanisms for addressing conflict, often through facilitation by external organizations, emerge as a necessary ingredient of strong common property regimes.

Conflicts and their Contributing Factors

The case studies identify a number of factors that contribute to conflict over the commons. As earlier examples have shown, the potential for conflict increases when local authorities, traditionally responsible for overseeing natural resource management, lose power and influence, a trend seen in many customary systems of common property. Other factors, including changes in the socio-economic environment or in state policies, may combine with weakening customary institutions to increase the likelihood of conflict over resources from the commons.

The development of urban markets in developing countries, and increasing links between these markets and rural areas, is generating higher demand for products derived from natural resources, and greater pressure on the commons. In India's Orissa state, forest resources have historically been used to fuel (primarily urban) development. The majority of timber that is felled in the state is destined for consumption in urban areas; bamboo is also harvested to supply the growing paper industry. This exploitation not only left many communities facing shortages of basic necessities – e.g., fuelwood, fodder and supplementary sources of food – it also increased the value of having access to common forest areas. This in turn has created

tensions between villages and increased the potential for conflict between communities (Singh 2002).

In a number of cases, scarcity of resources (degradation, migration) is identified as one of the reasons for increased conflict. Among Afar pastoralists in Ethiopia, population increases have limited options for preventing unauthorized use, resulting in more disputes. Armed conflict has grown increasingly common as means for excluding access to commons; alternatively, the Afar are faced with degradation from de facto open access. Resource scarcity is a product of many factors, including the establishment of protected areas and construction of dams (Unruh 2005).

Conflicts often exist where different production systems interface. Several case studies noted conflicts between mobile pastoralists and sedentary farmers in arid and semi-arid parts of Africa. Examples from Ethiopia, Mali and Niger describe how nomadic and sedentary systems may co-exist, as well as come into conflict. Increasing crop cultivation and in-migration by cultivators can make it problematic for pastoralists to get to river and water holes. Sedentary groups also may start engaging in pastoral activities and raise livestock, thus entering in direct competition with pastoral herders.

The likelihood of conflict also increases where there is tension between modern and traditional resource management systems. Many modern rules are incompatible with the lived customary rules, and provide opportunity for outsiders/non-claimants to gain and thus undermine their authority. After independence, the Malian state claimed a tenure monopoly in the country with statutory law takes precedence over customary practice. As a result it became difficult to apply and enforce rules governing the commons, and to manage the contradiction between authoritative texts and development logic, particularly when conservation is equated with stopping any form of resource use (Hamadoun 2005).

Government policy and other actions that lead to displacement and involuntary resettlement contribute to conflicts over common property. These can occur when government does not recognize the interests of common property users in a given territory, and either target the area for large-scale development projects or resettling migrant farmers. In one case from Mali, dam construction disrupts the social peace and creates potential for conflict. Although the newly created waters create opportunities for some, others lose out through the displacements created (Hamadoun 2005).

As mentioned earlier, in India the state owns forest lands that, in practice, are treated as common property. This gap between state ownership on paper and group use and (in many cases) collective management in practice can lead to conflict, particularly where the state is not active or effective in managing the resources.

The people of many villages across the Angul district have been facing a threat due to high powered electric lines passing through their forests leading to felling of trees (35 feet wide) across their forests to reduce the loss of power due to earthing. The forests revenue and the forest lands in most villages have been protected and regenerated by the communities for the last 20-30 years but the permissions are sought from the district administration and the forest department; the compensation goes to the government exchequer; the amount for compensatory afforestation and the trees harvested are grabbed by the forest department. The communities protecting the forests are neither asked permission nor compensated for the efforts they have put in. The result has been further degradation of the forests... More critically, the government has even denied compensation to the communities for the loss of plantations due to the construction of canals, where the district administration had given permission to the village institution to take up plantation and process of leasing the land to the community was in progress (Singh 2002).

Attempts by governments to attract foreign investment through exploitation of natural resources – often in areas where they are treated as common property by local residents – may contribute to conflict. In Peru, mining concessions are given out, often without the consent of the villages that at best can ask for a compensation for the land. Legally, communities are not able to oppose the granting of concessions. Concessions given for petroleum exploitation in West Africa, as well as game reserves and timber concessions in many countries (e.g., Mozambique), are given out by governments; despite the fact that communities' access to resources is limited, or they are cut-off entirely from resources, sacred sites, or neighbouring villages with whom they exchange goods.

In southern Cameroon, assets and access to land and natural resources is determined both by local elders/lineage heads as well as traditional chiefs. However, an absence of effective organizational or leadership structure in some cases, such as in the Adamaoua region of Cameroon, has contributed to conflicts between individuals and groups. In this region, 63 percent of cattle-owners use common land for grazing; only three percent have individual rights to grazing land. While farmers' groups (*Groupes d'Initiative Commune*) exist, there is no comparable organizational structure for the management of community pastures. As a result, conflicts emerge,

both between individuals within communities and across different herder groups (Deffo 2005).

This situation is compounded by the recent privatization of common grazing areas. In the 1970s, the government, with support from the World Bank, created public ranches designed to boost production. Initial demonstration ranches were subsequently privatized and, through this process, dignitaries, traders and other more powerful individuals were able to appropriate large parcels of prime pasture land that had previously been under community control. Today, these pastures are fenced off with barbed wire, limiting herders' mobility. Intensified competition for the remaining pastureland has contributed to the destruction of social ties on which access to the commons was historically based. In turn, this has minimized the community nature of pasture lands and increased pressures that lead to land degradation (Deffo 2005).

Karamajong elders in Uganda have also recognized a decline in their authority, which reflected (and perhaps reinforced) a lack of cooperation among pastoral groups. The imperative of conflict resolution encouraged local leaders to establish new rules between groups involved in armed conflict, and to revitalize communication by holding smaller peace meetings at the neighbourhood level (Unruh 2005).

