

# Natural Resource Tenure – a crucial aspect of poverty reduction and human rights

EDITOR NIGHISTY GHEZAE



This study is broad in scope: it covers agricultural land as well as urban. It covers water, wetlands, coastal areas, forests, rangelands, protected areas, genetic resources and petroleum and minerals. It shows how strongly development priorities such as pro-poor growth and the fulfilment of human rights apply to natural resource tenure. Environmental sustainability and climate change, gender equality, peace, security and democratic governance are all closely related issues.

Experiences and cases from different parts of the world illustrate key messages; supported by a selection of photos.

The overview and the recommendations may provide guidance for the development and implementation of policies and programmes that are urgently needed.



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**Natural Resource Tenure**  
**– a crucial aspect of poverty reduction**  
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## Foreword by Sida

In many developing countries, poor and marginalised groups – in the countryside as well as in cities and towns – depend on natural resources for their livelihoods and shelter. However their access to these resources is often insecure, if not totally lacking.

Developing slums begins with the recognition of people's rights to live there. Court cases in the developing world are, to a large extent, related to land rights. Typically, the poor have difficulties defending their rights against those more powerful. A farmer with insecure tenure might not dare to invest and develop the farm, which is a form of insecurity that in turn affects production. In particular, female farmers in many parts of the world live in uncertainty regarding their resources due to customs that prevent them from owning land or inheriting property if their husbands die. Losing access to land often means losing access to water. Without clear and generally accepted agreements regarding utilisation of forests, water or pastures, there is considerable risk of overuse and degradation. These are just a few examples showing how pro-poor natural resource tenure is extremely relevant to poverty reduction, environmental sustainability, gender equity and protection of human rights.

In May 2006 Sida began a consultative process in order to discuss and define a common approach to natural resource tenure. *Natural Resource Tenure – a position paper for Sida* was published in August 2007. It advocates a more holistic approach to tenure and natural resource governance, highlighting the diverse and complex character of tenure issues all over the world, while emphasising the interdependencies between different resources and their uses.

This document is a modified and updated version of what was originally a working document for the formulation of Sida's position. Both papers were broader in scope than many tenure documents in the sense that they covered agricultural land as well as urban land, water, wetlands, coastal areas, forests, rangelands, protected areas, genetic resources and, to some extent, sub-soil resources. They also show how different development priorities such as pro-poor growth, environment, gender equality, democratic governance, and peace and security relate to natural resource tenure.

By publishing *Natural Resource Tenure – a crucial aspect on poverty reduction and human rights*, we wish to share these findings and recommendations with a wider circle of readers. This overview of issues related to natural resource tenure may provide support for dialogue between actors and for the development and implementation of policies and programmes that are greatly in demand. The views represented in this book are those of the authors and might not necessarily represent Sida's position, but nevertheless they do provide a broad base for further analysis and exploration of these issues. Useful references to literature and institutions are also included.

Successful tenure interventions require cooperation between actors with many different areas of expertise. This paper will hopefully capture the attention of many different readers and stimulate such cooperation.

Stockholm, May 2009



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## Executive summary

Sustainable poverty reduction requires access to natural resources. While natural resource tenure includes rights over land, it encompasses other natural resources as well. The property may be farm land, grazing land, forest land, a river, a fishery, wildlife or some other resource, including minerals. Each of these resources possesses particular physical qualities and technical constraints concerning their use, yet they fit into an integrated ecosystem.

The key message of this study is that secure access to tenure for the poor is essential to poverty reduction and the realisation of human rights. This assessment shows that natural resource tenure is inherently complex. Incomplete understanding, and ignorance or disregard for fundamental complexities, may lead to erroneous policy prescriptions and ultimately, to conflict about these resources. A more country-grounded approach to analysis of major resource tenure policy issues and strategically focused interventions is needed.

Donors play an important role when cooperating with partners in developing countries in the assessment and implementation of the full potential of a pro-poor and human rights approach to natural resource tenure. In doing so, as a general principle, donors may acknowledge that tackling the challenges of resource tenure reform is a long-term process, which requires long-term and ongoing commitment. Significant harm may result from short-term interventions. Resource tenure reform needs to be driven and owned locally and donors may recognise that while lessons of good practice can be shared, the highly diverse history, environment and cultures of different nations demand that approaches to resource tenure be tailored to local circumstances and that there is no one-size-fits-all solution. Donors may therefore emphasise country ownership, show sensitivity to the local context and call for an understanding of the background (and historical) context of land/resource policy and administration.

The study gives suggestions on how donors may address natural resource tenure at different levels and describes several possible entry points.

## Introduction

There is no question that reducing poverty is an urgent task for governments and donor agencies. As part of the international development community, governments and donors are committed to the Millennium Development Goals – where the principal goal is to reduce the number of people living in extreme poverty by half by 2015.

Sustainable poverty reduction requires access to resources. In many developing countries, access to land, water and related production factors is absolutely essential and is the only way poor rural and urban households can develop sustainable livelihoods. The manner in which resources are regulated and property rights enforced determines the opportunities for the poor to ensure their household food security, earn income by producing marketable surpluses, accumulate capital and assets, access financial services, invest in alternative income-generating strategies, use their own labour to sustain the natural resource base, build reserves to cope with drought and preserve their assets during periods of political or economic crises or agricultural stress.

The opportunities presented by resource tenure reforms for reducing poverty are such that it has become an urgent matter for the donor community to offer support to partner governments in order to accomplish these reforms successfully.

The existence of EU land policy guidelines provides a framework for donor activities in this field. Compared to the EU guidelines, this paper is broader in scope in that it encompasses urban land, water, wetlands/coastal resources, rangelands, forest land, protected areas and wildlife, genetic resources, petroleum and minerals. In addition the study has, as far as possible, attempted to link the issue of climate change into all its chapters.

This report is also based on the Paris Declaration on Aid Effectiveness – applying its key principles of ownership, harmonisation, alignment and accountability to resource tenure activities.

The purpose of this paper is a) to present an overview of the central role of natural resource tenure in poverty reduction and sustainable development b) to assist in identifying donor approaches to natural resource tenure issues and c) to highlight some entry points for donors continued activities of natural resource tenure concern.

## Synopsis

In order to present a clear synopsis the study is divided into two parts, with illustrative photos in between.

Part 1 gives an overview of the role of natural resources tenure and a short summary of the global development agenda.

Part 2 suggests recommendation to donors.

Rather than providing solutions, the paper aims to support interested donors and partners in their own analysis and dialogue, and in their development and implementation of policies and programmes.

Chapter 1 explains what natural resource tenure is and why it matters.

Chapter 2 elaborates natural resource tenure and environmental conditions, including drivers and consequences of climate change. In addition to this chapter, as mentioned above, the issue of climate change is mainstreamed into all the other chapters.

Chapter 3 discusses agricultural land tenure rights and explains how secure land rights and control over its produce are the most critical bases for the rural poor dependent on farming for their livelihoods.

Chapter 4 examines urban land and discusses how the growth and importance of cities in developing countries pose a major challenge for urban and peri-urban land management.

Chapter 5 explains the distinct characteristics of water, considers the different types of water rights and relationship between water rights and land rights.

Chapter 6 examines tenure systems relevant to coastal fisheries and wetlands and discusses their importance to the poor.

Chapter 7 explains the different tenure systems commonly used in grazing areas and the particular issues in debates on rangelands are discussed.

Chapter 8 explains rights and tenure systems in forests and particular issues and areas of debate in forest land are explored.

Chapter 9 elaborates the different types of rights and tenure systems. Key international processes as well as particular issues and areas of debate are discussed.

Chapter 10 explains the wealth of genetic material and characteristics. It discusses the different types of rights and tenure systems and particular issues and areas of debate.

- Chapter 11 on petroleum and minerals explains that extraction operations are often associated with social and environmental impact including the expropriation of land and other resources and gives examples of recent positive developments.
- Chapter 12 examines the global development agendas: a comprehensive approach to development cooperation put together by the international development community.
- Chapter 13 summarises and concludes the different natural resources tenure issues.
- Chapter 14–16 explains the important role donors play when cooperating with partners in developing countries. Six entry points for policy making and implementation are suggested and specific recommendations are given.
- Annex 1 describes the specific targets and indicators for natural resources for the first and seventh Millennium Development Goals.
- Annex 2 informs of a selection of articles from various covenants, declarations and conventions that are relevant to rights to natural resource tenure.
- Annex 3 extracts the key messages from Sida's position paper on natural resources tenure from 2007.
- Annex 4 extracts key definitions from the FAO Multilingual thesaurus on land tenure (2003) as well as the EU land policy guidelines (2004).



# **What is natural resource tenure and why does it matter?**

## **CHAPTER 1**

### **1.1 What is natural resource tenure?**

A person or community's rights to land and other natural resources define their natural resource tenure. Resource tenure is defined as all the ways by which people gain legitimate access to natural resources for the purpose of management, extraction, use and disposal. Legally, tenure is a bundle of both rights and obligations – the right to own, hold, manage, transfer, or exploit resources and land, but also the obligation not to use these in a way that harms others (Bruce, 1998, p. 7; FAO, 2002, p. 10). See Annex 4 for Key Definitions. In other words, tenure defines property and what a person or group can do with it: their property rights. In this paper, “tenure rights” to natural resources are therefore broadly understood as synonymous with “property rights.” Ownership is not the only, or even the most common, type of tenure right. Property rights are an integral element of the management and use of resources. They define who has an interest in a resource and the extent of that interest. They are defined by custom, convention and law and affect the behaviour of people managing and using a resource.

Resource tenure is complex, multidimensional and interrelated. Soil, water, flora and faunal resources constitute a capital of vital importance to mankind, as expressed in e.g. the African Convention on the Conservation of Nature and Natural Resources from 1968.

Typically, there are many state laws and policies, implemented by multiple state agencies, which are relevant to resource tenure. For example, the jurisdictions of departments or ministries of land, forestry, fisheries and civil administration in terms of resource tenure often overlap. Municipalities or city councils are also involved. Local, informal practices are even more complex as they involve the accumulation of methods of doing

things over a period of many years. An understanding of the informal, as well as formal, dimensions of resource tenure is, consequently, a crucial starting point for any donor intervention.

### **1.1.1 Major types of resource tenure**

Generally, four major types of resource tenure are identified. These types are defined on the basis of those who exercise exclusive rights to the resource:

- *public/state property* – rights held by the state in which the public sector exercises rights over the resource
- *private property* – rights held by an individual or legal entities such as corporations
- *common property* – rights held jointly by a group of people
- *open access* – no specific rights exercised by anybody; a vacuum situation

In discussions on tenure, there is often confusion between an “open access system” and a “common property system”. The term “open access” (OA) describes a system where no property rights exist, or rather where property rights, for different reasons, cannot be enforced. This happens, for example, when traditional rights to land are abandoned and the state claims ownership of land but cannot enforce its rights to the land. This results in a “vacuum” where nobody (neither the state nor the local resource users) has the power or the legitimacy to enforce rules of use. If the resource in question is under pressure i.e. production is lower than potential demand, then open access will result in depletion of the resource as no one has defined rights and everyone has unrestricted use of the resource. There are no specific rights assigned to anyone and no one can be excluded from using the resource.

Common property (CP), in contrast, is the term used for the situation where a resource is owned by a group of people. This is often the case with forests, grazing land, water and fisheries. Common Property Resources Management (CPRM) systems often emerged in traditional systems. The characteristics of a functioning CPRM system are often as follows: the group is homogenous, the resource has a defined boundary, resource appropriation is relative to provision, there is sufficient consensus in the group on how to use the resource, the group feels that it can influence rules of use, a sanction system is in place, there is a transparent and accountable conflict resolution system, with monitoring possible and, last but not least, the group has the power to exclude other users. Although many of the traditional CPRM systems are still functioning, many are dete-

riorating. According to some observers, the deterioration in many third world countries is due to a growing insecurity about what rules to abide by when the state tries to modernise the land tenure system. The traditional system and the modern system exist side-by-side and the groups in society who will profit from adhering to the new system will do so while ignoring the traditional systems.

Although these four major types of tenure can be distinguished in theory, they often overlap in practice and change over time. At the same time, the notion of “resource” is also not as simple as it might seem. A single item (a tree, field, stream) may be many different resources all at once. In the same way, the notion of “right” is not straightforward either. Different people have different types of access to these different resources in different ways at different times of the year. For example, all members of a community may be allowed to bathe in a river or collect drinking water, but only certain farmers may be allowed to draw water for irrigating fields and decide how to distribute that water in the dry season, while the state may claim ultimate “ownership” of the water, including the right to reassign it to others. Even on land declared as state forest land, individuals from a community may have the right to collect medicinal plants or fallen branches for firewood (use), local groups may have the right to plant trees (management) and guard them (exclusion), but the state may retain the right to approve any felling of trees and collect revenue from users. In an urban setting, the state might have leased a plot of land to an individual who, in turn, makes an illegal subdivision and rents it to several people. In turn, these people have tenants who, for example, have access to a bed for the night but are not allowed in during the day, or have access to the veranda during the day for selling commodities, but sleep elsewhere at night.

Much of the literature on property rights points towards state-enacted and enforced law, designating who owns what. The existence of laws that define property rights relationships is not sufficient. In many cases, the state does not have enough resources to enforce formal property rights, and informal rights may exist without – indeed, often conflicting with – formal state recognition.

A variety of tenure forms are found in rural and urban areas, ranging from squatting on invaded land to various forms of informal or formal tenure.

Schlager and Ostrom, 1992, pp. 249–62 propose a useful classification of these bundles of rights in a hierarchy, ranging from limited, short-term rights to extensive, long-term rights to the benefit (which in this case is a stream) as follows:

- *Access*: the rights to enter a defined physical property. This might apply to recreational water use (such as swimming), where the main “use” is simply to be in the water, but would generally apply only to non-consumptive, in-stream uses.
- *Withdrawal*: the rights to obtain the benefits from that property by taking out some of the flow. In water resources, in-stream uses versus withdrawal right owners represent an important distinction.
- *Exclusion*: the rights to determine who will (and will not) have access to the resource.
- *Management*: the rights to regulate use patterns, thus transforming the resource and potentially altering the stream of benefits from that resource. Management rights also provide the ability to define access or withdrawal rights.
- *Alienation*: the rights to sell, lease or bequest the rights to the resource.

*Access* and *withdrawal* are considered use rights, while *exclusion*, *management* and *alienation* are rights of control over the resource. “Ownership” is often conceived of as holding the full bundle of rights. With this hierarchy as a guide, it is proposed that making queries about which types of users are able to claim which types of rights, and what type of legal framework those rights (or claims) are based upon, becomes easier.

## 1.2 Why resource tenure matters

Tenure rights to resources play a fundamental role in governing the patterns of natural resource management, as well as in the welfare of individuals and communities dependent on those resources. Any policy that shapes resource tenure rights potentially plays a major role in promoting or inhibiting economic growth, equity of resource distribution, empowerment of resource users and the sustainability of the resource base, environment and climate.

If we can understand existing natural resource tenure rights – how they are determined, and the role of policy in that determination – we can design successful policies to prevent further depletion of natural resources, enhance the resource base and ensure sustainable resource utilisation which can, in turn, improve household welfare.

### **1.2.1 Secure access to resource tenure for poverty reduction**

Secure<sup>1</sup> access to land and resource tenure is an essential catalytic force for poverty reduction, economic growth and sustainable development. The importance of secure access to productive resources is a reoccurring theme in a number of donor policies. Many donors recognise that natural resource tenure insecurity or unfavourable tenure conditions tend to strike at the foundation of the livelihood systems of the rural poor.

Secure access to resource tenure rights encourage investment, which can lead to higher productivity and efficiency. Tenure insecurity leading to loss of access can imply destitution, and discourage farmers from making investments to increase productivity and investments for the reorientation of farm production for the market or for reducing vulnerability and adapting to climate change (DFID 2007, Sida 2004).

Poverty and tenure insecurity are still mainly regarded as rural problems in Africa and Asia, although land conversion and the allocation of new functions to land is gaining importance in peri-urban areas, which puts new pressure on the urban poor. Increased tenure security is, again, an issue in the case of informal, and/or illegal land occupation of the poor on the urban fringe, who are either fleeing from deteriorated living or environmental conditions in rural areas, or have been evicted from other rural, or even urban, sites. The issue of illegal land occupation is also most likely to grow with increasing amounts of forced migration due to the impact of environmental degradation and climate change. Tenure security is an issue when it comes to overcrowded living conditions (slums) and environmental hazards, the occurrence of which may be caused by the density, hazardous location of settlements and exposure to multiple pollutants.

For example in Sida's Urban Policy, it is stated that equal rights of access to housing require improved property rights and other forms of secure tenure, especially for the poor who are most at risk from forced eviction and other violations of human rights (Sida 2006).

### **1.2.2 Food security**

Access to productive resources is a crucial factor in the eradication of food insecurity and rural poverty. Rural landlessness is often the best predictor of poverty and hunger. The poorest are usually landless or land poor. Inadequate right of access to land, and insecure tenure of those rights, often

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<sup>1</sup> Secure rights to resources reduce household vulnerability and guarantee a basic level of self-provisioning and supplementary income. For many poor people natural resources, and the investments they can make in them, are their largest single capital asset. For example the possibility of selling or leasing land provides a safety net for poor people who cannot farm themselves.

result in entrenched poverty and are significant impediments to rural development and the assurance of food security. Improved access to land allows a family to increase household food production, thereby helping to ensure household food security. Improved access to land may enable the family to increase household income by producing a surplus for sale in the market and may improve the ability of a household to access credit. Secure access to natural resources often provides a valuable safety net as a source of shelter, food and income in times of hardship, and a family's land may be the last available resort in the case of disaster.

Natural assets associated with land include water, forests and natural pastures. Moreover, land rights often include collective rights held by social groups and rights of access to common property resources. In addition to agricultural land, forests, rangelands, wetlands and wildlife resources are important sources of livelihood and food security.

### **1.2.3 Pro-poor growth**

Reducing poverty calls for rapid and sustainable pro-poor growth. This requires good governance and prudent macro-economic management in the form of competitive markets, a vibrant private sector, efficient institutions, sustainable use of natural resources and equitable access to resources and services. Making growth pro-poor requires equitable participation by poor women and men in generating and benefiting from that growth. It also requires reforms to reduce inequalities regarding human capabilities and access to assets, basic services and productive resources, such as land, water, forests, training and credit.

### **1.2.4 Governance**

The management and allocation of land and natural resources is a key governance issue for both rural and urban populations in a number of important ways. The recognition of the land rights of the millions who dwell in informal settlements is critical to improving their living situations and promoting the rule of law. Where there are no effective, legitimate channels for land access, squatting and land invasions are the only options available for the poor and these become legitimate in their eyes. Similarly, the fact that basic services are denied to people living in informal settlements, which consequently can only be acquired illegally, undermines respect for the law and the whole state system as well as exacerbating social exclusion.

Where land administration is complex or dysfunctional, rent-seeking behaviour flourishes at the expense of the poor. Land/natural resource institutions are a vital element of effective governance. Where they are

weak, the rights of the poor are particularly at risk. Well-functioning property rights systems and land institutions underpin economic development and help reduce corruption and social conflict. Efficient land administration that is accessible to ordinary people and that recognises the complexity of land rights on the ground is crucial. The legal recognition of informal land rights is a powerful tool for social inclusion. Land markets must help the poor gain access to land. Land-use planning needs to be democratic and transparent in order to render mediation effective between land users' competing interests. The link between natural resource tenure and governance has been identified in several policy and position papers by different donors. For example, see Annex 3 for Key Messages from Sida's position paper (Sida 2007).

Resource tenure must be addressed in terms not only of good governance but also democratic governance. Democratic governance implies participation, accountability, equity, respect for human rights and the rule of law, freedom from discrimination and economic and social policies responsive to people's aspirations and aimed at eradicating poverty (UNDP, 2002). If a society is democratic, the interests considered in making policy choices are certain to be more diversified. Furthermore, in democratic societies where social groups have access to information and participation in political life, and exercise some degree of influence on government policies, there are fewer chances of large landowners and other elites dominating policy choices. See also Havnevik et al. (2006), who stresses the need to address natural resources from a governance perspective. One of the policy and research findings of the study is that rural and associated policies and development strategies must be understood in a broader structural and governance context.

Governance and legal systems impact resource ownership. Gender issues are linked to a country's legal framework and inheritance laws. It is possible to use legal reform to address issues of importance for Natural Resource Tenure; for example issues concerning the overall legal framework for natural resources, inheritance rights of women and specific training for judges. Conflicts involving land are often very common in the formal legal system and in traditional conflict resolution mechanisms.

### **1.2.5 Corruption**

There are several angles from which to analyse the impact of corruption on natural resource tenure. In this section "corruption and governance" issues are elaborated as well as corruption and environmental degradation.

#### *1.2.5.1 Corruption and governance*

Corruption can take different forms. The GTZ (2005) publication, “Preventing Corruption in Resource Allocation” identifies some of the weak points where corruption can thrive within the land tenure system, both at the national level and local or implementation level.

At the policy development stage, political corruption often results in business elites placing certain issues on the agenda; for example, land reform activities that involve the distribution of privately-owned land or the opening up of “green” zones (protected zones) for development.

Legislation dealing with land tenure may be complicated – and perhaps deliberately so. Land registration can be a bureaucratic and time-consuming process and public officials may be able to take advantage of legislative complexity in order to extort bribes.

Land reform legislation that includes government selection of regions and beneficiaries for lucrative projects may imply economic effects that encourage political corruption, with politicians and private interests colluding for their mutual benefit. GTZ identifies some situations that arouse suspicion; for example, the exclusion of sections of the population from participating in such projects through high levels of compensation or protective legislation in the case of privatisation or nationalisation of public property.

Tax legislation and legislation governing natural resource management should be scrutinised for corruption-generating opportunities. It may be the case that taxes are only collected from those individuals who do not (or cannot) bribe tax officials. In some cases, natural resource protection laws are such that they cannot be complied with. Indeed, laws may be ambiguously worded and implementing bodies have broad scope for identifying irregularities or claiming competences for themselves in order to demand payment of bribes.

Attention should be paid to resettlement measures. Arbitrariness in the allocation of formal land titles to those being resettled may open the way for the generation of illegal income through corruption.

The GTZ publication mentioned above highlights the selection of sites for allocation as one particularly corruption-prone area. Massive and corrupt payments are sometimes made when new areas for development or urban expansion are designated. In several countries, such activities may sometimes involve entire (regional) governments, with corruption going right to the top.

#### *1.2.5.2 Corruption and environmental degradation*

Corruption is known to hinder economic development and to fuel poverty. There is also important evidence to suggest that it contributes to environ-



mental degradation. Corrupt forestry officials or law enforcement officers who are in the pockets of unscrupulous logging firms, will turn a blind eye to illegal forestry activities, threatening sustainable management of the forest's biodiversity storehouse. Similarly, fisheries inspectors endanger the sustainability of fish stocks by accepting bribes from trawling companies intent on ignoring official quotas. More broadly, poor national-level governance may translate into sub-standard environmental policy formulation and implementation, where narrow interest groups determine the common 'environmental good'. In extreme cases, high-level political corruption can facilitate the wholesale plundering of a country's natural resource base.

#### 1.2.5.3 Preventing corruption

Findings on corruption prevention, drawn from literature and discussions, indicate the following measures:

- *Active participation in Poverty Reduction Strategy* processes may offer scope for corruption prevention through involvement in agenda setting, donor coordination of anti-corruption measures, participation in sector-wide approaches, support to civil society and participation in joint monitoring and evaluation procedures.

- *Active participation in international processes for Forest Law Enforcement, Governance and Trade (FLEGT)* and the support of partners in improving their legal frameworks and law enforcement contribute directly towards prevention of corruption. The support of selected partner countries in negotiating Voluntary Partnership Agreements with the EU (FLEGT-VPA) is particularly important. These agreements aim to support partners in fighting illegal logging and preventing the import of illegally logged or traded timber into the EU. The key instrument is proof of legality, or what is known as the FLEGT licence.

- *Promoting transparency and social participation.* When delivering advisory services to any major legal state project involving land allocation or allocation processes in other sectors, efforts should be made to ensure that they include the participation of civil society. When involving civil society groups in monitoring and watchdog tasks, their legitimacy is crucially important. Since resource allocation often involves very large areas of national importance, the economic and social impact of a land reform measure or the creation of a new irrigation scheme can be considerable. In such cases, an independent national commission with a pluralist constitution should be employed for implementation monitoring.

Independent observers and peer review mechanisms play an especially important role when developing and promoting systems of trans-boundary cooperation in order to fight illegal logging and timber trade.

– *Supporting legal projects through policy advisory services.* Advisory services for legal reform or reform of legislative procedures within the scope of resource allocation should be assessed in order to bring to light any element of suspicion that political corruption may be taking place or where particular interests are favoured for no apparently good reason.

To help prevent corruption, legislative projects receiving advisory services should be explored to see where new opportunities for creaming off gains might arise or where existing ones are reinforced, and how these tendencies might be reduced or eliminated.

Laws with which the population cannot comply should, in principle, be taken up during government negotiations, and not just in terms of technical-legal deficiencies but also their implications for latent or evident corruption.

It is important to support partner institutions in formulating clearly worded laws. This applies with respect to provisions that govern offences and the definition of competences and procedures.

– *Incorporating measures into the promotion of democratic decentralisation.* The decentralisation of administrative tasks alone does not offer adequate protection against corruption. It is important to strengthen parliamentary monitoring in municipalities, and to complement parliamentary structures with broad citizen participation.

To date, just and fair forest management, including forest protection, has primarily been achieved where the people themselves have performed management tasks. The best protection against corruption is the creation of a joint management system consisting of representatives of the municipality and legitimate representatives of the local population.

– *“One-stop shop” principle as a means of simplifying administration.* The principle of introducing legislation to make administrative procedures more complicated, and involve as many agencies as possible in a given administrative action, should be made a thing of the past through the introduction of the “one-stop shop” principle (as introduced e.g. in Morocco for company licences). A structure of this kind means that, for any given approval or land title registration procedure, a single agency is appointed to deal with all administrative aspects. The effect this has on helping prevent corruption can be further reinforced by additional measures to strengthen internal control and external monitoring.

– *Informing the public of their rights.* The population concerned is often not even aware of its basic rights, nor does it know how to obtain a legal hear-

ing. The dissemination of basic information would be a first step toward improved monitoring of decision-makers by the population.

– *Good governance in forest management.* In many developing countries there is often an adequate set of laws and rules concerning how forests should be managed and who should have tenure rights, however these are very seldom enforced. This is mostly due to insufficient resources in the form of capacity building, human resources, technical knowhow and infrastructure. In some cases there might also be an unwillingness to enforce laws since powerful people are involved in corruption in relation to forests.

Illegal logging is closely linked with corruption and organised crime, undermining the rule of law, the principles of democratic governance and respect for human rights. Poor, people, dependent on the forests are often the hardest hit. It is a proven fact that illegal logging can fuel poverty and widen the gap between the powerful and the powerless by restricting access to resources and land (Nilsson-Rosander, 2008).

Throughout the ‘forestry policy community’, and the broader environment and development community, there is a growing awareness of a series of interlinked factors:

- The need to focus on the implementation of legislation and international agreements not merely on their introduction and negotiation but also on the related issues of governance and corruption.
- The growth of international environmental crime – the deliberate flouting of environmental laws and regulations with an international impact – and the need to tackle it at an international level.
- The role of consumer countries in driving illegal activities and the potential for them to take action to exclude illegal products and build markets for legal timber – alongside providing assistance to producer countries with law enforcement on the ground (Brack, 2007).

Approximately half of the tropical wood imported into the EU is estimated to come from illegal sources (European Commission, 2007).<sup>2</sup>

In May 2003, the European Commission adopted an Action Plan on Forest Law Enforcement, Governance and Trade. This Action Plan seeks to support improved governance in timber-producing countries and to ensure that illegal timber does not enter the EU. The ultimate goal of the Action Plan is to encourage sustainable management of forests, where

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<sup>2</sup> [http://ec.europa.eu/environment/news/efe/biodiversity/070606\\_en.htm](http://ec.europa.eu/environment/news/efe/biodiversity/070606_en.htm)

ensuring legality of forest operations is considered a vital first step. The plan emphasises issues such as equitable and just solutions, verification systems, transparency, capacity building and policy reform. Measures include support for improved governance and capacity building in producer countries and the development of Voluntary Partnership Agreements (VPA) with producer countries to ensure that only legally logged timber enters the EU.

The VPAs – bilateral agreements between producer countries and the EU – are central to the EU FLEGT initiative. The agreements aim to ensure that only legally licensed timber is exported and imported (Nilsson-Rosander 2008).

### **1.2.6 Human rights**

In countries where agriculture and renewable natural resources are the main sources of income, sustainable livelihoods will generally entail security of land and natural resource rights.

Land and other natural resources are backed by different sources of public, international law, including international human rights law. Rights to natural resources may be examined through the lens of international human rights law in terms of the right to adequate housing, property, food, protection against forced eviction, non-deprivation of property, rights related to inheritance, employment, an adequate standard of living and the rights of indigenous and tribal peoples, women, pastoralists and other vulnerable groups. Non-discrimination is a central human rights principle, always to be respected (Article 26, the International Covenant on Civil and Political Rights, ICCPR). Important human rights conventions and declarations in relation to natural resources are listed in Annex 2.

Integrating human rights concerns while addressing resource tenure rights means dealing with concerns other than the merely economic i.e. religious, cultural and political. (See e.g. Article 5 in CEDAW, Annex 2.) It will also help to identify power relations within a given society, which are usually crucial to understanding the social and political dynamics around natural resources.

### **1.2.7 Gender equality**

Women's right to resources is a critical factor in social status, economic well-being and empowerment. Resource tenure policy reform should be considered as an essential means of overcoming gender inequality. Resource tenure policy should ensure women full and equal access to, and control over land, including the right to inherit and own land and other productive resources.

In order for women farmers to realise their full potential as producers, access to land must be accompanied by access to rural extension, credits, production inputs, technology and human capital development.

Gender concerns of particular strategic importance as related to market integration and development are that women enjoy secure access to, and control over, productive resources and services and that they are part of decision-making processes at various levels (Sida 2004, p. 30). It is vital that this includes secure land tenure, property and inheritance rights (formal titling and registration), access to loans and credits, the right to sign and enter into legally binding agreements in their own right as well as access to services, capacity development and training.

Furthermore strengthening access to land for women is critical as they are major contributors to local food supply and family nutrition in most countries. Yet, they frequently lack secure access to the land where food is produced, often losing access to their husband's land at the time of his death, rarely enjoying the same rights to inherit land as men, and often being forgotten when land is distributed through land reform.

Women occupy a central role in food production and food security. According to findings by the UN Food and Agricultural Organisation (FAO) in 1985, women account more than half of the labour required to produce the food consumed in developing countries and perhaps three-quarters of the labour involved in food production in Africa. In Asia, women work as hired agricultural labourers or unpaid family workers, contributing between 10 and 50 percent of the labour needed for growing various crops.<sup>3</sup> In Latin America, women play a key role in the family farming sector.

The UN Economic and Social Council Commission on the Status of Women (1998) states that “land rights discrimination is a violation of human rights” and urges states “to design and revise laws to ensure that women are accorded full and equal rights to own land and other property...” (42 Session, 2–13 March 1998, Agenda, Item 3). Similarly, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states in Article 14 that “State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas...ensuring such women the right...to have access to...and equal treatment in land and agrarian reform...” (see further Annex 2).

A number of initiatives have been undertaken to strengthen resource rights for women through the revision of constitutions and land laws to provide equal property rights for men and women. These legal provisions

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<sup>3</sup> [www.fao.org/focus/e/women/sustin-e.htm](http://www.fao.org/focus/e/women/sustin-e.htm)

do not necessarily translate into de facto changes in customary land practices or local bureaucratic decision making, and women continue to be denied access to resources through legal, bureaucratic and customary inheritance practices in many countries. Implementing equality of opportunity may well require affirmative action until discriminatory social norms and practices against women are eradicated.

### **1.2.8 HIV/AIDS**

The impact of HIV/AIDS on land rights vary considerably according to tenure systems, patterns of inheritance and land market activities.

The disease directly impacts farm labour, undermining people's capacity to use land in a productive and sustainable manner. It indirectly impacts the land rights of widows and orphans, since land rights registered in the husband's name tend to be lost at the time of his death, or are passed down to other males. The effects of this disease constrain the already limited options of women to access land securely and may cause following generations to be disinherited.

Ownership and control of economic assets, such as housing and land, can protect women affected by HIV/AIDS from destitution. Furthermore, securing property and inheritance rights for women and girls has a clear value in HIV prevention. In many farming communities, women are not entitled to land in the same way as men. A well-documented effect of the AIDS epidemic is the drastically impaired living conditions of surviving widows and their children. Improving women's access to land and ownership of land helps women to withstand financial crises, care for their children, prevent domestic violence and avoid HIV.

Mobile livelihoods and insecure land rights amongst migrant workers, urban squatters and pastoralists can, in turn, affect the dynamics of HIV/AIDS and insecure tenure may prevent people from participating in disease-mitigation programmes. The prevalence of HIV/AIDS in informal settlements in African countries is normally higher than the country average. Insecurity, density and unsanitary conditions are some of the factors causing people to become more vulnerable to the disease.

### **1.2.9 Traditional knowledge and indigenous peoples**

Traditional knowledge refers to the knowledge, innovations and practices of indigenous and local communities around the world. Traditional knowledge, developed from experience gained over millennia and adapted to the local culture and environment, is transmitted orally from generation to generation and by younger generations observing their elders and actively learning from them.

When dealing with tenure issues, traditional knowledge is fundamental in at least two ways. A large part of local traditional knowledge deals with customary law and tenure issues, and traditional knowledge itself is also a focus of intense international dialogue and negotiations in respect of who owns the rights to it. The role of traditional knowledge, along with its preservation, protection and equitable use, has recently received increasing attention in a range of international policy discussions. Today, the rights perspective of traditional knowledge is under discussion and negotiation in several arenas e.g. in the technical working groups of the Convention of Biological Diversity, in the World Intellectual Property Organisation's Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore and in the UN Permanent Forum on Indigenous Issues. The United Nations Declaration on the Rights of Indigenous Peoples (see Annex 2) was adopted in 2007.