Mechanisms for Conflict Management via Common Property Regimes

Conflict mediation and management are closely linked to the ability to enforce rules and guarantee rights as their functioning depends not only on their power, but more importantly on their legitimacy in the eyes of resource users. Many enforcement mechanisms simultaneously work as conflict management mechanisms: if the decisions by the relevant institutions are respected, many conflicts do not break out.

Other cases also show that the legitimacy of arbitration mechanisms can be built up through dialogue. Hybrids of customary and modern rules have also formed, deriving power from their inclusiveness, i.e., a legitimacy based on the process used, rather than the institution itself. One of the cases from Uganda describes this, referring to the role of Community Land Associations (CLAs) in managing conflicts:

In the two case studies of conflicts, the individual violators of the CLA's presumed boundaries, felt as if they were powerless against the CLA. In discussions with district level key informants, the leaders cited "rules are rules." Not only does the drive for conservation of the forest seem to be the rule, those in conflict felt they had few means to negotiate. However, according to BUCODO, for one of the two conflict sites visited, the CLA had engaged in dialogue and consequently reduced the requested riparian buffer (and increased the land allowed to the farmer) (Obaikol et. al. 2005).

There have been positive experiences in increasing the capacity of existing systems and institutions. Support for these efforts has come from various sources: local institutions, governments, NGOs or international organizations. Under Nepal's forest leasehold initiative, rich or upper caste community members do not have access to common forest lands. In some cases, however, they encroached on the land of leasehold groups. Group members responded by providing incentives to the encroachers to stay out of these lands, an approach implemented in partnership with NGO facilitators. These strategies include the construction of pathways for people and animals, new ponds, forest crops and grass seeds to plant on their own land, and have led to a decrease in tension and conflicts (Shrestha 2005). In other cases from Ethiopia and Niger, international organizations have played a catalytic role in strengthening or developing institutions for conflict management, through projects in conflict areas (Bachir et. al. 2005, Unruh 2005).



In the Ouèssè community in Benin, migrant farmer and pastoralist groups are accustomed to negotiating access to and use of resources with local customary leaders; however, without direct links between the groups, conflict over lands – used as pasture by herders and for cultivation by farmers – has been difficult to manage. In one case, an external project played a mediating role by setting up a joint committee with representatives from different groups to decide on access and use rules.

Contrary to the situation in Savè area, a project for the Management of Natural Resources which was active in the Commune of Ouèssè to support the initiatives of the hunters in Kemon through a communicative intervention. The project was able to fulfill a role as mediator because it applied the appui-conseil (support and advice) approach instead of the coercive manner in which the government had worked during the communist regime and had fought the transhumant herders. The appui-conseil framework is based on participatory processes and the support of the stakeholders to help them sustain the actions in which they already are engaged. The principal objective of the appui-conseil is to provide a methodological guide for implementing various actions with villagers to improve pastoral resources management in the village Kemon and its territory. The concrete objective of the appui-conseil was to establish a better social relationship between the different stakeholders, a condition which would enable a sustainable management of land and associated pastoral resources (vegetation and water) (Dangbégnon 2005).

In recent years, the Ethiopian government has begun efforts to reduce conflict over CPRs among different pastoralist groups. In the eastern part of the country, the government has worked with traditional leaders to organize peace and development conferences and peace committees. In 2003, the government undertook a large-scale study of the roots and impact of conflicts in pastoral areas; its findings, though, have not yet been made public, limiting its usefulness as applied to conflict management (Aredo, 2005b).

While these examples suggest a positive role from outside institutions, strong organizations may also be able to resolve disputes on their own, as in the case of Japan's Land Improvement District (LID) councils.

When a general conflict does arise between upper-stream and down-stream areas, during the time of water scarcity for example, the irrigators inform the LID, which resolves the conflict through meetings. Despite the fact that the government has substantially subsidized LID, the government is neither used nor welcomed to resolve an internal problem. The LID has greatly contributed to reducing the disputes and increasing "fairness" in distributing irrigation water (Sarker 2005).

In this case, the Japanese state's function is not to take action in resolving disputes, but the state's broader support to LID's plays a role in ensuring that common property institutions have the resources and capacity needed to resolve conflicts effectively.

Summary

There are numerous, inter-connected factors at work in generating conflicts around common property. The declining authority of customary institutions may lead to conflicts over shared resources, particularly where the state system offers no effective counterpart for managing tenure relations. Commercialization and individualization of land may increase tensions among different user groups, and bring different production systems into conflict. Government policies and actions, such as non-recognition of user groups and group rights, can exacerbate conflict situations.

For common property systems to effectively manage conflicts over shared resources there must be effective ways to enforce rules and provide all community members with access to dispute-resolution mechanisms. Building the capacity of tenure institutions to provide these elements has been a necessary step among the cases in which common property regimes are adapting to manage conflicts. Support to negotiation processes that recognize the different users who have interest in common property, and that seek to increase the negotiating leverage of weaker or marginalized groups, is emerging as an important part of this capacity-building, whether coming from the state, NGOs, international organizations or customary leaders.

5. Examples of Reform and Innovation

This section provides a sense of what is being done at different levels to protect local and community access to the commons. Strengthening the security of access to the commons has taken different forms, including the development of new laws and policies, decentralization of state authorities, support to customary institutions, and initiatives of collective action and local organizing. Other innovations seek to develop new socio-economic institutions or improve the environmental sustainability of how the commons is used. In all these cases, the redistribution of power has been a fundamental element.