The international community has recognised the close and traditional dependence of many indigenous and local communities on the land, territories and resources they have traditionally owned or used. The World Bank (2005) writes about indigenous peoples in its operational guidelines:

*“The Bank recognises that the identities and cultures of indigenous peoples are inextricably linked to the lands on which they live and the natural resources on which they depend... Indigenous peoples are frequently among the most marginalised and vulnerable segments of the population. As a result, their economic, social, and legal status often limits their capacity to defend their interests in, and rights to lands, territories, and other productive resources, and/or restricts their ability to participate in and benefit from development. At the same time, the Bank recognises that indigenous peoples play a vital role in sustainable development and that their rights are increasingly being addressed under both domestic and international law.”<sup>4</sup>*

The UN Declaration on the Rights of Indigenous Peoples (2007) states in Article 26:

*“Indigenous peoples have the right to the lands, territories and resources, which they have traditionally owned, occupied or otherwise used or acquired.*

*Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*

*States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”*

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<sup>4</sup> <http://go.worldbank.org/TE769PDWNO>

The Conference of the Parties to the Convention on Biological Diversity (Secretariat of the Convention on Biological Diversity, 2004) has adopted the *Akwé: Kon Guidelines*<sup>5</sup> which are guidelines for the conduct of a cultural, environmental and social impact assessment regarding proposed developments located at, or which are likely to impact on, sacred sites, land and waters traditionally occupied or used by indigenous and local communities. The guidelines, named after a Mohawk term meaning “everything in creation” provide a collaborative framework with the aim of ensuring the full involvement of indigenous and local communities in the assessment of the cultural, environmental and social impact of proposed developments on sacred sites, land and waters traditionally occupied by them.

It is vital that customary law, traditional knowledge and indigenous rights are taken into account, respected and upheld in all forms of work with tenure and tenure-related issues.

### **1.2.10 Natural resource tenure conflicts**

There typically is a close link between resource tenure and conflicts over resources. Competing claims for control and use of resources (land, water, fisheries, forests) may provoke conflicts. Population growth, impacts of climate change and changing economic factors may, in turn, increase competition for access to resources. Clearly-defined resource tenure rights are also presumed to reduce conflict over resources during times of scarcity.

There is a general recognition that resource tenure-related conflicts are an increasing challenge. They generate social, environmental and economic costs which create obstacles to poverty reduction. They also risk widening into broader violent conflict that may have serious political consequences. The strong link between conflict and natural resource tenure and how climate change can aggravate tensions is highlighted, for example, in Sida’s position paper “A Climate of Conflict” (Sida, 2008) which concludes that adaptation to climate change should be prioritised in fragile states.

Several donors do attempt to ensure that their work promotes peace and security and apply a special approach in order to make sure that all development cooperation is conflict sensitive i.e. by ensuring that interventions do not have negative effects on conflict dynamics. For example Sida’s policy “Promoting Peace and Security through Development Coopera-

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<sup>5</sup> See the website of the Secretariat of the Convention on Biological Diversity: [www.cbd.int/doc/publications/akwe-brochure-en.pdf](http://www.cbd.int/doc/publications/akwe-brochure-en.pdf)



tion” (2005A), identifies three main types of activities aimed at promoting peace and security; namely promoting dialogue, security and structural stability i.e. activities that consciously target structural or root causes of violent conflict and insecurity. Among the stated examples of promotion of structural stability, the policy includes initiatives that promote the sustainable use and control of natural resources in order to prevent conflict over them. These include cooperation on the common use of scarce resources or on land distribution and usage and the control of primary commodities, such as diamonds and timber, so as to limit access to resources that would finance violent conflict.

The question of access to, and control of, resources underlies a number of conflicts in several regions. In many recent and ongoing conflicts, valuable or scarce resources – such as land, water, timber or minerals – have played a central role, both in causing and sustaining violence.

As water is an essential non-substitutable resource, conflicts may easily arise if it is being, or perceived as being, depleted or degraded by some actors to the detriment of others. The possibility of international, regional or local level conflicts regarding accesses to, and use of, freshwater therefore poses a serious threat to both human security and state security, especially in those regions of the globe that are already severely affected by water scarcity. This includes parts of Africa, the Middle East, central Asia and the Indian sub-continent. Today, water security is an essential component of national security in most countries.

The need for further integration of sectors such as water, development and conflict prevention has been a focus area, for example, for the Swedish Government in the past few years, as is clearly expressed in the Swedish Policy for Global Development. Studies on understanding how the question of benefit sharing could be implemented in practice are underway within the Swedish Government Offices. A study called “Trans-boundary Water Cooperation as a Tool for Conflict Prevention and Broader Benefit-Sharing” (Phillips et al., 2006), has been launched by the former Expert Group on Development Issues (EGDI) commissioned by the Foreign Ministry in Stockholm.

The end of an armed conflict, especially in the case of a prolonged civil war, creates a situation whereby a significant proportion of the population affected will claim or re-claim access to land and land-based resources. In these countries, violent conflict is usually accompanied by changes in land distribution and transformation of property rights. In addition, access to land is a major issue with respect to the return of refugees. Climate change is likely to dramatically increase numbers of displaced people due to droughts, floods etc. These refugees will often mi-

grate to areas (rural as well as urban) that are already occupied, which may lead to increased pressure on land and increased risk of conflict. It is important, therefore, to understand ownership, use and access to land and to incorporate sufficient analysis of the local land tenure situation. This also applies to the demobilisation and reintegration of former combatants. Post-war re-establishment of ownership, use and access rights is often complicated and problematic, but if land and property issues are left unattended they may cause a significant risk of renewed confrontation.

It is important to note here that, although the question of resource scarcity is often cited as a key cause in a number of conflicts, the reality however is that resource-based conflicts cannot be explained away so easily. Scarcity may not only lead to violent conflict; it may also be a catalyst for peace. Not only that, it has also been argued that an abundance of resources – the opposite of scarcity – also generates conflicts. Scarcity usually refers to natural resources that people need for their direct livelihoods (e.g. fresh water or fuel wood) while the abundance debate focuses on luxury goods sold on the global market (e.g. diamonds or gold). Even with regard to one specific resource, scarcity and abundance may occur simultaneously. A resource may be scarce in some segments of society and abundant in others.

Resource-based conflicts are, as we have seen, the function of complex and multifaceted dynamics. These range from the inadequacies and failures of municipal and national policies and legislative frameworks, to globalisation and its impact on local circumstances. Rather than scarcity in itself, it is the way scarcity is dealt with that may be the cause of conflict. It is important to stress that, insofar there is a conflict and when exploring the conflict process, it is useful to ask questions that unravel relevant security of resource tenure circumstances and their contribution to the generation of the conflict.

# Natural resource tenure, environment and climate change

## CHAPTER 2

Natural resource tenure and environmental conditions, including drivers and consequences of climate change are closely related. Tenure systems can promote resource use that harms the environment or it can serve to enhance the sustainable use of natural resources and ecosystem services. Unsuitable rules (either formal or informal) for acquiring access to land and other natural resources can lead to environmental degradation. Environmental aspects are an integral part of international development cooperation. The most important point of departure is that a permanent reduction in poverty is not possible unless consideration is given to the natural resources and environment that people depend on for their livelihoods, health and survival.

Land, together with water and genetic resources, are the natural resources that most directly impact human livelihoods. Land conversion (e.g. clearing of natural forest land for agriculture, biofuel production, shrimp farming etc.) is a major factor behind environmental degradation and the loss of biodiversity and ecosystem services, as well as representing a risk for increased emissions of green house gases (GHG) and increased vulnerability to climate change, as landscapes and bases for livelihoods are transformed. This is often linked to and/or aggravated by unclear tenure arrangements. In many parts of the world, clearing land has become an effective way to lay claim to it. For example, local people who had customary rights to these resources have traditionally used forests for shifting cultivation. The ability of people who are not members of local communities to acquire land by cutting down trees has resulted in the clearing of land on an extensive scale leading to, for example, a massive increase in green house gas emission, fires and smoke that has blanketed parts of Asia and South America in recent years.

Inappropriate tenure arrangements on state lands can also lead to environmental degradation. In the case of arid or semi-arid grazing systems, some rangelands regarded officially as state property have been converted from traditional pastoralist production to commercial ranching or cultivation. Such policies have failed to recognise that the variability of rainfall requires pastoralists to have access to extensive rangelands. Removal of some of the lands for commercial ranching restricts the mobility of pastoralists. As a result, there is an over-concentration of pastoral livestock in the rangeland areas that are still accessible to the pastoralists. A similar example is the conversion of forest and range land to large-scale plantations of e.g. oil palm and sugar cane in South-East Asia and South America, which has resulted in the loss of biodiversity and livelihood opportunities for pastoralists and forest-living peoples. An emerging issue related to most types of land concerns biofuel plantations.

## 2.1 Biofuels: large-scale land conversion coming up

With the outlook of rising prices of fossil fuels, few alternative fuels for transport and with hopes for more “climate-neutral” fuel production and climate change mitigation, the European Union, United States and developing countries such as Brazil, China, India, Indonesia, Colombia, Tanzania and Malaysia have embarked on aggressive state-supported programmes to produce the liquid biofuels: ethanol and biodiesel. Sugarcane and maize are the main feedstock sources for ethanol production, while oil from rapeseed, soybean, oil palm and, in drier areas, *jatropha* are used for biodiesel production.

Biofuel production will become an increasingly important factor behind large-scale land-use changes, e.g. deforestation and land clearing, displacement, contamination of water and eventually food scarcity, which will further enhance competition for land and water resources. Researchers from the International Water Management Institute have projected that an aggressive adoption of biofuel with no changes in feedstock and conversion efficiency would demand an additional 32 million hectares of land worldwide by 2030 (Barreto, 2008, p. 2). Most types of land will be affected – agricultural land, forests and rangelands.

Biofuel production may constitute a new market, employment and income opportunities, however there is a risk of high environmental and social costs, particularly so where tenure rights are unclear. Countries seeking to expand their biofuel production may choose to expropriate land being used by small-scale farmers and allocate it to outside investors. There are already examples of governmental agreements with companies

that allow large-scale plantations of “energy crops” where land titles/rights of the poor are overturned and local livelihoods jeopardised as it may be difficult to negotiate compensation sufficient to ensure a sustainable livelihood.

Conflicts over land use and violation of indigenous and customary land use rights of local communities are common problems when large areas of land are converted or transferred to new users, particularly when strong economic interests are pushing for rapid change (Eklöf, 2007, p. 18).

Expansion of biofuel production is likely to lead to greater competition for access to land which will affect those who have formal land tenure rights but will be especially serious for those without. Expansion of biofuel production also stimulates landless families to occupy private holdings in order to force land reform, leading to social conflicts among land grabbers and negative environmental impacts. Sound land tenure policies will be crucial to ensure that these women and men do not fall into even greater hardship. (See also Sida’s Helpdesk for Environmental Assessment & Swedbio, 2009.)

Environmental and climate change aspects are also closely related to secure access to resources. Secure access is a necessary precondition for ensuring sustainable natural resource use, protection of biodiversity and maintenance of ecosystem services. Secure access to tenure promotes a long term perspective and encourages investment of labour and capital into the land, and into the natural resource base. Investment leads to improved returns from land and natural resources, and the intensification of their use. Greater land tenure security also serves to mitigate climate change as well as securing investment in adaptation. Secure land tenure is also a prerequisite for people to invest in disaster risk reduction in order to strengthen their resilience to climate change. According to FAO (2008A), farming and forest communities are more likely to invest in agricultural practices and sustain healthy forests and fertile fields, both of which are important carbon sinks, if they have secure access to land.

Climate change, aggravation of soil erosion and degradation and water scarcity threaten long-term food productivity. Soil degradation alone reduces yields significantly on 16 percent of agricultural land globally. It is especially severe in Central America, where 75 percent of crop land is seriously degraded, and in Africa, where 20 percent of the total land area, especially pasture, is at risk (Scherr, 1999).

Some calculations indicate that 500 million people live on severely degraded hillsides, 200 million farms lie on fragile tropical rain forest soils and 850 million people live in dry areas threatened by desertification.

With continuing climate changes, there is a huge risk that these numbers are likely to increase (IFPRI, 1994).

Lack of clearly-defined rights can reduce incentive to implement long-term resource preservation measures. In the case of privately held land, for example, tenant farmers with short-term leases may not undertake soil protection measures, plant trees or improve pastures if they do not hold the land long enough to reap the benefits of their investments.

## **2.2 Climate change: affecting natural resources and legal land boundaries**

Secure access to land for the poor and vulnerable is increasingly affected by climate change impact. Climate change threatens to uproot many rural communities. As many as one billion people could lose their homes by 2050 because of the devastating impact of climate change (Christian Aid, 2007). Rising sea levels, increasing frequency of floods, droughts and extreme climatic events such as cyclones etc. may force people who live in the affected areas to abandon their land. In Bangladesh alone 12–17 million people have already left their land due to climate change (Sida, 2008, p. 18.). Such population displacement will trigger greater competition between migrants and established communities for access to land.

Climate change may also affect existing land tenure arrangements when land and natural resources are effected by drought, floods etc. Predicted sea-level rise and rising tides along low-lying coastal areas will impact on coastal resources and the people dependent on these resources. According to Austin (2007), who has studied the climate change effects on land tenure in the Philippines, the degradation of the coastal environment in the Philippines has been of increasing concern throughout the last two decades. Rising tides along the Philippine coastline exert serious effects on landless fisher folk who are already marginalised as a result of lack of land rights, declining fish productivity etc. One major reason that land reforms have not succeeded for fishing communities is that the status of the land that they occupy may change with rising tides and shifting seascapes. Austin points out an example of one family in Honda Bay that built their house 30 meters from the high tide line, as public land is legally deemed to be the strip of land within 20 meters inland from the high tide line. However, 20 years later when they wanted to apply for their land, including their house, it appeared that their house was now only 15 meters from the high tide line, i.e. technically on public land (Austin, 2007). Consequently, the rising tides actually change the legal boundaries of public and private land, and when the sea-level rises the fishing and other coastal

communities have to move further inland, encroaching on other people's assets causing, in a worst case scenario, violent conflicts.

Land tenure policies thus need to be flexible enough to accommodate anticipated transformation of land use and settlement patterns. It is important for planners to understand how climate change affects land and how communities have already begun to adapt to climate change, and how this affects existing land tenure systems. Governments should work to integrate land policy considerations into their climate change adaptation strategies.

Climate mitigation efforts in the format of trying to increase carbon stocks in land may also have consequences for rural poor. *Reduction of Emissions from Deforestation and Forest Degradation* (REDD), a proposed scheme under The United Nations Framework Convention on Climate Change rises new tenure issues such as: Who owns carbon stocks?, Who should be remunerated if they are increased?.... (see chapter 8.2.6).

# Agricultural land tenure rights

## CHAPTER 3

Secure land rights and control over its produce are one of the most critical bases for the rural poor dependent on farming for their livelihoods. In addition to production advantages, secure land rights can promote sustainable land management as well as access to credit. Land tenure rights regulate the legal relationship between people – whether as individuals or groups – and land. Land tenure rights have played a fundamental role throughout history in the socioeconomic development of states and nations, and will continue to play an important role. In many societies, both social status and power depended on the size and structure of landholdings. This continues to be the case today.

What form land tenure rights should take and how those rights are, or should be, allocated therefore raises questions that are fundamentally political in nature. The answers to these questions – in the shape, form, content and allocation of land tenure rights, land tenure regimes and reforms to such regimes – are themselves symptomatic of what are ultimately ideological expressions of the relationship between humans and land.

From a legal perspective, rights over land are far easier to conceptualise, establish and administer because of land's fixed physical nature; it is easier to define the boundaries of the resource unit than, for example, rights over water and fishery resources, which are inherently mobile and transitory.

In many developing countries, especially in Latin America, southern Africa and some parts of Asia, rural land ownership is highly inequitable. Agricultural workers on big commercial estates are amongst the poorest and most vulnerable groups. Moreover, inequitable land ownership in many regions is deeply entrenched both politically and culturally; consequently, it cannot be changed easily or rapidly.



### 3.1 Donor involvement in past and present land tenure reforms

Land tenure reform refers to deliberate changes to the distribution of land resources or the forms of tenure under which they are held.

Reasons for launching land reform tend to accumulate over time and build up into a commitment to overhaul the whole, rather than to amend in piecemeal fashion. Immediate motivations vary widely; from frustration with deficiencies in the colonial-derived property laws and a desire to free up the market in land to accelerating entitlement programmes or redressing land losses caused by racially discriminatory laws.

Donor involvement in land reform and land policy has changed over time. There have often been shifts in the approaches to land policy and administration by both developing country governments and donor organisations. Past land policies are important because they often continue to affect the conditions of poor people's access to and use of land today. In order to understand how policy making with respect to land tenure has taken place, it is useful to look at the milestones of this process.

During the colonial period in Africa, the western legal view emerged in land policy in the former African colonies from start. European concepts of proprietary ownership were thus transposed into African colonies. In the British colonies of South and South-East Asia, policy focused on the creation of free-holding landlords with rent-paying tenants.

Following World War II, state control of land and consolidation into large state farms spread across a number of countries in Asia and Africa. State-led land redistributive policies were high on the political agenda in the 1950s (in Asia and the Near East) and 1960s (in Latin America), especially in countries with high land property concentration, great social and economic inequality, abject rural poverty and widespread landlessness. Land reforms were largely political and aimed at mitigating rural riots and protests in order to keep the ruling government in power.

Land reform in Asia was driven by the desire of the US/UK Allies to weaken traditional elites and reduce the appeal of communism. At the same time, American-sponsored land reform in Latin America was also driven by ideological goals. The lack of political will to advance land reform, combined with the gradual disintegration of communism globally, led to disinterest in this often politically charged activity on the part of governments.

In the 1960s, donor aid to developing countries increasingly took the form of large infrastructural packages and support for both industrialisation and modernised agricultural development schemes, with the expectation that benefits would 'trickle-down' to the rural and urban poor.

In the 1970s, agricultural development was primarily associated with the technology of the Green Revolution, with a central role given to international institutions and the state.

The late 1980s and 1990s saw countries around the world devoting greater attention to neo-liberal reforms and structural adjustment that included opening up markets, reducing or eliminating subsidies, privatising state-run enterprises and allowing national currencies to float. As part of this process, countries determined that property rights may exert a considerable impact on the development process. In some countries in Asia, there were policies to eliminate restrictions on the accumulation of land. In Africa, there were recommendations that communal forms of landholding be replaced by private property.

In Latin America, countries retreated from their modest agrarian reforms by granting negotiable titles to individuals. They also devoted considerable attention to titling former national lands and granting indigenous groups title to lands.

This is the thinking behind the long-standing promotion by the World Bank (and many donor organisations) of individualised land registration and titling (IRT) programmes, as both the World Bank and governments in developing countries have pushed land policy and administration along this evolutionary path.

The World Bank, for example, advocated land market promotion and land redistribution as well as formal land titling to owner-operated family farms and the individualisation of holdings and abandonment of ‘communal’ tenure. The Bank’s policy position has always hinged on the basic assumption that secure property rights are both necessary and critical to economic growth, which in practice means formal legal (and normally individual) rights to own (or long-term occupancy), use and transfer land. The concept behind the approach is about “rural land” and agricultural development.

During the 1980s, the World Bank’s structural adjustment programmes and liberalisation policies (and the IMF’s stabilisation policies) linked beliefs about the importance of privatising and individualising land rights with the broad pro-market tenets of ‘neo-liberalism’. This shift was also reflected in its 1993 housing policy paper, which was heavily influenced by Hernando de Soto’s work on urban informal settlements in Peru (de Soto, 1986, 2001). Urban land tenure had received scant attention as a subject in its own right until the 1980s but by the early 1990s, de Soto’s ideas were exerting a major impact on thinking about urban land.

Despite the increasing dominance of market principles during the 1980s and 1990s, land was a key issue that remained on the political agenda. In

Sub-Saharan Africa, user rights may have been privatised, but many states continued to retain radical title (ultimate ownership) and control of land use and administration. This has been central to the maintenance of their political and economic interests. In South and South-East Asia, longstanding state control of land use through land classification remained similarly strong, sometimes justified on the grounds of land's environmental functions, although this has been contested through squatting and illegal resource extraction with growing recognition by regional governments that they can not control such boundary incursions.

The 1980s and 1990s also saw the emergence of much critical research-based evidence on the effects of past land policies on the poor.

The experience of individualised land registration and titling programmes in Sub-Saharan Africa has been criticised, on both social and economic grounds, with the evidence increasingly challenging underlying Western legal assumptions about land.

In the early 1990s, the World Bank itself funded and undertook several empirical studies (Deininger and Binswanger, 1999, pp. 247–76) on the link between freehold tenure and agricultural productivity, which also found that titling made no difference to levels of agricultural investment and productivity.

The Bank now downplays land redistribution and acknowledges that its past focus on mass titling programmes was “inappropriate,” as was its past focus on land sale markets. In particular, the World Bank suggests that, under some circumstances, government-directed, one-time land redistribution could be replaced by non-coercive mechanisms of adjustment in access to land. Reference is made to market-assisted, market-driven, market-friendly or negotiated land reforms to indicate strategies intended to facilitate land market transfers. Furthermore, the Bank acknowledges the importance of social legitimacy to the effectiveness and efficiency of land policy and administration. As a result, it now firmly favours decentralisation of land administration systems and a much greater role for local (‘customary’) land tenure practices and laws. In contrast to its strategies for rural areas, however, the accumulating evidence from urban areas had a somewhat more limited effect on the World Bank's 2000 urban strategy paper (World Bank, 2000).

### **3.2 Overview of debate**

Debates about land tenure have been subject to a number of variations of intellectual current for decades and positions have followed different lines of thinking. Some proponents have argued for strong pro-market systems

while others advocated state-managed collectivism. Still others argued for systems based on ideas of social equality. Over the past few years, the land tenure debate has focused on:

- the comparative advantages of formal and informal tenure systems, and how to improve the integration of these systems,
- assessing the economic efficiency of small vs. large landholdings (including the balance between economies of scale through mechanisation, and diseconomies of scale through supervision and monitoring costs),
- the effects of different tenure systems on natural resource management in rural areas,
- defining the preconditions for efficient management of common resources and seeking options for joint public/private management,
- the continuing marginalisation of various groups – in particular women, indigenous peoples and the poor – due to lack of access to land,
- the pros and cons of market-based vs. non-market-based mechanisms for land reform.

In all these debates, there is ample evidence to support one or the other approach. Because of the great variation in policy contexts and socio-economic and cultural conditions, the relative merits/demerits of one form compared to another depend on the social, economic, political and cultural environment. For example, the debate on farm size and productivity has led to two models of agricultural development competing in the policy idea market.

For some, small farms are more productive than large ones. They produce more food per unit of area, contributing to national food security and generating more employment in the process. Furthermore, smallholders buy locally and sell locally, helping create dynamic and sustainable local economies. Others refute such arguments and note that the era of the smallholder farmer is over, and that for reasons of efficiency, small farms should be consolidated into fewer large holdings, allowing for economies of scale and increased mechanisation. On the one hand, they point to impoverished peasant farmers on the margins of existence with little ability to generate a surplus for investment in their farming enterprise and limited capacity to adopt new technology. On the other hand, they point to large, profitable farms, accessing world markets and providing employment and good wages for the local rural workforce. Both sides present ample evidence to support either case. However, due to the great variation

in farm types, any statements on the relative merits of small versus large farms can only be relevant within specific social, economic and biophysical environments.

With the right kind of policy environment and availability of appropriate services and infrastructure, small-scale farming systems can be at least as productive per hectare as large commercial farms, and also provide a decent living standard through assured access to local and global markets. This will depend on both national and international policies. A range of national and international factors combine to impede the poor from exercising their rights. Too often, discrimination in law, regulations and customs excludes the poorest from markets, financial services, land and technical information. Public services are often ineffective and there are insufficient incentives for the private sector to service the needs of the poor.

The rules for international trade in agricultural produce remain largely inimical to the interests of developing countries. Subsidies provided for producers by wealthy countries result in overproduction and depression of world prices. Along with other trade barriers, this clearly limits opportunities in developing countries.

The crucial challenge is to ensure that agricultural growth takes place and small-scale farmers have their property rights secured and protected. Land titling is not always the best way of increasing tenure security, nor does it automatically lead to greater investment and productivity. In many places while land is held through unwritten, customary means it is not subject to insecurity. Formal credit may not be available and much investment in land on small family farms is based on labour effort rather than capital. If a policy aims to support small-scale family farmers, it must provide them with secure tenure. This can be promoted either by protecting legitimate customary rights or by providing land title.

## Urban land

### CHAPTER 4

Almost three billion people live in urban areas across the world – equivalent to roughly half of the world’s total population. The growth and importance of cities in developing countries poses a major challenge for urban and peri-urban land management. Millions of people in developing countries live without adequate security of tenure or property rights. The United Nations expects this group to increase. The problem is particularly acute where the costs of access to legal land and housing are high and rising faster than incomes. In Africa, it is estimated that 70 percent of the urban population live in slums, (UN-HABITAT, 2006). Squatter populations in big cities are highly vulnerable to dispossession. The consequences of these evictions are severe: property is destroyed, assets are lost, social networks are broken and access to essential services is lost.

Goal 7, Target 11 of the MDGs commits world leaders to achieving a “significant improvement in the lives of at least 100 million slum dwellers by 2020” (See Annex 1). It is important to note that it is not at all clear how many people live in the slums. But UN-HABITAT (2005) considers this MDG target as far too modest. It covers only a fraction – just about 10 percent – of the world’s slum dwellers. Since the target’s inception in 2000, the global slum population has already grown by about 200 million people. If current trends continue, the number of slum dwellers will have reached 1.6 billion by the 2020 target deadline. This dictates a much broader and more ambitious approach in order to achieve the “Cities without Slums” target of the Millennium Declaration adopted by world leaders in September 2000.

## 4.1 Types of urban tenure systems

While the importance of land issues has been widely recognised for many years, urban land tenure and property rights in developing countries have not been a subject of significant academic or professional interest until relatively recently. Furthermore, the amount of empirical evidence dealing with the full range of statutory, customary and informal or non-statutory systems of urban land tenure and property rights, together with the dynamics of their interaction, remains extremely limited.

Different studies have identified a wide range of formal and informal tenure systems and established that these systems are based on a wide range of cultural and historical influences. Among the most common types of tenure, the following are identified: private, public, informal, customary and religious.

Different forms of tenure and rights commonly coexist within the same settlement and individual plots can change from one category to another over time. We should, therefore, not think of tenure strictly as formal or informal, but instead, acknowledge a broader range of systems. The coexistence of different types of tenure categories within most land and housing markets creates a complex series of relationships. Policy related to any one has major and often unintended repercussions on the others. There may also be more than one legal tenure system operating in the same city, as in the case of Islamic societies or those where customary tenure operates alongside statutory systems.

Informal settlements often outnumber legally planned developments in developing countries and are increasing more rapidly. Despite their population size, informal settlements only take up a small surface area of the city, as exemplified by Nairobi where the slum dwellers constitute around 60 percent of the population, yet live on only 5 percent of the residential land area. The negative effects on the poor are high and governments and local authorities are increasingly losing control over urban development.<sup>6</sup>

Informal tenure systems include a wide range of categories with varying degrees of legality or illegality. They include regularised and non-regularised squatting, unauthorised subdivisions on legally owned land and various forms of unofficial rental arrangements. In many of the world's slum areas, several forms of tenure may coexist on the same plot, as in Calcutta, where 'thika' tenants rent plots and then sublet rooms to others who sublet beds on a shift system, with each party entitled to certain rights.

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<sup>6</sup> Figures from Payne et al.: *Safe as houses? Securing urban and land tenure and property rights online* at [www.id21.org/insights/insights48/insights-iss48-art00.html](http://www.id21.org/insights/insights48/insights-iss48-art00.html).

## 4.2 Reforms in urban land tenure – the issue of security

Many governments and international funding agencies have taken the conventional route of providing individual land titles, either within informal settlements or in locations to which settlers are relocated. The intention is to provide high levels of security and property rights in a way that will enable poor households to obtain access to services and help individuals to escape poverty. At present, there are indications and increasing research evidence, however, that benefits claimed for titling have been exaggerated. In fact, Payne et al (2008)<sup>7</sup> conducted an empirical study in Senegal and South Africa that showed that what was important for slum dwellers and their willingness to invest in developing the land was the perception of land security, not the title itself.

It is observed that many households are not interested in obtaining titles because of the costs and time involved, and the risk of losing their land if they have to pledge their deeds to obtain a bank loan. It is also noted that most bank lending is not asset but revenue based, so the provision of titles will not necessarily increase access to formal credit. Quite understandably, banks are normally unwilling to lend money to the poor when the only security is a house or shack in a poor area of the city.

In addition to the exaggerated benefits of titling, significant drawbacks have been identified. These include the provision of windfall profits to squatter 'owners' who sell up as soon as formal tenure is granted, the eviction of tenants or imposition of higher rents upon them, the resulting growth of new unauthorised settlements by groups hoping formal titles will also be awarded to new areas, the heavy burden placed on land registries and the potential distortion in property prices, caused by the buying up of newly formalised settlements by higher income groups who may capture much of the subsidies.

Formal financial institutions in most developing countries are at varying levels of development. However, even in a country like India, which has developed a better housing finance industry relative to other low-income countries, financing by mortgaging is very low. It is mainly the upper and upper-middle income groups that qualify for loans. In Uganda, whereas only 200 mortgage loans are issued annually, 50 000 new urban dwellings are built (African Development Bank, 2008). In Nairobi, Kenya,

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<sup>7</sup> The Global Land Tool Network, GLTN, has co-funded the research project *Social and economic impacts of land titling programmes in urban and peri-urban areas; International experience and case studies of Senegal and South Africa* together with Swedish Sida and the Norwegian Ministry of Foreign Affairs. The study seeks to assess the social and economic impacts of land titling and home ownership programmes in urban and peri-urban areas of developing countries.



people jokingly say that “only bankers” can get mortgages. In addition, provision of subsidised or free land remains a key method for many governments to support community groups in their efforts to improve living conditions in slums, for instance in South Africa and Thailand. It may also be part of a wider strategy to redistribute land as has been done in Peru.

More seriously, some governments have used titling programmes as an excuse to evict informal settlers from prime inner-city sites and have granted the people titles on plots outside the city, far from sources of livelihoods and services with limited or non-existent means of transportation. It is also expensive for governments to grant titles to settlers on private land, the market values of which may approach European or American levels. Finally, the administrative costs and complexity of titling programmes may reduce demand, although this may also be an indication that people feel secure, even without titles.

In general, public debate about tenure, which De Soto (2001) has done much to move centre stage, can now be based on a wealth of empirical evidence. For example, international experience and research evidence (Payne et al. 2008) shows that the poor will invest what they can if they have reasonable security. Besides ownership, it has been proven that, for example, non-eviction guidelines enforced by the state, occupancy licences or lease arrangements can provide adequate security for people to feel safe and invest in their homes and livelihoods. However, as mentioned, titles are not a pre-requisite for ensuring security. Many people achieve this through political pressure, collecting receipts for utility payments, or simply by sheer force of numbers.

The World Bank now acknowledges that formal titles are not always necessary or sufficient for high levels of tenure security. Similarly, the EU-Land Policy Guidelines (2004) state that land registration or titling was considered necessary to achieve security of rights, increased productivity and access to credit. However, experience shows that titles may neither be necessary nor sufficient to achieve these aims.

There seems to be a consensus that the primary objective of tenure policy should be to ensure protection for all households from forced eviction and to ensure that due notice and reasonable options for alternative accommodation are given. Many intermediate options have been identified which appear to offer improved security, increased public sector influence over land development, modest increase in tax revenue and practical options for financing land development.

Several options are used in different parts of the world. Examples of such are described below but they should not be followed unconditionally for there is no one-size-fits-all blueprint for tenure policy.

One option is to increase the rights of residents without changing the formal tenure status. The certificates of use in Botswana and Lesotho are one example. The arrangements in Hyderabad, India, where some slum settlements are designated “un-objectionable”, and are therefore to be officially tolerated, is another. In high-density areas, it may be appropriate to offer condominium ownership, along the lines currently implemented in Brazil, Malaysia, Thailand and the Philippines.

A further option is to extend existing customary arrangements, as has been carried out in Egypt. Here a ground rent or ‘hekr’ is charged to informal settlers on government or unclaimed desert land. This does not grant title, nor can it be transferred, but if households have to be displaced it ensures that they will receive compensation for the buildings they have erected on their plots. Such an arrangement distinguishes between the ownership of land and the ownership of property and facilitates access to plots by the poor, which would otherwise have been beyond their means.

### **4.3 Urban agriculture**

Urbanisation in most developing countries is progressing at alarming rates. With the urban population growing about three times faster than that of rural areas, many cities in the South have difficulties creating sufficient formal employment opportunities and providing basic services for their residents. As a consequence, urban poverty and food insecurity are on the rise.

Various studies and projects indicate that the legitimisation and official support of urban and peri-urban agriculture contributes to poverty reduction by enhancing the access of the urban poor to fresh and nutritious food at affordable prices, generating additional income and stimulating micro-enterprise development.

More and more cities have recognised the importance of urban agriculture and are supporting it actively, however as a result urban agriculture is competing for land with other urban land uses. It is important to recognise this sort of conflict and the local authorities must see it as their task to make clear and comprehensible spatial plans where land use for peri-urban areas is considered. In many cities, human settlements grow most in peri-urban areas, which are also often controlled hardly at all in terms of spatial regulations as they fall outside city boundaries.

Water is vital for food production, human health, local livelihoods and environmental health. Where water is plentiful, people often do not know or care who else may be sharing the same river, lake or aquifer. As the population grows, and water quality and quantity deteriorate, water demands increase for households, farms, industry and the environment. In turn, this leads to water scarcity. Rainfall patterns change due to climate change which most likely will also affect surface water levels that are established by rainfall and glacial melting and thus fresh water supply. The Intergovernmental Panel on Climate Change predicts that the numbers of people facing water scarcity will rise sharply due to climate change (Sida, 2008, p. 17).

The increasing scarcity of, and competition for, water has attracted growing attention to water rights in recent years. With increasing global competition, how property rights are defined, who benefits from these rights and how they are enforced become fundamental, not only in terms of efficiency, but also in terms of equity and environmental sustainability.

### **5.1 Types of water rights**

Water has distinct characteristics that differ from other resources, which consequently makes rights to it more difficult to define. Water is mobile and the majority of water use depends on flows. After water is diverted, some evaporates or is transpired by plants, but much water also runs back through surface channels and aquifers to be reused further downstream. Cultivation of crops, planting or cutting of trees and other changes in land use transform the quantity and timing of water flows into and out of aquifers and rivers. Almost all water has multiple overlapping uses and users. All uses not only withdraw some water, but also add something to it which affects the quality for users downstream.

Water rights can be defined as a legal right: to abstract or divert and use a specified quantity of water from a natural source, to impound or store a specified quantity of water in a natural source behind a dam or other hydraulic structure or to use water in a natural source. A “natural source” includes a stream, river or lake, a reservoir created by the damming of a river, a swamp or pond, as well as groundwater from a natural spring or a well (Hodgson, 2004).