Collective Action and Organizing

The most common forms of response to pressures and threats to the commons are collective action and community organizing. Some form of collective action was seen in nearly half of the cases, often with the goal of adapting and creating more supportive local arrangements, including the renegotiation of power arrangements between communities, the state and other actors. The link between collective action and community empowerment is seen most clearly in

cases where common property users face external competition for resources (e.g., cases from Indonesia, Peru and Scotland). In addition to increasing the leverage and collective strength of communities, collective action may contribute to adaptations and innovative approaches to addressing specific challenges, including socio-economic innovations, environmental innovations and, as discussed in the previous section, mechanisms for conflict management.

In the case study from Saigata, India, when deforestation became a threat in the 1970s, migrant farmers established local discussion groups that were intended to determine the causes of fodder and fuelwood scarcity. These groups identified consumptive uses that were contributing to forest degradation and organized Dandaar skits in traditional theaters to disseminate information on self-restricting consumption of forest resources. A forest protection committee was also formed in 1976 which regulated forest access and use (Ghate 2005).

Leasehold forests in Nepal create new commons for the poorer sections, and have helped the poor and especially women gain leverage to undertake other empowerment activities.

Land-poor women and men can restore and make degraded forests lands productive again, meeting the goals of sustainability and poverty reduction, with micro-finance helping women who have less access to credit relative to men. However, better off and upper caste groups have tried to undermine this initiative e.g., by grazing; livestock and damaging crops in leasehold areas or uprooting tree crops planted in leasehold areas (Shrestha 2005).

Partnerships between communities and non-governmental organizations or project-related institutions are increasing support to local collective action. In Indonesia, in order to protect their access and use of the commons, Nyuncung villagers created communication forums with neighbouring villages that shared similar threats. This forum on people's forests formed a united front against the extension of the national park. Together with a local NGO, the local communication forum introduced a zoning of forest use, ranging from strict conservation areas, through regeneration/restoration areas, through to open areas that could be used for cultivation. This zoning of forest use is intended to secure Nyuncung villagers' access rights while protecting and conserving forest areas (Galudra 2005).

In the case of Peru's *campesinos* communities, renting out of some common pasture lands to community members who lack sufficient individual land, or who need to leave fields fallow for some period generates incomes for communities. However, in other cases, these commons areas can be used freely by *campesinos* employing a rotation system to control degradation. In Niger, the Takieta forest reserve is the only source of common forest in an area otherwise occupied by farms. While the reserve is state-owned and managed on paper, *de facto* it is common land. The introduction of new activities such as honey/fish/fuel wood production and forest rehabilitation in addition to older activities introduced by the forestry service in the sixties, such as seedling production, tree planting and forest rehabilitation, have been important in conserving and protecting the forest commons.



Legislative and Policy Reforms

As discussed earlier, the majority of cases do not identify the existence of state laws and policies that provide adequate recognition for and support to common property regimes. At least 11 cases proposed that reforms be undertaken, in order to provide a legal and policy framework that is more supportive of common property regimes.

Three of the cases – from Scotland, South Africa and Uganda – discuss recent reforms that have taken place and that provide some form of legal recognition by the state for common property. In Scotland, the Crofters Holding Act of 1866 had provided crofters (tenant farmers) in Scotland with rights to land and legal protection against being cleared off the lands. The recent Land Reform Bill of 2003 now provides crofting towns with rights to purchase their lands or to continue renting on the conditions they gain approval from the community, form an association and identify a development plan. While the community buyout of land in Laid Township has not yet taken place, informal negotiations are still taking place between the residents and the current landlord (Seki 2005).

Uganda's Land Act, passed in 2002, provides a governance framework for common property. It recognizes customary rights and ownership, which

includes communal ownership of resources. The Wildlife Act of Uganda also recognizes rights of use of the commons and allows these to continue. Devolution to local governments via the Local Governments Act provides district councils with authority for the environmental conservation; district councils may further devolve control of local hunting and fishing to lower bodies (Obaikol 2005).

In South Africa, the 2004 Communal Land Rights Act (CLRA) provides for the registration of tenure rights to community members. While more difficult questions are yet to be answered (e.g., distributional issues, ownership structure and governance of resources), community tenure rights may provide a basis to address threats that are causing communities to lose their lands. The case from Ekutheleni, though, emphasizes that this will only be achieved if a middle ground is identified between local tenure systems and state land administrative practices, which thus far has proved difficult to find. Without this change, the new legislation has thus far failed to offer new solutions to Ekutheleni residents (AFRA 2005).

Changes to the legal framework may also create an “enabling environment” for rural peoples to take part in decision-making that affects them, including policy processes that concern the commons. The 1997 Thai constitution, for example, requires the state to support peoples’ participation in natural resource management and relevant decision-making. This provision is now being used as a basis for advocating policies that recognize local property rights systems (Kitewachakul 2005).

The cases studies also noted that rural people’s organizations and NGOs increasingly play a significant role in advocating for policy and legislative reform to recognize and strengthen common property regimes. Cases from Argentina, Kenya, Peru and Uganda all identified reform campaigns that are being driven by civil-society networks, including efforts to work with rural communities and rural peoples’ associations to identify key land tenure concerns and develop proposals legislative reform (Burneo 2005, Karangathi 2005, Kosovsky 2005, Obaikol 2005).

Decentralization and Empowerment of Customary Authorities

As described in Section 2 of this paper, forms of decentralization and devolution, including through the empowerment of local customary institutions, are another form of response to the pressures confronting common property regimes. In Ethiopia, even though land belongs to the state, administrative powers and authority have been decentralized to local ethnic authorities and regions gaining power to manage their own affairs.

The constitution fully recognizes customary and religious law; important customary institutions and authority were revived. In addition councils of Somali elders, *Guurti*, (and of the Afar) are being formed within regional governments. There is now significant interaction between customary institutions that regulate access to the commons and regional and state authorities.