As water is a fluid and dynamic resource, flowing and seeping through many channels, water rights are also part of a fluid and dynamic, and rarely a single, consistent system. Control over water and its use, therefore, has been regulated in diverse ways that involve bundles of rights (Schlager and Ostrom, 1992). These bundles assign legitimate authority and the obligations to control water, and determine the priority of water use. They lay down who has the right to appropriate water, whether or not water can be transferred and the relationship between water rights and land rights. Such bundles of rights range from the most exclusive forms of private property rights to communal rights at the local community level, public regulation at the national or state level, agreements at the international level or a combination of some or all of these.

In private property rights, rights are held by individuals or by legal entities such as corporations. In water, generally only use rights are recognised for individuals, and particularly permits or licenses that give an individual a right to use water in certain ways.

Indeed, many jurisdictions do not permit trade in water rights separate to that of the land for which they have been issued. Where it exists, the trade in water rights tends to be quite regulated. Individual transactions are generally subject to the prior approval of the water administration. This is primarily to protect against adverse impacts on third parties, specifically other water rights holders, and on the environment (Hodgson, 2006).

In some cases private rights go beyond merely use rights to include water allocation rights, as in Chile’s tradable water rights systems which allow holders to transfer water rights to others through sale or lease. An unregulated water rights market has existed in Chile since 1981, the only country to have one. To their supporters, tradable water rights systems offer a number of stated advantages. Apart from ensuring a more economically efficient allocation rather than the planned approach of most water rights regimes, tradable water rights are also regarded as a relatively painless means of re-allocating water rights, and thus water, from less to more economically productive uses (Garrido, 1998, p. 33–56; Bauer, 2004, p. 173).

In common water rights, water can be used by people in the ways specified by some community or user group. The community or the user group has the right to allocate water and specifies who may or may not use water and in what ways.

In public water rights, governments allocate rights to users. This may be done either through government agencies or by acting as a licensing or leasing agent for water rights. In Zimbabwe, for example, the water reform of the 1990s declared that all water was the property of the state and that water rights could be obtained through acquiring water permits, giving legal license to use but not to own water (Zimbabwe National Water Authority, 1998). Similarly, in Mozambique, the Water Act of 1991 regards water as a public good, and allows people to acquire a renewable water license valid for five years (Governo de Mozambique, 1991).

Despite the range of legal frameworks applicable, there may still be some water uses that are not recognised as legitimate in any of those frameworks (i.e. not recognised as legitimate by anyone except perhaps the users themselves). Thus, at times there is a need to distinguish between rights: those that are a legitimised use of the water and those that include mere access to water without a recognised claim. The latter may be a case of open access (where no rights or management regime operates), or may be tolerated by the rights holders as long as it does not infringe upon their water use. As water becomes scarce, open access or tolerated use is likely to lose out most rapidly, unless the users are able to establish their claim based on long-term use or other means.

The delineation of water rights is further complicated when taking into consideration the multiple uses (irrigation, domestic, fishing, livestock, industries etc.) as well as multiple users (different villages, groups of farmers upstream and downstream, fishermen, cattle owners etc.) of the resource. These overlapping uses bring in different government agencies, as well as different sets of norms and rules related to water.

The specific character of water resources requires forms of organisation that often transcend or cut across the ordinary administrative boundaries of the local community, district or state. A command area of an irrigation system, for example, may lie in more than one village or a river basin may run through several countries.

## **5.2 Water rights in transboundary watercourses**

Almost half of the earth's land surface lies within international river basins and some 263 major rivers cross international borders (Hodgson, 2004). International water resources include surface water, such as rivers

and lakes and their tributaries, and then groundwater, such as aquifers and ground basins that lie within the jurisdiction of two or more states.

Water rights and water rights regimes are strongly influenced by international law insofar as they relate to the use of the water of transboundary watercourses. International law defines how states should allocate the water of transboundary watercourses within their borders. Below follows a short discussion on water rights concerning international river basins. Traditionally, there are five theories governing the use of international rivers (Utton and Teclaff 1978):

- *absolute territorial sovereignty* (the Harmon doctrine), which ascribes upper riparian states absolute sovereignty over rivers flowing through their territory,
- *absolute territorial integrity*, which guarantees lower riparian states the use of rivers in an unaltered condition,
- *limited territorial sovereignty* or *equitable utilisation theory*, which permits use of rivers so far as no harm is done to other riparian states,
- *limited territorial integrity*, which recognises the existence of a community of interest among riparian states, which gives rise to a series of reciprocal rights and obligations,
- *drainage basin development* or *the theory of the community of interest*, which stresses the common development of rivers by all riparian states.

The last theory has become the most widely advocated by the international legal community. This theory recognises that both upstream and downstream states have a legitimate interest in water resources and tries to balance their use to the mutual benefit of all parties concerned. In 1966, the International Law Association (ILA) formulated the Helsinki Rules on the Uses of Waters of International Rivers, which embodied this concept and adopted the notion of equitable utilisation.

The International Law Commission (ILC) of the United Nations adopted the same concept in 1991 in the Law of the Non-Navigational Uses of International Watercourses (see e.g. Mc Caffrey, 2001). The main concepts and principles included in the ILC articles (ILC 1991) may be summarised as follows: the articles aim to achieve a balance between the “equitable and reasonable” utilisation of an international river by any individual riparian state (Article 5) on the one hand, and on the other hand the desirability of avoiding “significant harm” to other riparian states that are already using the river (Article 7), or might want to use it in the future. The articles stress the riparian states’ obligation to protect international rivers and associated

ecosystems (Articles 5, 8, 20, and 21). They oblige riparian states to cooperate in the optimal utilisation and protection of the rivers that they share (Article 8) and recognise that agreements between riparian states may cover the entire river basin, or only part of it (Article 3). In the latter case, however, the agreement should not “adversely affect,” to a “significant extent,” other riparian states’ use of the waters in the basin.

From a water rights perspective this means that first, there are limits to the amount of water within a state that can be subject to water rights relating to a transboundary watercourse as well as, potentially, the types of use to which that water may be put. Secondly, in addition to the water rights at national level, the international dimension cannot be neglected in the case of transboundary watercourses. Management of such shared water resources must take into account many factors, including current laws, existing legal and institutional frameworks, present and future water resources and uses, climatic conditions and water availability in the basin or region concerned, water cost from different sources and users’ ability to pay.

### **5.3 Relationship between water rights and land rights**

Land and water are essential for development. Land use exerts major impact on the quality and quantity of water resources. Conversely, the availability of water determines possible land use. An integrated approach to land and water is consequently essential. Land tenure and water rights are the major mechanisms determining resource use and management. However, existing systems do not always work together to support development.

Historically, the right to use water has depended on the existence of a land tenure right. In much of Africa and Asia, it is difficult to identify water rights as they are so intrinsically linked to land (Ramazzotti, 1996). In most European countries, land ownership or rental is required in order to own the right to abstract water. In the eastern states of the US, the eastern provinces of Canada and in the UK, allocation of water is governed by the law of riparian right, borrowed from English Common Law. Only those who own property adjoining lakes or streams are allowed to abstract water from those bodies of water and then only in a manner that does not interfere with the rights of other riparian users i.e. “authorisation” to use water in a stream or other water body, based on the ownership of adjacent land. Water rights under the riparian doctrine belong to the land and cannot be sold without the land (Levina and Adams, 2006, pp. 13–17).

There are several key themes where a lack of communication between people working on land rights and those working on water rights presents

particular difficulties. One of the most important areas is irrigated land, which currently produces 40 percent of the world's food (Hodgson, 2004).

In irrigation systems, land rights are key to obtaining water. For irrigators, a lack of secure access to water reduces the value of any land tenure rights. The water rights of irrigators depend on the institutional arrangements of the irrigation system. They are extremely variable as land tenure legislation usually makes no distinction between irrigable and non-irrigable land.

Ground water, which supplies much irrigation and drinking water, is an increasingly fragile resource with increasing rates of withdrawal. Existing approaches to water rights apply the same principles to both ground and surface water. However, laws restricting the withdrawal of groundwater are often impossible to enforce.

In many places, traditional rights to land and water exist alongside formal legal rights. Traditional rights may be the only ones actually applied at local level. This means the relationship between land tenure rights and water rights is even more complex. In Kenya, for example, strong norms specify that everyone has the right to use water. However, much of the land has been privatised. In the Nyando basin, land-purchasing companies bought land from large-scale white farmers, then subdivided and sold all of the land to small landholders, without any regard to the slope of plots' location relative to water. As a result, many had no access to the spring or rivers, and thus could not even obtain water for basic domestic needs. The few public access points – such as bridges – became over-used. Furthermore, communities faced considerable obstacles in the development of water sources if they lacked control over the land (Meinzen-Dick and Nkonya, 2005).

The linkage between land rights and water rights can also be illustrated in the case of wetlands and semi-arid rangelands. In the case of wetlands, control over land also gives water. Here, land is scarcer than water; hence it makes sense to concentrate on allocating land. In contrast, in dry areas water rights are key to controlling and using land for pastures. Access to water points opens up opportunities to use large areas of grazing land for migratory pastoralists. In Africa, both wetlands and dry lands are important resources. Hence, for these resources, the principle of interconnected land and water rights are important to understand.



## 5.4 Water rights reform

Currently, much discussion on water rights reform does not consider making water rights separable from rights over land. This particularly applies to cases in the western United States, Chile and Australia, where growing demand for water for non-agricultural uses in cities and industries creates pressure to transfer water away from agriculture. At a policy level however, governments and international agencies approach land tenure and water rights as separate issues, despite calling for integrated management of land and water.

Securing access to land and water is a key element of both survival and livelihood strategies for the poor. While many reforms seek to strengthen the land tenure rights of the poor, the relationship between water rights, poverty and livelihoods is less clear. Reducing poverty is rarely a priority of water rights reform. The issue between water rights, poverty and livelihoods has been linked mostly to safe drinking water and the human right to water, and less to individual water rights.

The main drivers for reform have been related to concerns about whether or not water resources are sufficient in regards to existing water rights, current and planned uses of water, and land.

Very often, the basis of water law reform is quite technically biased in favour of the complex disciplines that make up water resources management. Generally speaking, water rights reform has had fewer redistributive or socioeconomic objectives than reforms to land tenure rights. One exception is South Africa, which has enacted a Water Act seeking to implement the two key principles – “sustainability” and “equity” – of the 1997 National Water Policy (RSA, 1998).

In recent years, concerns about the effects of large-scale water abstractions on the environment have played an increasingly important role in water sector reforms seeking to promote the sustainable management and use of water resources. In this regard, key objectives for water management, which have been influential in guiding the shape of water-sector reforms including reform of water rights, are the “Dublin Principles”<sup>8</sup> which are an attempt to concisely state the main issues and thrust of water management. The growing trend is towards integrated water resources management (IWRM) to overcome the divide created by distributing the authority over land and water to different government agencies.

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<sup>8</sup> The International Conference on Water and Environment, Dublin, Ireland, January 1992 gave rise to four principles that have been the basis for much subsequent water sector reform.

## Wetlands/coastal resources

### CHAPTER 6

It is estimated that wetlands (including lakes, rivers, marshes, and coastal regions to a depth of six meters at low tide) cover more than 1 280 million hectares, or approximately 13% of the earth's land surface. This figure does, however, under-represent many wetland types and should be regarded as a low estimate (Millennium Ecosystem Assessment, 2005; Finlayson and Davidson, 1999). Coastal resources and wetlands are important for the poor around the world. Fish and shellfish provide one sixth of the animal protein consumed in the world (Laureti, 1999. See also Capistrano, 2005). Small-scale fishing is vital for food security and poverty alleviation in many developing countries. Intact and functioning wetlands are the primary source of survival for many of socially and economically excluded groups in the developing world. At the same time, coasts and wetlands are very often biodiversity hotspots with important ecosystem services such as e.g. regulators of water, climate and natural hazards. Around the world, however, coasts and wetlands are facing degradation. Coasts and wetlands may also be affected by climate change i.e. rising tides and sea levels (Parry et al. 2007). Furthermore, a recent study shows that poor countries in Africa and Asia are especially vulnerable to climate change due to the combined effect of warming, the importance of fisheries to national economies and diets, and limited societal capacity to adapt to climate change (Allison et al. 2009).

A growing body of literature claims that fishery resources are in a state of crisis, expressed both in estimates of biomass of fish and in declining catch rates. It is estimated that more than half of the fish stocks are fully exploited (52%) and that 27% are either overexploited or depleted (FAO, 2009). Furthermore, over-fishing is a major cause of the ongoing degradation of coral reefs. The loss of wetlands has been estimated at 50 percent of the area that existed in 1900 (Millennium Ecosystem Assessment,

2005). However, outside Western Europe and North America, there is little information available on wetland loss. Tenure policies are a central part of the governance of natural resources and it is increasingly clear that absence of tenure policies, or the existence of inappropriate ones, is one of the main causes of the degradation of coastal resources and wetlands.

### 6.1 Tenure systems relevant to coastal fisheries and wetlands

While coastal resources (fisheries) are often characterised by open access or lack of appropriate tenure systems, wetlands tend to be characterised by conflicts between different tenure systems (e.g. land tenure and water resource tenure).

In many developing countries, tenure and tenure rights related to coastal fishery resources are insufficiently defined and regulated. For example, in Central America access to fish is formally restricted to fishers who have a license to fish. However, since there is rarely any limitation on the number of licenses, combined with a limited capacity to monitor and control that fishers have a license and fish according to prescribed regulations and norms, coastal fishing is predominantly open access in practice. The often prevailing common access nature of coastal fishery resources, difficulties in controlling catch levels and supranational requirements for effective control, challenge the effective enforcement of tenure policies by national and regional institutions.

Attempts to manage wetlands generally have a poor record as different groups use wetlands for different needs, one user group has limited influence over the total use of the wetland and because joint management arrangements are vulnerable to free-riding. In cases where wetlands are managed as common pool resources, state appropriation or imposition of private property rights may lead to the unsustainable utilisation of wetland resources or the conversion of wetlands for other uses.

A number of good examples of approaches have been identified, which are relevant for tenure of both coastal resources and wetlands:

- *The ecosystem approach* addresses the abiotic and human components of ecosystems in a holistic fashion and relies on a strong framework that clearly recognises relevant participants, their resources, access rights and obligations. The approach is articulated in the Code of Conduct for Responsible Fisheries, adopted by the FAO member states in 1995.
- *Co-management* emphasises the sharing of rights and obligations between local users of coastal and wetland resources.

However, co-management systems require extensive initial

resources in the form of extension activities, education, awareness building and technical assistance.

- The *establishment of protected* areas for especially environmentally critical coastal and wetland areas is, of course, an effective way to regulate the use of vital natural resources. This does not necessarily mean that people dependent on such areas are cut off from a very important source of livelihood, but that their use of natural resources is clearly regulated. Protected coastal areas have a potential to attract tourists, which may serve as an alternative source of livelihood instead of direct natural resource use.
- *Changing exploitation* patterns can be achieved through a number of direct regulations, such as gear regulations, setting the legal fish size and temporarily or seasonally closing areas.

Customary tenure systems are relatively common along coasts and wetlands and have the benefit of being accepted by the majority of local resource users. A common claim in the literature is the need for increased knowledge and acknowledgement of such systems as important components in sustainable resource tenure. For example, in Africa, Indonesia and Central America there are examples of coastal and inland fishing waters where access rights to both water and adjacent land are linked to customary territories.

## 6.2 Poverty and tenure of coastal resources and wetlands

The necessary links between poverty and the degradation of coastal resources and wetlands have been increasingly addressed in the last five to seven years by FAO, the World Bank, the 9th Ramsar Convention<sup>9</sup> and other international bodies. The seemingly joint conclusion is that efforts made to protect threatened coastal resources and wetlands should not be allowed to exert negative effects on poverty alleviation. Tenure systems and access rights have to be designed to benefit, or at least not negatively affect, the poor. If resource use is restricted, alternatives must be available to the poor. One obstacle that forms part of this challenge of identifying and designing pro-poor tenure systems is that poverty alleviation and nat-

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<sup>9</sup> The Ramsar Convention on Wetlands – signed in Ramsar, Iran in 1971 is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. There are currently 158 Contracting Parties to the Convention, with 1828 wetland sites totalling 169 million hectares, designated for inclusion in the Ramsar list of international importance (Ramsar, 1999).

ural resource conservation/management often constitute two separate sectors that are only rarely connected. For example, FAO has shown that the extent to which national poverty alleviation strategies target the fishery sector is very limited. Subsequently, calls for increased integration between the two sectors are common in recent literature for both coastal resources and wetlands.

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**Box 1. Common fishing as sustainable sea-resource management  
in artisan fishing communities: cases from Chile**

In Chile, the indiscriminate extraction of the edible shellfish, *Concholepas concholepas*, Chilean 'loco' or false abalone – propitiated by a neo-liberal market economy during the 1970s – almost led to its extinction, threatening both the survival of small-scale artisan fishers and the eco-system.

As a solution, and in order to reverse this development, fishers' unions in Chile have been adopting the State-created Management and Exploitation Areas for Benthic Resources (MEABR or MAs) since the 1990s. (Benthic resources are organisms that live in contact with the sea bottom, e.g. snails, crabs, clams, mussels.) Substituting open access, the MAs empower the fishers with exclusive territorial use rights to manage the species under the institutions of the commons. However, private property dominates in most of the country, including lands adjacent to the sea, rivers and lakes, constraining the rights of others; the jurisdiction of the state and its citizens. Many of the MAs fall within private estates.