Decentralization has seen an improvement of communication among community members, smaller neighborhood meetings for conflict resolution. It has also been relevant for conflict resolution because increased conflicts among different ethnic communities were linked to declining effectiveness of customary mechanisms in the wake of the state.

5. Examples

In Niger, decentralization, based on the new *Code Rural*, began in the 1990s. This has increased possibilities for local experimentation with community based CPR management.¹³

The rural district council's act of 1998 in Zimbabwe devolves natural resource management authority to rural development councils, which are the lowest level of administrative body with power to manage budgets and to remit to local communities. However, under the traditional leaders act, village leaders are also responsible for making sure that communal lands are allocated in accordance with the community land act, which governs communal land system (with title vested in the president as representative of the state).

While devolution is seen as important, it may often be complicated by the conflict between traditional and modern institutions, which lack clarity on their roles and responsibilities. Where traditional leaders still command respect on civic and cultural issues, and could continue to form a basis for promotion of sustainable, community-based NRM.

Government plays an active role in reinforcing the self-governance structure of the organizations and does not participate in the management responsibility of the irrigation organizations that, in turn, self-govern their resources based on their built-up irrigation institutions, social customs, trust, and reciprocity (Sarker 2005).

These examples illustrate the importance of adequate support to decentralization or devolution processes, such that local communities or customary authorities are able to perform the tasks and responsibilities for which they are being empowered. This support may come from the state (as in the case of irrigation systems in Japan), from NGOs or other civil-society groups (as in the case of conflict management in Benin, described in Section 5), from international organizations (as in the case of Takieta Forest in Niger, described in Section 2), or from a combination of different sources.



¹³ For more information on Niger's Code Rural and other tenure innovations see Mwangi and Dohrn, 2008.

6. Conclusions

This paper began by asking two broad sets of questions. The first set of questions concerned the nature and effectiveness of land and resource rights at the community level. It focused on the role of local level institutions in securing group rights. The second set of questions focused on the interplay of these rights with macro-level institutions, especially with formal laws and policies. The main thematic areas that emerged from the case studies included the question of how rights to the commons are acquired by groups and individuals; the problem of how to define tenure security, especially from the rights holders' perspective; the nature and sources of threats to common property, including conflicts; and the kinds of innovations that show promise in providing some measure of security for common property rights in a rapidly changing context. This concluding section recaps the key lessons learnt, most of which were summarized in each of the subsections.

Clearly, a broad range of actors at multiple levels have been identified across the 41 case studies. These generally include poor men and women, community leaders, both customary and non-customary, investors and

state/government actors. While the incentives of each of these actors were not always explicitly mentioned in each of the individual case studies, they are implicitly embedded. The first section of this paper which focuses on why property rights matter, summarizes a set of incentives for community actors and why they would want continued access to the commons and some security of access via common property arrangements. Many rural men and women rely on diverse products from the commons for subsistence, including during lean times. Few others rely on products from the commons to generate incomes beyond subsistence. For many rural men and women, continued and secure access to these benefits is imperative. Securing the collective arrangements on which this access is based is indeed a logical pathway to sustained use and management.

However, these preferences are not uniform or static, and where communities are faced with changing external and internal circumstances they too change.

For example, enhanced markets for commons products differentiate wealthier and poorer individuals, as the former are better equipped to deal with the market and its risks. Similarly, choices on new technologies can set apart men's and women's preferences, with women often preferring technologies that enhance their roles in provisioning for family subsistence. Finally, where outside investors have an interest in the products and services of the commons, it is often village leaders and representatives who negotiate on behalf of the community. They often end up maximizing their own interests as against that of the community they represent.

The incentives of governments with regard to securing common property rights are mixed. Most governments continue to have a strong incentive to generate revenues through promoting investment in extractive industries, such as mining and plantation forestry, or non-consumptive use such as conservation and tourism. Common property is frequently a casualty, as governments are pressured to provide these resources, including a system of property rights (usually private, individual) that investors deem sufficient to guarantee the security of their investments. In several cases, however, community organizing has successfully thwarted top down, external allocation of the commons. There is also a recent trend towards decentralized forms of governance and the provision of both

formal and non formal recognition of community rights, including explicit laws that recognize community rights and/or co-management arrangements. Despite this often well-intended attempt at decentralization and/or devolution, ambiguities in cross-sectoral legislation and in the roles of responsibilities of local and customary authorities have resulted in further insecurity for the commons management that are outlined below.

The above attempt at distilling the incentives of different actors is at best superficial. A refined analysis of actors and their incentives requires a more systematic methodology that exceeds the methodology that was used to generate this set of case studies. However, the following concluding paragraphs provide an indication of how different actors used formal and informal institutions, including community organizing, and the implications of these actions to access and security of tenure of the commons.

The case study findings reinforce the well-recognized observation that access to common property plays an important role in reducing the vulnerability of poor rural households, and often functions as a safety net against extreme poverty. Access to the commons is particularly crucial for pastoralist communities for whom food security is primarily, if not wholly, dependent on access to pastures and water sources by their herds. Beyond the demonstrable links between common property and livelihoods, there are ripple effects in which secure access to the commons increase other important linkages that foster human development and capacities.

There are various ways in which access to the commons is created and sustained, including through community membership and identity, collective organizing, and state action. In addition to its role in developing and implementing laws and policies, other kinds of state action can also support common property regimes, including its role in endorsing projects for community-based natural resource management and adapting the working relations with local institutions.

Customary systems remain an important source of legitimacy for access to the commons. Group membership, particularly based on lineage, plays a significant role in providing and managing access to the commons, although in some cases it is also possible for non-group members to

negotiate access to resources managed as commons through customary institutions. Customary systems, however, remain vulnerable where they are not recognized by the state, particularly when governments take actions or establish policies that undermine the authority of customary institutions.