The MAs were introduced in 1992. Prior to May 2000, 20% of the registered fishing organisations in the country had applied for 103 MAs. By June 2006, their total number had increased to 559, of which 365 had approved management plans. There were a total of 320 organisations standing behind the 559 MAs. In 14 years, the MAs had expanded all along the Chilean coast, embracing almost every cove and almost half of the artisan fishing organisations – about 40% of its members.

Using a principally participatory rural appraisal for El Quisco (2001) and interviews with qualified informants for Puerto Oscuro (2002–2006), the purpose of the study (Gallardo F. G., 2008) was to qualitatively evaluate fishers' perspective on the territorial use rights through these two areas. The study showed that although the MAs have brought better incomes, their economic importance for the fishers has been reduced, compared to other fishing activities. Experiences from both cases studied have otherwise been positive in terms of the recuperation of the species, the fishers' environmental concerns and strengthening their unions as social organisations. However, many problems still remain; among them, the problem of access to the land, and often new solutions bring new problems. With the new extraction methods and expansion of the MAs, fishers experienced a transition from nomadic to sedentary fishing, transforming their lifestyle and skills. If the MAs prove to be sustainable, permanent fishing in rural areas may lead to tensions as fishers settle on coastal lands not belonging to them, or are otherwise hindered from developing their own infrastructure.

*Source:* Gallardo, F. G., 2008.

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# Rangelands

## CHAPTER 7

Rangelands are mainly found in areas with low rainfall or where winters are long and cold. They include natural grasslands and lands with shrubs and scattered trees and account for about 50% of the world's land surface.<sup>10</sup> About 26% of the ice-free land area is grazed (Steinfeld et al. 2006) – more than twice as much as the land area used for crops. In addition, about 33% of the world's cultivated areas are used to grow livestock feed (ibid).

The livestock sector is by far the single largest anthropogenic user of land. Mixed crop-livestock systems have historically been the basis of agricultural intensification and increased production. Although economically not a major global player, the livestock sector is socially and politically very significant. It accounts for 40% of agricultural gross domestic product (GDP), employs 1–3 billion people and creates livelihoods for one billion of the world's poor (ibid).

However, livestock production is also one of the major causes of the world's most pressing environmental problems, including global warming, land degradation, air and water pollution and loss of biodiversity. Using methodology that considers the entire commodity chain, estimates state that livestock are responsible for 18 percent of greenhouse gas emissions, a greater share than that of transport. This was presented by FAO in 2006 (ibid).

Expansion of livestock production is a key factor in deforestation, especially in Latin America where the greatest amount of deforestation is occurring – 70% of previous forested land in the Amazon is occupied by pastures, and feed crops cover a large part of the remainder. About 20% of the world's pastures and rangelands, with 73% of rangelands in dry areas, have been degraded to some extent, mostly through overgrazing,

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10 [www.rangelandcongress.com](http://www.rangelandcongress.com).

compaction and erosion caused by livestock. The dry lands in particular are affected by these trends, as livestock are often the only source of livelihood for the people living in these areas (ibid).

Grazing areas consist mainly of land that is less favourable for crop production. These areas are strongly characterised by patchiness of resources and resilience in the face of climatic extremes, and vegetation (especially where water resources are short) has adapted to patchy and variable rainfall. As a result, not only pasture availability but also pasture quality may vary substantially.

Models from the 4th Assessment Report of the Intergovernmental Panel on Climate Change, IPCC, (2007) indicate that in seasonally dry, tropical regions, even slight warming (1–2°C) reduces yield (Cohen et al. 2008).

Traditional pastoralists broadly accept pasture and rainfall as givens and adapt their social and herding systems to take best advantage of them. Many grazing areas also have multiple land uses e.g. areas where people collect wild food, medicines or for honey production etc. If these areas are covered with shrubs or scattered trees, then many wood products are harvested as well. When the grazing area is reduced (e.g. as a result of land conversion to other uses) overgrazing often becomes a problem. Not only is the available grazing area reduced, but animal movement between grazing lands – an essential strategy used by pastoralists to optimise resource use – is also restricted. Rotational grazing systems are often by far the most effective way of optimising resource use and furthering ecosystem health and integrity (Niamir Fuller cited in Rodriguez, 2008, p. 20).

Nomads and indigenous groups rarely own the land; instead they own their livestock. In Gambia, for example, land cannot normally be bought or sold, so investment goes into livestock. Traditional practices help to share benefits and reduce risks. For example, the slaughtering of livestock for social and religious reasons ensures that meat is frequently shared with the community, the lending of animals to relatives benefits both borrower and lender and spreads risks

It is increasingly recognised that the area currently available for pastoralists is decreasing. The CCD (Convention to Combat Desertification) has a thematic programme network on rangeland management in one of its seven action programmes. All national action plans thus contain activities concerning range and pastoralist management.

### **7.1 Tenure systems in grazing areas**

Grazing lands utilised by pastoralists are, or have mostly been, under common property management regimes. Grazing areas can be utilised by

different ethnic groups at different times and are regulated by customary rights, which means that local usages belong to all the inhabitants of a particular place or district. However, customary management regimes are, in many cases, becoming weaker due to increasing pressure on land. When a common property regime is disturbed there is a risk that open access will result. Many grazing areas (and just as many forests) are de facto open access resources.

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### **Box 2. Overgrazing in Ethiopia**

Overgrazing in Ethiopia has become severe as pastoralists are limited to downscaled areas and their traditional communal alternate dry/wet season continuous grazing system is no longer practised. Declining returns from range/livestock result in increased poverty and migration to urban areas. It also encourages farming of marginal areas which, in turn, further increases degradation. Traditional nomadic grazing lands have been taken over as irrigated agriculture has increased and the designation of parks has pushed pastoralists out to marginal areas. Overgrazing is also exacerbated by inappropriate development of watering points for livestock, which has disrupted the rhythm of movement between wet and dry season grazing areas and has led to long periods of concentration of livestock around watering points. Rangelands were largely controlled by pastoral clans until the 1960s (see also Homann et al. 2008).

The absence of land-use planning became the root cause of conflict between the government and peasants and/or pastoralists who traditionally depended on the land prior to “developmental interventions”. While the full impact of the nationalisation of rural land was felt less by pastoralists, the new land policy did not halt the expansion of crop farming into traditional rangelands. Pastoralists demanded a policy that might have halted this encroachment, but the government did not respond favourably (ref: Ethiopia’s country report for the Convention to Combat Desertification 2000).

See [www.unccd.int/actionprogrammes/africa/national/2000/ethiopia-eng.pdf](http://www.unccd.int/actionprogrammes/africa/national/2000/ethiopia-eng.pdf)

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## **7.2 Rangelands: particular issues and areas of debate**

### **7.2.1 Tenure policies do not favour pastoralists**

Inappropriate land tenure policies are major contributors to environmental degradation in arid/semi-arid grazing systems. A huge body of literature is in virtually total agreement that the world’s grazing lands are the most degraded lands on earth (Steinfeld et al. 2006). The world’s three billion ruminants, of which one billion are beef cattle, are increasingly contributing to overgrazing (ibid). In many countries there is no adminis-



trative mechanism for limiting livestock populations to sustainable yield of rangelands. Overgrazing could be reduced by e.g. grazing fees or by removing obstacles to mobility on common property pastures (ibid). Additionally, lack of clear tenure systems of rangelands often prevents further investments in land improvement.

The patterns described above show how pastoralists and small-scale livestock keepers are generally becoming marginalised as traditional grazing areas are decreasing or subject to degradation. Donors do not prioritise these issues or those mentioned above. The most vulnerable people – women and the very poor – are more likely to own sheep and goats than cattle, and supervision of the animals, theft and diseases are often bigger and more immediate problems than, for example, overgrazing or land tenure issues.

### **7.2.2 The reliance on rangelands for the poor tends to be forgotten**

For wealthy livestock owners, uncultivated land is most important as a source of forage; for the very poor, it is most important for resources such as firewood and raw materials for construction and handicrafts. By identifying a piece of land only as “rangeland” there is a danger that other uses and users will be forgotten or excluded. Normally the poorest tend to rely on the “bush” the most.

### **7.2.3 Large scale biofuel plantations – a threat to subsistence**

Today there is also increasing pressure on rangelands where soy beans, sugarcane or fast-growing trees, such as the Eucalyptus or the *Jatropha curcas* are cultivated for biofuel production. *Jatropha* has been regarded as very promising but the plant is poisonous, particularly the seeds, which may harm livestock, particularly goats. Large-scale biofuel plantations are a “hot” issue and particularly relevant in semi-arid areas with higher rainfall located in areas with either open access or common property management.

The rapid expansion of biofuel production has already led to concentration of land resources, displacement, contamination of water and food scarcity, all of which may initiate or exacerbate conflicts. The trend is to target ‘marginal lands’ because these areas are unsuitable for food production and are often poor in biodiversity. However, such lands are often utilised by the rural poor for different subsistence purposes and may even be their most valuable asset contributing 25–80% of their income (Raswant et al 2008).

## Forest land

### CHAPTER 8

The world's natural forests have been decreasing in area for a long period of time at a relatively rapid rate. Planted forest area, however, is increasing. Planted forest areas include household woodlots as well as larger-scale plantation forests. Large scale plantations used to be largely under state ownership but are currently often privatised. Most natural forests are still owned by the state, see Box 3).

Natural forests, secondary forests<sup>11</sup> and plantations differ in many respects (biodiversity, proneness to natural disasters, influence on soil and water, economic and management system needed to use the resource etc.). The major differences are found between natural forests and large-scale forest plantations. Today, plantation forests are often part of an industrial system. In such cases, their main potential value in poverty alleviation is by providing jobs for those living in the vicinity of the plantations. The plantation forest also has some environmental value (carbon sink, water retention, soil retention etc.)

Natural forests have higher environmental value and often play an important role in subsistence economy systems (fruit, fodder, fuel wood, grazing, green vegetables etc.) and are relatively more important to disadvantaged groups in society. Trees may be used as cash crops for industry but their more common purpose is to provide access to various non-timber forest products for households.

It is sometimes difficult to differentiate between forest land and agricultural land, especially in areas where shifting cultivation is used.

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<sup>11</sup> A secondary forest (or second-growth forest) is a forest or woodland area which has re-grown after a major disturbance such as fire, insect infestation, timber harvest or windthrow, until a long enough period has passed so that the effects of the disturbance are no longer evident. It is distinguished from primary forest (old growth or primeval forest), which has not undergone such disruptions, as well as third-growth forests that result from severe disruptions in second growth forests.

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**Box 3. Some figures on forest resources**

- Approximately 77% of the world's forests are owned by governments. Of the 77%, there are large areas actually managed (or used) by local groups who do not have legal rights to the land. The figure 77% also includes forest lands that are under concession to logging companies.
- In developing countries, community reserves constitute 8% on average.

A "community reserve" is land set aside by governments for local groups and indigenous people who have use or access rights, however the government often still holds the legal title and thus the ultimate rights to the land.
- Communities own about 14% of forestland – as an average for the world (this figure differs between countries).
- Forests are home to 300 million people around the world.
- More than 1.6 billion people depend, to varying degrees, on forests for their livelihoods, e.g. fuelwood, medicinal plants and forest foods.
- About 60 million indigenous people are almost wholly dependent on forests. Some 350 million people who live within or adjacent to dense forests are very dependent on them for subsistence and income.
- As food supplements, forest foods provide certain proteins, fats, vitamins and minerals that are not found in many staple crops, and may even stave off hunger and famine when drought, flood or pests and diseases cause crops to fail.
- Bushmeat or edible wild mammals, reptiles, birds and insects which live in forests or trees can account for up to 85% of the protein intake of people living in or near forests.
- Some 80% of the people living in developing countries depend on non-wood forest products, such as fruit and herbs, for their primary health and nutritional needs.
- Natural products are the only source of medicine for 75% to 90% of people living in developing countries.

Sources: White and Martin, 2002, p. 7, table 2; as well as from the FAO's website: [www.fao.org](http://www.fao.org)

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## 8.1 Types of rights and tenure systems in forests

Property rights to forests and forest resources often overlap, they are confusing and difficult to enforce. In natural forests, multi-layered rights normally exist. While local people generally adhere to customary or traditional tenure systems, governments tend to install a "modernised" formal property rights system which, in many cases, designates the state as the sole owner of forest land. Insecurity regarding which rules to abide by undermines good forest management (Fitzpatrick, 2006). While security

of tenure is not sufficient to safeguard sustainable management, it is often one necessary prerequisite.

There are three main tenure types that can be distinguished – *open access*, *common property* or *private property*.

### **8.1.1 Open access**

Large areas of forests in the world are de facto *open access* resources. This means that a tenure regime exists on paper (often state owned), but not in practice. In practice resource use is not governed by any rules.

Reasons (and opinions) concerning the open access state of many forests differ:

- The traditional management system of most forests was a functioning common property system. The colonial states in many third world countries, as well as the independent nations later on, decided that forests were state property. The denial of the rights of a traditional system, combined with a lack of state competence and the means to enforce the state's legal ownership rights, resulted in limbo where none of the rules for use were followed.
- The main reason for the open access state of large forest areas is that traditional systems of common property were not strong, stable or resilient enough to develop and survive population growth, changing norms in society and a changing economic environment. The systems collapsed and resulted in "lawlessness".
- In recent publications on property rights, it is claimed that one of the main reasons for the depletion of natural resources in many of the third world countries is that in reality traditional systems and the modernised system exist intertwined and that this provides opportunities for certain groups in society to use specific parts of the two systems when it suits them best in order to increase their landholdings (Fitzpatrick 2006).

### **8.1.2 Common property**

In traditional systems forests are, or were, often managed as common property. Some natural resources can produce more or are otherwise easier to deal with if managed in larger sections by a group (Baland, 1996, p 171). Rights to grazing, fishing and some uses of water (irrigation systems) also belong to this group.

For decades, little attention was paid to analysing, much less to promoting, common property regimes. Common property regimes were

mostly confused with open access (Hardin, 1968). However, in recent years, this type of ownership has received more attention and is increasingly backed by formal legal systems in the form of community forestry acts (see Box 4) or similar. Functioning common property systems for natural forests use the resource efficiently and provide a sustainable supply of non-timber forest products such as green vegetables, fruit, nuts, mushrooms, spices, medicinal plants, game meat and fish, weaving material, tools, construction materials and cooking utensils.

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**Box 4. Sharing benefits from the forest in Tanzania:  
Community-based forest management in Suledo**

One good example of how local communities can sustainably manage biodiverse resources can be found in the south-east corner of Kiteto District in Suledo, on the famous Masaa Steppe in Tanzania. The forest in Suledo provides many important products and services for the nine multiethnic villages in the area. In Masaa land, grazing is a core use of the forest. In addition, it provides many other products such as fruit, nuts, medicines and mushrooms. As the area is undulating, the hills also function as small water catchments. The forest also has an important role in initiation ceremonies, which are a crucial part of local customs.

Increasing pressure on land, however, has brought more and more land under agriculture. In order to halt the ongoing deforestation, the government decided to declare the entire area a National Forest Reserve in 1994. This, however, would have restricted the local communities' access to the forest. Consequently community members protested, organised and decided to manage the forest by themselves and for themselves. Local management plans outlining regulations for use, management and benefit sharing were defined based on traditional knowledge and institutions. The rules were passed by the respective village assemblies as village bylaws and upon approval by the district council, they gained full legal status. The whole process was facilitated by the district forest officer and backed by the Land Management Programme (LAMP), now under implementation by the Kiteto District Council and supported by Sida.

To date, the nine villages have been surprisingly successful in implementing their management plans at no cost to the government. Key resources for local livelihoods are efficiently managed and protected, biodiversity is utilised in a sustainable manner and the forest continues to provide important eco-system services such as watershed protection. The initiative has had a direct impact on the formulation of the Tanzania Forest Policy of 1998 and the Forest Act of 2002. With the strong policy support that now exists, the vision is to scale up these activities in the field so that eventually every village in Tanzania could have its own village-managed forest.

*Source:* Sjoeholm and Luono, 2002, pp. 13–20.

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Despite the certain trend towards increased legal support, weaknesses persist and traditional common property systems for forests are threatened by an increase in population, weak legal rights of the owning groups and, occasionally, decreasing social capital in these groups. If the legal rights of the user groups are weak, then they might not be able to defend the resource against exploitation from outsiders such as timber companies. If traditional knowledge, customs, beliefs and culture are eroded then the value base for common management of the resource may disappear.

## **8.2 Forest land: particular issues and areas of debate**

### **8.2.1 Poverty alleviation**

The hegemony of states as owners and managers of forests is declining. One trend is towards increased privatisation. Many forest countries such as Bolivia and Tanzania have changed legislation in order to strengthen indigenous or local ownership. This trend has grown stronger over the last 15 years.

Still it is more common that local people have weak tenure rights, supported by customary law only.

As stated above, today private property is the predominant tenure system for larger plantation forests. In small-scale forest plantations, trees are often kept as household property and are normally located in the vicinity of the house or in agricultural fields.

For natural forests, forest companies can often obtain property rights for the trees (but not the land) from governments who sell or lease out concessions. Often such concessions, as well as the land designated for plantations, are given out for land that is formally (national law) the property of the state, but according to customary law the property of communities living in these forests.

Many developing countries have a rather well constructed legislation concerning forests and forestry aimed at sustainable use, however these laws are very seldom enforced. The reasons for this are manifold. Forests are often remote and it is difficult to enforce and monitor implementation of legislation with limited resources. Corruption is also common in the forest sector of many countries.

One lesson is that, in order for community ownership to be effective, there must be a legal and policy environment to support it. Official, legal recognition of community-based rights to forest resources must be feasible to acquire and defensible in both the political and the judicial arenas.