The case studies described fewer instances where state legislation is the main source of legitimacy for common property rights, when compared to the examples given of customary systems playing this role. In cases where no legal framework yet exists, a common refrain among case study authors is for such laws to be developed, so that the state recognizes collective rights and there is a framework in place to support common property regimes. In some cases, new laws have been passed in recent years that provide a basis for recognizing group rights to land and resources; implementation of these, however, is still limited.

Greater involvement by communities that manage resources as common property in both the development and implementation of laws would be an important step toward stronger legal and governance frameworks with respect to common property regimes.

6. Conclusions

The cases highlight three key tenure security concerns on the part of common property users: affordability, familiarity, and utility not only in documenting rights but also in developing systems for managing the commons effectively and sustainably. This last concern, in particular, highlights the practical need for linking secure access to land and resources with opportunities to use them for livelihood needs, in ways that balance current and future consumption.

The expansion of agriculture is creating new opportunities for rural households to earn cash income, but also poses the risk that common lands may be individualized, with poorer or marginalized groups (e.g., pastoralists or indigenous forest communities) being excluded. The cases illustrate that there are viable ways to negotiate arrangements that can support mixed production systems, and manage or prevent conflicts among different groups of resource users.

While both large-scale commercialization and small-scale agriculture are contributing to individualization of the commons, the case studies exhibit much greater concern about the impacts of the former. In most of the cases, when resources from the commons are captured by external investors, local residents are not enjoying any benefits. There is often a power imbalance between communities and outside investors, which makes it

more challenging – though not impossible – for community groups to establish grounds for negotiating shared rights to the commons.

State actions and policies may contribute to nationalization or privatization of the commons in a variety of ways. States may assume or claim direct control over the commons, such as through the establishment of protected areas. Policies and legal reforms may encourage private land rights either directly, by opening up community lands to the market, or indirectly, by supporting investments in sectors (e.g., commercial ranching) that tend to be based on individual property rights. As discussed earlier, state actions and policies may also undermine customary institutions that manage the commons, or generate overlapping claims to the commons (land and other resources) that make it more difficult for groups to establish secure rights.



These examples suggest that customary systems are able to adapt to new types of conflict, particularly if facilitation or assistance is made available to support this adaptation. In cases where horizontal conflicts emerge between different user groups, steps can be taken to strengthen the capacity of local institutions that manage the commons also to manage and prevent disputes. In cases where there is a vertical conflict, i.e., one where there is a power imbalance between the parties in conflict, support to community organizing and collective action can help to even the playing field, increasing the ability of community groups to negotiate more secure access to the commons, which is the issue most often at the heart of such disputes.

The cases suggest that collective action is proving an effective and robust approach to addressing many of the challenges that common property regimes face. Still, there is wider recognition that new legislation and policy reform are needed as well, in order to support commons property systems and ensure that the rights of both groups and individuals within those groups are secure. Many cases note that draft laws or policies are being developed, and recommend these as key actions to be taken. In fewer of the cases, such laws and policies already exist, and attention must now be given to implementing them.

The seemingly uphill challenge of developing and implementing laws and policies that support common property reflects, at least in part, the need to increase the visibility and voice of rural peoples who depend on the commons for their livelihoods. So long as communities that manage resources as common property are left out of decision-making, their rights to these resources will be at risk, and the tenure systems through which they manage resources will be threatened. Increasing not just participation in, but also leverage over the processes and institutions that determine land tenure and natural resource management policies should be an important element of efforts to strengthen common property regimes.

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** Before title indicates that the paper was contributed as a case study to this initiative*

ANNEX A

Brief description of case studies

Africa

1. Benin - Constant Dangbégnon

Land tenure systems and pastoral resources management in Chabe community, Benin, 2005

The case addresses pastoral resource management within complex land tenure systems of Chabe community, an ethnic group in Benin, which has made use of their local organizations and institutions for the conservation of their natural resources. The case analyses various interpretations of property rights, competitive natural resources exploitation, conflicts and negotiation processes among different users (landowners, migrant farmers, herders, etc.). (GRAZING)

2. Benin - R. Mongbo, P. Tohinlo & A. Floquet, CEBEDES / Université d'Abomey-Calavi

Le Complexe fluvio – lacustre d'Agonvè : un 'success story' de propriété commune sous gestion endogène au Bénin, 2005

The study describes the common management regime of a fluviolacustrine ecosystem in which people alternate between fishing and growing vegetables and other species. The production rhythm is well aligned with the rhythm of the ecosystem leaving it time to rest and recover. The basis of the functioning of this system is a divine order, which is integrated in people's daily lives. (FISHERIES, WETLANDS)

3. Botswana - Michael Taylor, Indigenous Vegetation Project

Review of shifts in tenure systems over Botswana's common rangelands, and the policies that have encouraged these shifts, 2005

This paper examines the shift in tenure systems over Botswana's common rangelands and the policies that have encouraged such shifts, as well as current trajectories in and feasibility of community-based management of rangeland resources. (GRAZING)

4. Cameroon - Victor Deffo, IRAD

Problemes D'Utilisation des Patuages Communautaires dans la Region de L'Adamaoua Camerounais, 2005

Attempts to organize farmers' groups, and manage use of common rangelands between pastoralists and farmers, face challenges from lack of common rules that control access, use and management of natural resources. (LAND, GRAZING)

5. Cameroon - W. Mala, V. Robiglio & M. Diaw, CIFOR / IITA

Management of common land and resources in Southern Cameroon: examination of the context and developmental implications at the forest margins. 2005

Examines the livelihood and land-use changes taking place in agro-forestry settings, and the resilience capacity of the tenure system, particularly with respect to lineage-based rights to land. (FORESTS)

6. Cameroon - Sylvie Mbog, ODECO

Reflexion sur la propriété rurale commune dans une perspective de développement et de modernisation: le cas du Cameroun, 2005

The study examines the land tenure practices in Southern Cameroonian villages, focusing on the interplay between statutory and customary law and the resulting confusion and uncertainty as to the rules of access and management for land and forests. While most land and forests are exploited according to the customary rules and regulations, statutory rules allow some users to refer to the rules that are more convenient to back up their claims. (LAND, FORESTS)

7. Ethiopia - Dejene Aredo, Addis Ababa University

Fuzzy Access Rights in Pastoral Economies: Case Studies from Southern Ethiopia, 2005

Documents the management of pastoral resources through two basic tenure regimes: common property in permanent settlements, and "fuzzy access rights" (FAR) in temporary/shifting settlements, with the latter characterized by flexibility and hierarchy of use and access rights. (GRAZING, WATER)

8. Ethiopia - Dejene Aredo, Univ. Addis Ababa

Property rights, customary institutions, and conflict: the case of the southern pastoral areas of Ethiopia, 2005

This paper summarizes a study of common lands and conflict in the pastoral areas of southern Ethiopia, where conflicts have remained widespread and worrying. The purpose of this study is to analyze the causes, nature and impacts of conflict in the southern pastoral areas and to investigate the role of customary institutions and stakeholders in preventing and resolving conflicts. (GRAZING, WATER)

9. Ethiopia - Jon Unruh, McGill University

Common property and conflict in Ethiopia: the case of the Afar, Somali, and Karamojong cluster pastoralists, 2005

Three cases of armed confrontation over pastoral commons in Ethiopia, and developments which have led to significant opportunities for conflict resolution and rule-making. (GRAZING)

10. Kenya - Joseph Karangathi, Mau Community Forest Association

A Case Study on Common Property Tenure System. 2005

Discussion of social organization within customary tenure in Mau Forest area, change processes taking place, and the legal and policy context governing the commons, including prospects for reform in this arena. (FORESTS)

11. Mali - Mahalmoudou Hamadoun, Université Mandé Bukari

La propriété rurale commune dans la Zone Nord du Mali (Région de GAO), 2005

A mix of customary and statutory rules govern access, use and management of land; customary rules seem to prevail within communities, but the arrival of many new occupants has weakened those rules considerably. (PASTURES, LAND)

12. Niger - A. Bachir, G. Vogt & K. Vogt, CRAC-GRN / SOS-Sahel

Cooking Stones to Extract the Juice: 5 years of Autonomous Common Property Resources Management at Takiéta, 2005

This paper describes an on-going practical example of local stakeholders working together towards shared management of a strategic 'common' resource. It gives a practical as well as theoretical view of the autonomous evolution of this local management structure and its management over a five-year period, focusing on the need to create an enabling environment in which effective, decentralized and equitable local management can take place, and to invest in the long-term viability of collaborative 'local' management through inclusive processes and appropriate social communication strategies. (FORESTS)

13. South Africa - Association for Rural Advancement (AFRA)

Securing tenure at Ekuthuleni, 2005

Considers the challenges facing one community in securing rights to collective land through the recently passed Communal Land Rights Act, which provides a framework for the transfer of land to a juristic person representing a community, as well as the registration of deeds of land tenure rights to members of the community. (LAND)

14. Tanzania - Claire H. Quinn*, Meg Huby, Hilda Kiwasila and Jon Lovett, University of York

Perceptions of risks to livelihoods differ between men and women in semi-arid Tanzania, 2003

This paper examines the major concerns and risks to livelihoods faced by rural communities in semi-arid Tanzania, with the aim to identify factors influencing local perceptions of problems and to test the feasibility of 'risk mapping'.
(GRAZING, WATER)

15. Uganda - Rose Mwebaza, Uganda Land Alliance

Land Rights of the Karamajong Pastoral Minority in Uganda, 2005

Examines systems of herder mobility among pastoralists and conflicts that emerge when these intersect with state policies concerning protected areas.
(LAND, GRAZING)

16. Uganda - E. Obaikol, H. Kamusiime & M. Rugadya, Associates for Development

Rural Common Property Resources Management in Uganda:

A Case Study of Community Forest Management in Budongo – Masindi District, 2005

Examination of community organization to manage collective forest resources, in the context of policy, legal and institutional changes that allow for the establishment of community-based resource management. (LAND, FORESTS)

17. Uganda - Esther Obaikol, Associates for Development

Common Property Resource Management in Uganda:

The Legal and Institutional Framework, 2005

Review of legal and policy framework related to management of customary land and the commons, including interaction between different sets of laws and policies, and their relation to social and commercial trends taking place in the country.
(LAND, FORESTS, WATER)

18. Zimbabwe - Zvidzai Chidhakwa, SAFIRE

Local management of indigenous fruit trees as common property in Northeast Zimbabwe, 2005

This paper discusses traditional and formal practices of tree management in northeastern Zimbabwe, focusing on three indigenous fruit tree species, within a context of growing pressure from migration, commercialization and non-recognition of communal land practices by the state. (LAND, TREES)

Asia

20. India - Safia Aggarwal, ARD

Community Forestry in Transition:

Sixty Years of Experience in the Indian Central Himalayas, 2005

This study presents experiences in commons management from Kumaun in northern India, where formal local institutions of community forestry (van panchayats) were established in the 1940s. It examines transitions in community forestry and other informal institutions of commons management, as these are influenced by changing socio-economic contexts on the one hand and changing state policies on the other. (FOREST)

21. India - Purnamita Dasgupta -

Institute of Economic Growth at University of Dehli Enclave

Common Pool Resources as Development Drivers?