Non-timber forest products are used by all communities and groups living in or in the vicinity of a forest. Moreover several case studies show

that society's poorer groups are more dependent than wealthier groups on income or subsistence goods from the forest. Any action depriving people from continuing their use of natural forests and bush land will, consequently, exert a relatively stronger negative impact on poorer groups. The beneficiaries of privatisation of natural forests or bush land in order to improve management and production will generally not be the most vulnerable social groups.

The World Bank estimates that there are 60 million highly forest-dependent indigenous people in Latin America, West Africa and Southeast Asia. An additional 400 to 500 million people are estimated to be directly dependent on forest resources for their livelihoods. Only a small number of the people who are dependent on forest resources actually have formal property rights or secure user rights to the natural resources they live on (White and Martin, 2002).

### **8.2.2 Clashes between systems**

Clearly identifying and recognising the property rights of the indigenous and other local community groups can potentially contribute to fairer, more effective and efficient sustainable management of forest resources. Common property resource management can be efficient and sustainable under the right circumstances. Forests for subsistence use by local communities and, in most cases, for gathering products for the market (cash income) are probably best utilised as common property. If there is a push for privatisation of forest land to individual property, the costs for this must be very carefully weighed against the possible gains. Groups have to be backed by customary law and national legislation, which needs to be transparent and accountable. Since privatisation and titling is very costly to administer, monitor and enforce, the risk of failure is substantial. With enforcement failure of the formal system and the traditional system no longer functioning, open access will result.

### **8.2.3 Support needed for local management**

Governments are beginning to realise that they have not been able to manage their forests in a sustainable manner and that local people (often indigenous groups) have customary rights and claims to forests that should be accommodated in legislation and practice. In addition to this being a rights issue, there is also increasing evidence that local communities can play an important role in managing forest resources in a sustainable manner while improving local livelihoods. Substantial areas have thus come under different degrees of local management. This process needs to be supported and strengthened and the internal working of groups who

manage common property needs support. Community groups have their own challenges as concerns adjusting and transforming traditional governance systems in order to manage their forests to meet modern demands.

#### **8.2.4 Food security**

While local uses of forests are often invisible to an outside observer, they are nevertheless crucial to local people. Development initiatives aimed at more intensive use of the land or conversion to other land uses may easily result in traditional “invisible” and/or extensive use being overruled. Development projects (development support or commercial projects) normally aim at intensified use of land. Such intensification activities often result in local people losing many of the inputs they need for their livelihoods. All the actors involved are (rightfully) working towards intensification in terms of increased output per hectare and the former use of the land or forest, often by poorer groups or women, is neglected or forgotten. If intensification occurs then the manner in which local people should be able to substitute all the goods previously obtained from the forest or bush land must be taken into consideration.

Natural forests and bush land often supply local people with distress foods and resources during difficult times. Communities or groups of people who live in areas where they can barely make a living from agriculture will be more likely to use resources from forest and bush land. Natural forests and bush land are thus relatively more important to vulnerable groups in society. Food resources gathered from the forest sometimes form a good complement to crops grown in the fields. The crops from the field give energy and the non-timber forest products provide vitamins, proteins and minerals. While conversion of forest lands to uses yielding more cash value (rubber, sugar, oil palm etc.) will provide a higher profit, it might also deprive local people of their food security and cause a deterioration of their nutritional status.

#### **8.2.5 Biofuels**

The discussions and developments related to climate change and biofuels have a strong bearing on tenure rights. One emerging issue is the rapid expansion of large-scale biofuel plantations, associated with land concessions allocated to private investors. While this may be important for new jobs and income opportunities in rural areas, there is also a clear risk that common property and/or collective rights are not acknowledged, and that the rights as well as the livelihoods of local communities and indigenous peoples may be compromised.



### **8.2.6 Reduced Emissions from Deforestation and Degradation in developing countries; REDD**

The United Nations Framework Convention on Climate Change (UNFCCC) has recently placed more focus on the role of deforestation and degradation of forests in climate change. According to the Intergovernmental Panel on Climate Change, deforestation and degradation of forests contributes approximately 20% of greenhouse gas emissions (IPCC, 2007). It is anticipated that a new protocol on climate change will contain a mechanism for Reduction of Emissions from Deforestation and Forest Degradation (REDD). In short; developing countries would be paid to stop deforestation and degradation (and of course when applicable, to increase carbon stocks). This REDD mechanism could be financed by Overseas Development Assistance funds and/or by carbon credit markets.

When discussing Reduction of Emissions from Deforestation and Forest Degradation it is important to note that a fair part of deforestation around the world is driven by consumption in the North and should thus be handled by trade and energy policies in developed countries.

The issue of natural resource tenure is, of course, important in relation to a REDD mechanism. Who own the stocks of carbon? Who will be paid the remuneration for the Reduction of Emissions from Deforestation and Forest Degradation? Most parties (nations) to the convention are of the opinion that the country (government) should receive the payments and that it is a question of national sovereignty if/how it should be distributed within the country. Landowners believe they own the carbon stocks and thus should receive the REDD benefits. Local and indigenous communities with insecure tenure are likely to lose out on a REDD deal if appropriate policies and governance are not in place. There have already been reports from voluntary carbon markets that local communities have been forbidden to use land where carbon credits have been sold or have even been evicted from such land.

## Protected areas and wildlife

### CHAPTER 9

Protected areas, as well as restrictions on the use of wildlife and plants, are measures taken to ensure that endangered species and/or habitats are protected from degradation and even extinction. By definition, these restrictions entail excluding and/or regulating access to, and use of, either defined land areas and its biological resources (through different categories of protected areas, with varying degrees of protection) or restricting and/or criminalising the use of defined species, whether in or outside protected areas.

Protected areas (PAs), as well as international (and national) regulations on illegal trade of endangered species such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), are consequently important measures ensuring the conservation of species and habitats at local, national and global levels.

Protected areas often have substantial (normally non-monetary) values, bringing benefits, such as the maintenance of ecosystem services (e.g. watershed protection, buffering against natural disasters) and genetic resources, wild food and medicines. They often enjoy considerable aesthetic, cultural and spiritual values, with many reflecting sustainable land use practices. They are also important for research and education.

A protected area designation also brings a number of potentially direct benefits, including income from entry fees, employment opportunities and tourism. In the case of wildlife (or areas with a lower degree of protection), the sale of hunting quotas can be a very important income earner (see Boxes 5 and 6).

Officially designated PAs presently cover about 12 percent of the global land area.<sup>12</sup> A large number of people, including a high proportion of indigenous peoples, are therefore directly affected, with most residing in poor and marginal areas.

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**Box 5. The Campfire Programme**

An illustrative case of decentralisation and empowerment of local communities is the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) programme in Zimbabwe. CAMPFIRE is also under adoption in a few other southern African countries. Under CAMPFIRE, local communities manage and utilise their natural resources to their exclusive economic benefit. This approach has been most effective in the management of wildlife held on communal land. As a result of the financial incentives gained, these communities now take the initiative to protect and conserve the wildlife which, in the past, they would have poached. This experience confirms the need for greater empowerment of communities concerning the conservation of their environment. This is only possible through delegating responsibility and authority and creating administrative and institutional mechanisms that are legitimate, effective and accountable in the control of land use and natural resource utilisation. Rural communities, therefore, may own and utilise common property resources effectively and sustainably, provided they clearly benefit from the resources and are empowered by local institutions. This concept needs to be extended to the use and management of water resources by irrigating communities.

About 90 percent of CAMPFIRE's income comes from selling hunting concessions to professional hunters and safari operators working to set government quotas. Individual hunters, who pay high fees for being able to shoot elephants (USD12,000) and buffalos, are strictly monitored and accompanied by local, licensed professionals. Trophy hunting is considered to be the ultimate form of ecotourism as hunters usually travel in small groups, demand few amenities, cause minimal damage to the local ecosystem yet provide considerable income. Areas with high wildlife populations sell live animals to national parks. A number of natural resources, such as crocodile eggs, caterpillars, river sand and timber, are harvested and sold by local communities. Skins and ivory may be sold from "problem animals" (who may be killed legally). In good years, money is used by the general community for building and equipping clinics and schools, constructing fences, drilling wells, building roads, paying guides and funding local sports teams. In bad years, such as during a drought, the money is given directly to the local people or used for buying maize and other foodstuffs.<sup>13</sup>

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<sup>12</sup> [www.unep-wcmc.org/protected\\_areas/](http://www.unep-wcmc.org/protected_areas/)

<sup>13</sup> From [www.fao.org/docrep/W7314E/w7314eoa.htm](http://www.fao.org/docrep/W7314E/w7314eoa.htm) and [www.globaleye.org.uk/archive/summer2k/focuson/mars\\_pt1.html](http://www.globaleye.org.uk/archive/summer2k/focuson/mars_pt1.html). For further information, please see Frost and Bond (2008), pp. 776–787.

## 9.1 Types of rights and tenure systems

Protected areas designated by the government: The United Nations Environment Programme World Conservation Monitoring Centre now lists more than 102,000 terrestrial and marine sites covering nearly 19 million square kilometres – almost 4 per cent of the Earth.<sup>14</sup> A much smaller proportion of the world's seas (barely one percent) are protected. The level of restriction to an area may vary considerably (see Box 6), and the zoning of an area into a complex of different regulatory categories is common. Officially protected areas may be designated at various levels, from local governments up to globally recognised areas, such as World Heritage Sites (under UNESCO). In most developing countries, where land is generally considered public, there are no landowners to formally compensate (see below). The right to enjoy the aesthetic and educational values of protected areas is probably the most obvious benefit. In many countries (e.g. Tanzania), tourists pay far higher entrance fees than nationals and/or local communities do.

### 9.1.1 Collective rights

Particularly in Latin America (but also elsewhere) large areas, often with very high conservation value, have been designated and recognised as traditional territories of indigenous peoples. In many cases, this has meant that external pressures (logging, in-migrating farmers converting the land) have been substantially reduced and consequently, the areas are better and more sustainably managed, from a conservation perspective as well.

### 9.1.2 Private wildlife sanctuaries and hunting areas

A less common, but increasing type of protected areas is private wildlife sanctuaries, where land owners (or private companies given a concession to the land) manage the land as a conservation business and/or hunting area. This, for example, is found in several countries in Africa, see Boxes 5 and 6.

### 9.1.3 Common property

As chapter 8 on forests shows, local communities are managing and conserving considerable areas in a sustainable manner outside the formal, protected area system. This significantly contributes to actual protected area coverage worldwide. Co-management, or community-based management, is also increasingly discussed and practised in relation to officially protected areas, both as a means of achieving more effective and efficient conservation and of ensuring that both benefits and costs of protected areas are

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<sup>14</sup> [www.unep.org/OurPlanet/imgversn/142/images/Our\\_Planet\\_14.2\\_english.pdf](http://www.unep.org/OurPlanet/imgversn/142/images/Our_Planet_14.2_english.pdf).

shared more transparently and fairly with those most directly affected. Community wildlife trusts are emerging in many countries.

## 9.2 Key international processes

### 9.2.1 Protected areas

Protected areas (PAs) are discussed in a number of international arenas, including the Convention on Biological Diversity (CBD) (Article 8) that calls on contracting parties to develop systems of protected areas. Designation as a *United Nations Educational, Scientific and Cultural Organisation World Heritage Site* provides the strongest legal status. The need to expand marine areas, including in areas outside national jurisdiction, is currently a heatedly debated topic.

Many large NGOs and private foundations (e.g. Conservation International, Nature Conservancy, WWF) are successfully raising funds for PA work and undertaking advocacy to increase general attention and commitment to conservation. The European Union, in its prioritisation of biodiversity-related work, pays considerable attention to PAs, both within Europe (through the Natura 2000 network) and internationally, and there is strong lobbying for increased funding for PAs from EU's ODA.

### 9.2.2 Endangered species

CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments, aimed at ensuring that international trade in wild animals and plant specimens does not threaten their survival. Today, it accords varying degrees of protection to more than 30,000 animal and plant species, whether traded as live specimens, fur coats or dried herbs.

## 9.3 Protected areas and wildlife: particular issues and areas of debate

There are a number of important issues and debates strongly linked to tenure (rights, access, control and benefit-sharing) that are related to PAs and wildlife management.

### 9.3.1 Do protected areas marginalise local communities?

The distribution of costs and benefits of PAs largely tends not to favour local communities and indigenous peoples. The exclusion from access and use, sometimes coupled with resettlement, means that local communities – due to loss of land, income opportunities and cultural identity – often pay a very high cost when PAs are established. At the same time, benefits

are, in most cases, captured largely by the government (entrance fees, hunting licences etc.) and or larger tourist companies (hotels, package tours) with local benefits often being more marginal.

Promoting eco-tourism and various benefit-sharing arrangements (revenues from fees, etc.) with local communities are very relevant options, but unfortunately, seem in many cases to be more rhetorical than actual.

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**Box 6. Private and community conservancies in Namibia: co-managing land for game farming and wildlife-related livelihoods**

About 75 percent of Namibia's wildlife lies outside formally state-run protected areas. Private farms have developed a multi-million Euro industry, based on consumptive and non-consumptive uses of wildlife. However, individual farm units are not large enough for successful game farming, which requires large areas that take opportunistic advantage of pasture growth and water supply in arid and unpredictable environments.

Mobility and flexibility are the keys to survival. Private farmers soon realised the advantages of pooling their land and resources to manage wildlife collectively, and established "conservancies" with common operating rules, management plans and criteria for the distribution of income derived from wildlife. There are now at least 24 conservancies on private land in Namibia (compared to only twelve in 1998) covering an area of close to four million hectares. Efficiency of scale means that their returns are more than twice those of individual wildlife ranches. Namibian communities have followed suit. There are now also 15 "community conservancies" in Namibia, managing another 4 million hectares of land, with more than 200,000 wild animals, including endangered black rhino, endemic species such as Hartmann's Mountain Zebra and large parts of Namibia's elephant population.<sup>15</sup> Important habitats managed by community conservancies include the western escarpment of the central plateau – a major centre of endemism, seasonal and permanent wetlands, northern broad-leaved woodlands and west-flowing rivers, which form linear oases in the Namib Desert. Several community conservancies have set some of their land aside as core wildlife and tourism areas within broader land use plans, and wildlife has been reintroduced to at least three such conservancies. Torra, a community conservancy with more than 350,000 ha in north-western Namibia, has one up-market tourism lodge that generates about EUR 50,000 annually. Trophy hunting is worth nearly EUR 18,000 annually and a recent sale of Springbok raised EUR 13,000. The size of the conservancy means that it could certainly develop two more lodges without causing environmental damage or spoiling the wilderness experience for tourists. This would more than double existing income, making considerably more money available to the 120 households living in the region.

Source: adapted from Jones and Weaver, 2003; see also footnote 15.

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<sup>15</sup> As of March 2006, there were 44 conservancies covering 7.8 million hectares of desert, savannah, and woodlands. (Source: Shigwedha, A: Four new conservancies launched. *Namibia*, March 1, 2006 at [www.namibian.com.na/2006/March/national/o6A1A484E.html](http://www.namibian.com.na/2006/March/national/o6A1A484E.html)).

**9.3.2 Is strengthening collective and/or common property rights a solution?**

Two (partially linked, partially different) debates and developments regarding local access and local involvement in decision-making are relevant: collective rights and community-based management.

Recognition of collective rights over ancestral territories (including in protected areas) is a consistent demand and request by indigenous peoples in a number of national, regional and international arenas (including the Convention of Biological Diversity and the UN Permanent Forum on Indigenous Issues) and a source of heated debate.

There is also increasing, worldwide attention on the potential of collaborative and/or community-based (common property resource) management and formal protected areas as a way of ensuring both benefit sharing with local communities and improved conservation. This, however, is not uncontested.

## Genetic resources

### CHAPTER 10

Genetic resources refer to genetic material of plants, animals or micro-organisms of value as a resource for future generations of humanity (UN, 1997). The concept includes wild as well as domesticated species.

Throughout human history 40,000 to 100,000 plant species have been regularly used for food, fibres, industrial, cultural and medicinal purposes. The genetic resources of plants and animals are crucial in order to feed the world's population. They are the raw material that farmers and plant breeders use to improve the quality and productivity of their crops. However, global food security has become increasingly dependent on only a handful of crops. Over 50 percent of the global requirement for proteins and calories are nowadays met by just three plants – maize, wheat and rice. Only 150 crops are traded on a significant global scale. Yet surveys indicate there are still over 7,000 plant species across the world that are cultivated or harvested from the wild for food (Bioversity International).<sup>16</sup> Additionally, wild and semi-domesticated diversity in and around farmers' fields as well as, for example, in forests contributes to food security. Medicinal plants have been used by mankind for millennia; their use is as old as humanity itself. Currently, it is estimated that the number of higher plant species used worldwide for medicinal purposes is more than 50,000 (Hawkins, 2008.)

*Farm animal diversity* refers to the approximately 40 species of animals (including approximately 10,000 breeds or strains) that have been domesticated or semi-domesticated over the past 12,000 years, contributing to agricultural production. Animal diversity also covers aquatic animals (Bioversity International, website).

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<sup>16</sup> [www.bioversityinternational.org/](http://www.bioversityinternational.org/)



Wild genetic resources, including any associated traditional knowledge commonly used by many indigenous peoples and local communities, also remain important resources in research and technological development, and are systematically collected and studied for many different purposes.