A study of NTFPs in Himachal Pradesh, India, 2005

This study investigates the role and implications of common-pool resources as a source of sustainable rural incomes in the context of opportunities created by the development process, and with emphasis on the household decision-making process regarding protecting and planting trees. (LAND, TREES)

22. India – Rucha Ghate, SHODH

A Community case study: Self-initiated forest management in Saigata, 2005

The case focuses on organizing within a heterogeneous community to manage forest areas, as a response to deforestation and resource degradation in the 1970s. (FORESTS)

23. India - Hemant Kumar Gupta, Forest Survey of India

An analysis of policy, legal and institutional framework of Common Property Management in the Himachal Himalayas, India: a case study, 2005

The rural economy of Himachal Pradesh is mainly dependent on common property resources (CPRs) and their use, availability and sustainability is the prime concern of the people living in the state. This case discusses how encroachment, privatization and government appropriation have been the main processes taking resources out of communal control and use, and analyzes the policy, legal and institutional framework being practiced in Himachal Pradesh state. (LAND, WATER, FORESTS)

24. India - C. Kumar & K. Nongkynrih, CIFOR / North Eastern Hill University

Customary Tenurial Forest Practices and the Poor in Khasi – Jaintia Society of Meghalaya, 2005

This paper focuses on the customary forest tenure practices in Khasi-Jaintia society of Meghalaya state, located in the northeastern part of India. Empirical observations from the field show a trend by which the poor, as one of the constituent users of forests for livelihood, are becoming more and more vulnerable. (FOREST)

25. India - Devendra Prasad, Chitrakoot Seva Ashram (CSA)

Management of Common Property through Land Rights, 2005

Case study community empowerment activities designed such that people in Manikpur Block of Chitrakoot district, Uttar Pradesh state, can better protect their land rights. While the area of the Manikpur Block is declared to be in the Ranipur Sanctuary of Forest Department, the forest is depleted and the villages are no longer allowed to be dependent on forest products, creating both land tenure and livelihoods challenges. (LAND, FORESTS)

26. India - Subrata Singh, Foundation for Ecological Security

Common Property Resource Management in Transitional Villages, 2005

This paper identifies potential vulnerable areas in the management of common property resources in the transitional villages, in the context of changing social and economic institutions, gradual loss of common interests and group identity, and growing integration into market-oriented economies. It examines the characteristics of the CPR institutions in the changing scenarios and the need for support mechanisms for effective governance of the commons. (INSTITUTIONS)

27. India - Subrata Singh, FES

Conflicts and Disturbance - A Reason to Change: Lessons from Community based Natural Resource Management Institutions in Orissa, India, 2005

This paper is based on the case studies from Orissa, India to examine the conditions of change in village institutions due to conflicts and disturbances. It analyses the conflicts in two broad levels, to discuss on sustainability of institutions as well as the commons that are threatened because of conflicts between thoughts, expectations and practice. (LAND, FORESTS)

28. Indonesia - Indonesian Institute for Forest and Environment (RMI)

Community, Halimun Area and Common Property, 2005

Discusses the institutional and social history that has generated conflict between communities which manage forest resources and national park authorities, with attention to the impact of state policies oriented toward commercial exploitation of natural resources. (LAND, FORESTS)

29. Indonesia - Gamma Galudra, ICRAF

Land Tenure Conflicts in Halimun Area:

What are the Alternative Resolutions for Land Tenure Conflicts? 2005

Analyses land tenure conflict between local communities who manage the forest land for livelihood needs and national park authorities which, supported by state law, seek to maintain forest area for conservation. (FORESTS)

30. Japan - Ashutosh Sarker, University of Queensland

Land Improvement Districts as Irrigation Common-Pool Resources in Japan, 2005

Discusses the different types of self-governance and participatory structures that exist in Japan, and the way the Japanese government encourages natural resource users to self-govern common irrigation resources through Land Improvement Districts, with an enhanced importance attached to self-governance and participation within the economic, political, legal, and institutional structure. (IRRIGATION)

31. Nepal – Bhim Adikari and Jon Lovett, University of York

Transaction costs of community forest management in Nepal, 2005.

This paper examines the transaction costs incurred by forest users in community forestry in the mid-hills of Nepal, revealing that the average 'poor' household incurred Nepalese rupees (NRS) 1265 in transaction costs annually, while wealthier 'rich' households incurred an average of NRS 2312 per year. The results show that transaction costs represent a major component of resource management costs and vary according to the socio-economic status of resource users and characteristics of the community. (FORESTS)

32. Nepal – Bhim Adikari and Jon Lovett, University of York

The role of heterogeneity in success of community forest management in Nepal, 2005.

The paper examines the relationship between local level heterogeneity and the likelihood of successful collective action in community-based forest management in Nepal. One key result is that the effects of heterogeneity can be highly variable, so that systems of governance need to be flexible to allow adaptation of management regimes to local conditions. (FORESTS)

33. Nepal – Bhim Adikari, Salvatore di Falco and Jon Lovett, University of York

Household characteristics and forest dependency in common property forest management in Nepal, 2004.

This study analyzes the relationship between key household characteristics and common property resources used in order to assess whether poorer households are able to gain greater access to community forests as a result of institutional change. Both quantitative and qualitative analyses suggest that forest product collection from community forests is dependent on various socio-economic variables, from which it can be concluded that, at least for some key products, poorer households are currently facing more restricted access to community forests than 'less poor' or relatively better off households. (FORESTS)

34. Nepal - Bharat Shrestha, Mobilization and Development (MODE)

Rural Common Property under Leasehold Forestry in Nepal, 2005

Review of initiative to provide 40-year leasehold rights to forest-dependent communities, particularly women and other highly vulnerable groups. (FORESTS)

35. Thailand - Nitaya Kijtewachakul

Common Property and Complexity of Local Rights System

in Sopsai Watershed, Nan Province, Northern Thailand, 2005

Discusses collective action and community-based initiatives as a form of adaptation to maintain local tenure systems, in the context of conservation projects.

Europe

36. Scotland - Erika Seki, University of Aberdeen

Community action toward buyout of land in Scotland, 2005

Discusses experience from a community movement toward buyout of collective crofting land and the process of regenerating crofting communities, in the context of implementation of the 2003 Land Reform Act. (LAND)

Latin America

37. Argentina - Fernando Kosovsky, CEPPAS

Estudio sobre propiedad comunitaria de la tierra en Argentina, 2005

Analysis of the legal frameworks, institutional to national level, related to the common property in Argentina. (LAND)

38. Colombia - Laura Maria Alayón Hurtado, Universidad Javeriana

Cangrejos Negros Con y Sin Fin: Regulaciones Externas y Apropiaciones Locales en el Manejo de un Recurso de Uso Comun en las Islas de Provedencia y Santa Catalina, 2005

Analyzes the relationship between incentives for cooperation and the management of black crabs as a common resource, as well as the relations of the users with the territory, not as common property, but as a symbolic shared dimension that determines the possibility of and extraction of the resource. (MARINE RESOURCES)

39. Guatemala - Mauro Vay Ganon, CODECA

Formas de Tenencia Colectiva de la Tierra en Guatemala, 2005

Discusses the tenure systems, patterns of social organization and land-management practices found in Guatemala's campesino communities. (LAND)

40. Peru - Zulema Burneo, CEPES

La Propiedad Colectiva de la Tierra: Las Comunidades Campesinas del Peru, 2005

Provides analysis of historical development and current trends in campesinos communities. Group rights to these lands are recognized by the state but are under threat by other recent policy and legal reforms that encourage private land ownership. (LAND, GRAZING)

41. Peru - Wagner Guzman, IIAP

Propiedad colectiva, Zonificación y Ordenamiento Territorial: Estudio de caso en Bosques Inundables de Aguaje (Mauritia flexuosa) en la Comunidad Nativa de Parinari, Loreto, Perú, 2005

The case presents a diagnosis and characterization of land rights in the Peruvian Amazon, including an evaluation of the processes taking place in common property areas, resource management problems present, and efforts to address these through the mapping and the development of locally driven territorial rules. (FORESTS)

Annex B

Case study framework

In April 2005, organizations and researchers were invited to submit case studies to this initiative, drawing on their existing data and analysis. The study's organizers developed a framework of issues for consideration, outlined below. Using this common framework was intended to make it possible to analyze and compare the findings of case studies across countries and regions, so that the study could yield practical recommendations for consideration by policy makers. Case study authors were also invited to address other questions that were not included in this framework, but which they considered important for their analysis.

Two sets of issues for consideration were provided:

1) at the community level, and 2) at the country level.

Case studies were encouraged to focus on one of these two levels.

1. Community level

Tenure Systems

- What are existing customary or statutory tenure arrangements in common property systems? What are the rationales that underpin these common property arrangements?
- are the community's own understandings and definitions of the tenure of their common land? What is the distribution of land use rights within the community? How is this distribution of land rights managed or enforced?

Organization within Communities

- kinds of power relations or power dynamics exist within the community?
- How are communities organized socially? How is the community's social organization related to the management of common property, or the ability for community members to access and use common property and common lands?

Use of Common Land and Resources

- What are the present uses of the community's common lands? How is work on the common lands organized? What are current agricultural (including pasture and cattle-raising) practices developed in those lands? How are these practices related to the community organization and traditions?
- Does the use of common lands result in marketable goods? How is the use of common property and common lands related to the family livelihood and wellbeing?

Changes Taking Place

- What are the existing change processes that affect the common property system? To what extent is change driven by internal factors or from within communities (e.g., population dynamics)? To what extent is change driven by external factors or from outside communities (e.g., migration, external investment)?
- What are the effects of these changes in common property systems? Are all households affected similarly, or are some households or community members affected differently than others?
- What are the effects of these changes on access to land, particularly by poor households, women, indigenous peoples? Are there any effects on poverty (e.g., as indicated by changes in poverty indicators) or environmental conditions?
- What do community members think about the challenges and transformation of common property systems, e.g., individualization of land parcels?

Overall Assessment

- What elements of common property and common lands management are working well, in terms of encouraging development for people and sustainability of the system? Why?
- What elements need to be improved? Why? What steps could be taken to improve these elements?

2. Country-level

While case studies should focus on the community level analysis, participants are also invited to provide valuable information on national legal and institutional frameworks concerning common property.

National Context

- What is the social, economic and political context in the country and/or region where these common property systems exist?

Legal and Policy Framework

- What are the current national land policies related to common property systems? What are their results, including both positive and negative impacts (e.g., costs and benefits)?
- How do changes in common property systems interact with other national policy issues – e.g., land conversion and urbanization, agricultural production, migration, communal conflict, etc.
- What are the existing laws and regulations related to common lands? Do these provide mechanisms through which common property systems can be adapted or strengthened?

Institutions

- What institutions are responsible for administering laws or implementing policies that are related to common property? How is their functioning assessed?
- What bottlenecks or challenges exist in terms of developing or reforming the national framework toward common property?

Opportunities for Reform

- What are alternative proposals for reforming laws, policies, and institutional arrangements?
- What are the perspectives/points of view from implementing agencies (government, NGOs), common property owners/users, CSOs, and other stakeholders on this policy question?
- Are civil society organizations (e.g., NGOs, farmers' unions, women's networks, indigenous peoples' organizations, etc.) active in analyzing or advocating for change to national policy toward common property? If so, what kinds of work are being undertaken?



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