Developing countries are the main source of genetic diversity – both wild and domesticated – on earth and thus providers of much raw material, whereas most large-scale, industrial enterprises based on use and development of genetic resources (pharmaceutical, seed companies, cosmetics, etc.) are based in developed countries.

Rights relating to genetic resources are a specific case within biodiversity in its broader sense, and are also strongly associated with rights to land. However, considerable erosion of genetic diversity has taken, and is taking, place. Related to agricultural crops and breeds, erosion is mainly due to modern industrial agriculture through the replacement of local varieties by improved or exotic varieties. The decline in genetic diversity makes crops more vulnerable to pests and diseases as well as climatic variation, and has serious implications for the long-term sustainability of the food system. The emerging reality of climate change has shone a new light on the particular value of agrobiodiversity for adaptation and decreasing vulnerability related to new climatic conditions in agricultural systems (FAO, 2008A). Related to wild genetic resources, the erosion of diversity is closely linked to the loss of ecosystems and habitats.

### **10.1 Genetic resources: types of rights and tenure systems**

Genetic resources were traditionally regarded as “a common heritage of mankind,” with open access for everybody to use and develop. Farmers were freely allowed to use, save, reuse, exchange and sell plant material. Researchers had free access to collect specimens. However, when genetic material increasingly became patented or subject to other intellectual property rights (IPRs), developing countries responded by arguing that genetic resources should be subject to national sovereignty in order to create a formalised basis for benefit-sharing linked to these resources (Safrin, 2004). This became the starting point for the current landscape of negotiations with polarised position, where the key question remain the same; who has the right to, and control over, the genetic resources of the Earth and thus may gain from its actual and potential value? This question does not only contain the challenge of balancing interests between the developed and the developing world, but also between different cultures and different norms of how to share values in ways other than by individual/private rights that is nowadays the standard of northern industrialised cultures.

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**Box 7. Farmers Rights in Practice: Examples from the Community Biodiversity Development and Conservation Network in South-East Asia**

*The Community Biodiversity Development and Conservation and Biodiversity Use and Conservation in Asia Programme (CBDC-BUCAP)* is implemented by the regional organisation SEARICE. In this programme, farmers in Thailand, Vietnam, Lao PDR, Bhutan and the Philippines are undertaking rice breeding and selection in collaboration with scientists. This participatory plant breeding has yielded farmer-developed varieties that are both popular in taste and structure (red, sticky, aromatic) and suitable for acid sulphate soil, alkaline soil, prime irrigated areas and marginal uplands – and many other beneficial results.

As another example; in Vietnam, local authorities are supporting farmers in their efforts to access broader markets. By law, farmers cannot trade or sell seed across province borders if the seed is not certified. Government authorities in the CBDC project areas include farmer-developed seed in their formal distribution system. This is possible largely because of the expanding use and popularity of farmer-developed seeds. In other cases, local authorities issue local certification to enable localised trading and exchange.

From the governments, this is part of the preparation for the opening up of the rice industry (and seed sector) to liberalised trade. By strengthening farmers' capacities to conserve, develop, exchange and sell their seeds, they will have access to well-functioning and efficient alternatives that are adapted to local conditions when the market opens up, and they will at least be able to secure their own seed needs.

In the policy arena, the articulation of farmers' rights varies with the political-economic context in each country. In the Philippines, farmers have set up community registry systems as part of their political expression against the National Plant Variety Protection Act, which they feel impedes farmers' rights. The idea is to put the information in the public domain with an explicit declaration that no intellectual property rights will be applied to these materials, derivatives or associated knowledge.

Despite these successes, and despite the formal recognition of farmers' rights enshrined in the International Treaty on Plant Genetic Resources for Food and Agriculture, there is general concern among stakeholders that farmers' rights are threatened by introduction of seed laws and certification systems that are designed for industrialised countries. The global seed industry is not well adapted to local realities in developing countries. International developments through e.g. demands from industrialised country negotiations of Free Trade Agreements are unfavourable. Most national policies (seed laws and plant variety protection laws) failed to consider farmers' rights when they were drafted. There is thus agreement between many stakeholders internationally on the need to raise awareness and protect farmers' rights.

*Source:* Southeast Asia Regional Initiatives for Community Empowerment, SEARICE, [www.searice.org.ph/](http://www.searice.org.ph/). See also Farmers Rights Project: Resource pages for decision-makers and practitioners, [www.farmersrights.org](http://www.farmersrights.org).

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Some important perspectives in this regard are:

- *Individual/private rights*: Patents and other intellectual property rights: applying patents to living organisms as such has only very recently been allowed in most developed countries. Starting in the US in the 1980s, it is still a heated area of debate. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), countries are required to apply some form of protection, either through patents or a sui generis system for plant varieties.<sup>17</sup> However plants and animals, and essentially the biological processes that produce them (except for micro-organisms), may be excluded from patentability. Under bilateral trade agreements (mainly initiated by the US and partly by the EU), developing countries may be asked to implement “TRIPS plus” provisions that extend intellectual property rights further into a wider area of protectable matter than do “standard” TRIPS requirements (Tansey and Rajotte, 2008).

The International Union for the Protection of New Varieties of Plants (UPOV; from 1961, last updated 1991) aims to protect the rights of plant breeders and encourage breeders to develop new plant varieties.

The UN World Intellectual Property Organisation’s (WIPO) Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore (IGC) was established by the WIPO General Assembly in October 2000 as an international forum for debate, dialogue and negotiations concerning the interplay between intellectual property, traditional knowledge, genetic resources and traditional cultural expression.

- *National sovereignty*: national sovereignty over biological resources was a key demand from developing countries when the Convention on Biological Diversity (CBD) was negotiated. The concept constitutes one of the basic premises of the CBD (ratified in 1993). In the CBD, a “genetic resource” is defined as “genetic material of actual or potential value.”

Based on the CBD, at least 40 developing countries (Andersen, 2008) have or are in the process of introducing access and benefit sharing legislation related to genetic resources and associated knowledge, no longer making it possi-

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<sup>17</sup> Sui generis is a (post) Latin expression, literally meaning ‘of its own kind’/‘genus’ or ‘unique in its characteristics’.

ble to freely collect genetic resources. Voluntary guidelines on Access and Benefit Sharing, the Bonn Guidelines were adopted by the 6th Conference of the Parties to the CBD in 2002. A protocol under the CBD for an international regime on Access and Benefit Sharing (ABS) is presently under negotiation, with the aim of finalisation by 2010. It is expected that the protocol will form a basis for the harmonisation of ABS regulations, thus providing for facilitating access, as well as benefit sharing, deals.

- *A global “tenure regime” for food crops:* recognising that open exchange of plant material and research on crop development is critical to improving the quality and productivity of crops, and that this depends on international cooperation (since all countries depend on crops and the genetic diversity within these crops from other countries and regions), the FAO Conference adopted the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) in 2001. The Treaty aims to ensure the continued availability of plant genetic resources that countries will need to feed their people. Through it, countries have agreed to establish a multilateral system that applies to 64 major crops and forages in order to facilitate access to plant genetic resources for food and agriculture, and to share benefits in a fair and equitable manner.
- *Common property – Farmers’ rights:* the traditional rights of farmers to save, reuse, exchange and sell seed from their own harvests is a crucial aspect of poverty reduction and rights. These rights are enshrined in the concept of *farmers’ rights*, as recognition of farmers’ collective efforts in plant breeding throughout the millennia. These efforts have created the current diversity and varieties of crops. Furthermore, farmers’ rights are still the backbone of food security for many small-scale farmers in developing countries, as saving their own seed, enhancing the crops through their own selection and exchanging seeds with other farmers remain the main seed source for many poor farmers (Andersen, 2008).

*Farmers’ rights* are officially recognised in the FAO-ITPGRFA, although actual interpretation is left to national legislation. For further information, see Farmers Rights Project Resource pages for decision makers and practitioners.<sup>18</sup>

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18 [www.farmersrights.org/](http://www.farmersrights.org/)

In implementing obligations under TRIPS, developing countries may choose to introduce an alternative *sui generis* system to protect plant varieties and farmers' rights. In the International Union for the Protection of New Varieties of Plants, UPOV's latest update from 1991, farm-saved seed is no longer automatically allowed. However, as an optional exception, a government may legalise seed saving for the farmer's own use (Tansey and Rajotte, 2008).

## 10.2 Genetic resources: particular issues and areas of debate

### 10.2.1 Access & Benefit Sharing and Intellectual Property Rights

The issue of “tenure” (or “Access and Benefit Sharing, ABS” and “Intellectual Property Rights, IPR” as the more common terminology is in this context) related to genetic resources and associated knowledge is dealt with in several overlapping international fora and processes (such as the WTO-TRIPS, the CBD<sup>19</sup>, WIPO-IGC, and the UN Permanent Forum on Indigenous Issues, to name a few of the debate's main arenas). The issues are complex and include many stakeholders with different interests; formal parties, such as developed and developing countries, as well as other key stakeholders. These include industry, scientific institutions, development and environmental NGOs, and representatives from indigenous and local communities. As negotiations are ongoing in several arenas, it is difficult to obtain a full overview and progress is slow. Thus, this cluster of negotiations creates confusion and overlapping work. Some of the issues under debate include:

- Industry and breeders lobby for strong property rights regimes to be maintained and further developed, and for as free access as possible for bioprospecting.
- Developing countries are pushing for a legally-binding international Access and Benefit Sharing regime and a mandatory system of disclosure of origin in patent applications.
- Indigenous peoples and local communities are largely against the notion of “patents on life” and in favour of acknowledgement of their rights as holders of traditional knowledge.
- Researchers are experiencing increasing restrictions in accessing genetic material and associated knowledge from Intellectual Property Rights systems, as well as national Access and Benefit Sharing regulations.

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<sup>19</sup> The CBD Ad Hoc Open-Ended Working Group on Access and Benefit Sharing.

### **10.2.2 Rights of indigenous and local communities**

Farmers and local communities are key knowledge holders of genetic resources and are seriously affected by the international and national legal frameworks that regulate access, use and benefit sharing related to genetic resources. The interests and priorities of indigenous and local communities may, in many cases, also differ from both state and private interests.

There are also growing concerns that farmers' rights are under threat, and that this will affect food security. Most national policies (seed laws and plant variety protection laws) failed to pay proper attention to securing farmers' rights when drafted due to pressure from the seed industry and even industrialised countries negotiating bilateral agreements with developing countries.

## **10.3 Increased corporate control, weakened public systems and access to genetic resources**

### **10.3.1 Resources for research**

Loss of genetic diversity as well as the expansion of property rights regulating genetic resources and related knowledge has been accompanied by a rapid concentration of the seed industry, where a handful of transnational companies control an increasing part of daily global seed production and distribution.

Another important, and interrelated, factor is the public sector's abdication of involvement in plant breeding and providing certified seed. In many countries, and particularly in Africa, the public seed supply system has been weakened resulting in severe effects for farmers and highlighting the importance and role of farmers' traditional right to save, reuse, exchange and sell seeds from their own harvests.

Another important issue is the procedures surrounding access to genetic resources faced by many researchers at national and international levels as a consequence of national access legislation and intellectual property regulations. The International Treaty on Plant Genetic Resources for Food and Agriculture is, in this respect, an important initiative that aims to facilitate access to genetic resources for food and agriculture. The Consultative Group on International Agricultural Research (CGIAR) also strives to negotiate new private/public partnerships as a means to accessing proprietary technologies for public use through segmented markets, humanitarian use etc. It is also expected that the protocol for an international regime on Access and Benefit Sharing, presently under negotiation under the Convention on Biological Diversity, will contribute to harmonisation in this area.

### 10.3.2 Biopiracy and misappropriation of genetic resources

Biopiracy refers to the appropriation of genetic resources and the related traditional knowledge of farming and indigenous communities by individuals or institutions who seek exclusive monopoly control (patents or intellectual property) over these resources and knowledge, without proper agreements with its developers (concerning domesticated materials), and/or without proper consent by relevant indigenous and local communities and government authorities as mandated by the Convention on Biological Diversity (mainly concerning wild material), (Byström and Einarsson, 2000). A legally related term is “misappropriation of genetic resources”. The ongoing CBD negotiations on an international regime for access and benefit sharing are still considering how internationally agreed definitions of misappropriation and misuse of genetic resources and associated traditional knowledge could support compliance where genetic resources have been accessed or used in circumvention of national legislation or without the setting up of mutually agreed terms.<sup>20</sup>

Two key issues:

- The information that examiners are required to consider when checking for novelty. For example under us patent law there is, in principle, no requirement to check non-written sources outside the us. This means that traditional use anywhere else in the world that is not documented in writing does not formally constitute prior art.<sup>21</sup>
- The drawing of the boundary between invention and discovery, especially when the subject matter of a patent is a biological substance found in nature, such as a DNA sequence or a cell line This dividing line tends to be blurred. A number of biopiracy cases involve this type of material, collected from developing countries and subsequently patented in developed countries.

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<sup>20</sup> See [www.cbd.int/abs](http://www.cbd.int/abs)

<sup>21</sup> *Prior art* in most systems of patent law constitutes all information that has been made available to the public in any form before a given date that might be relevant to a patent's claims of originality.

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**Box 8. The case of the Enola bean**

The Enola bean patent (US patent number 5,894,079) was issued in 1999. Proctor, the patent holder, originally bought a bag of commercial beans in Mexico, planted them in Colorado [US], and carried out several years of selection. Not long after that, and supported by a US patent and a plant breeder's rights certificate, Proctor claimed that Mexican farmers were infringing on his monopoly by selling yellow beans in the US. Shipments of yellow beans were stopped at the Mexican-US border, and Mexican farmers lost a good market. Proctor also filed lawsuits against seed companies and farmers in the US, claiming that they infringed on his monopoly rights for selling or growing yellow beans from Mexico.

The patented Enola bean is genetically identical to a pre-existing Mexican bean variety that has traditionally been bred and developed by indigenous peoples in Mexico, but which has also been cultivated in the US.

The NGO ETC Group discovered the Enola bean patent in 1999 and demanded that the patent should be legally challenged and revoked. FAO and the Consultative Group on International Agricultural Research (CGIAR) investigated the patent as a likely violation of their 1994 trust agreement that obliges them to keep designated crop germplasm in the public domain and off limits to intellectual property claims. As a result, the Colombia-based International Center for Tropical Agriculture (CIAT; a CGIAR Institute), with support from FAO, filed an official challenge of the Enola bean patent at the US Patent and Trademark Office (PTO) in 2000.

In 2005, the US-PTO released its "final rejection" of all 64 claims of the patent. However, Proctor was given a six-month period to prepare and file a request to extend the re-examination period. In October 2005, Proctor filed the request and won a three-month reprieve. US-PTO thereafter issued another "final" rejection in response to Proctor's amendments at the end of 2005. Proctor filed one more extension after this. Finally, 29 April 2008 US-PTO's Board of Patent Appeals affirmed the patent examiner's decision regarding the rejection of all standing claims in the Patent. Still though, Will Larry Proctor had an option to appeal through the U.S. Federal Court system.

The final PTO's decision to reject the Enola bean patent could, of course, be regarded as a victory. However in essence, the U.S. patent system allowed the owner of an unjust patent to legally monopolise markets and destroy competition for close to half the 20-year patent term. Mexican and U.S. farmers who suffered as a result of the unjust monopoly will never be compensated for their losses. Patent law has no mechanism to compensate farmers and indigenous peoples who are victimised by predatory patent abuses.

Source: ETC Group webpage, [www.etcgroup.org](http://www.etcgroup.org)

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## 10.4 Biotechnology and GMOs

Agrobiotechnology, broadly defined, refers to any technique that uses living organisms or substances from these organisms to analyse and modify plants, animals and organic products, and to produce new ones. Whereas most biotechnologies are commonly used and well accepted, intense debates are underway, with polarised opinions, both in the industrialised and developing world about the balance between the risks and benefits associated with the introduction of genetic engineering and GM crops. A common concern related to “tenure” and shared between many proponents and those doubting the use of GM crops, is linked to the control and ownership of genetic resources. There are particular concerns relating to GM crops, as virtually all GM crops on the market are patented, and farmers (subject to national legislation) may not be allowed to save the seed. The germ plasm will even be restricted for breeding by other breeders.

GM technology per se could also be applicable as a means of “inbuilt patenting” in seeds. The Genetic Use Restriction Technologies (GURTs) is a term used to describe different forms of controlling the action of genes in plants. A specific case of this is the so called v-GURTs – better known as Terminator Technology – that results in seed sterility, with the main objective being to discourage farmers from saving their seed (Tansey and Rajotte, 2008). Such technology, which explicitly limits farmers’ access to, and control over, seed could have severe implications for food security if the technology is generally used in developing countries, or sterile seed is sowed by accident, for example after being distributed for purposes such as food aid.

## 10.5 Animal genetic resources

Animal genetic diversity (compared to crop genetic diversity) has received very little attention. After the adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture by FAO member states (see above) however, a similar process was initiated for animal genetic resources. The State of the World’s Animal Genetic Resources for Food and Agriculture identified significant gaps in capacity to manage animal genetic resources, particularly in developing countries. In response, the international community adopted the Global Plan of Action for Animal Genetic Resources (GPA) at the International Technical Conference on Animal Genetic Resources for Food and Agriculture in September 2007. Some particular tenure-related concerns regarding animal genetic resources include:

Restrictions regarding traditional grazing activities of pastoralists, resulting from the conversion of land use (e.g. establishment of protected areas, biofuel cultivation, land-grabbing, settlement of pastoralists, etc.), means that many pastoralists give up keeping animals which, in turn, threatens the survival of many unique livestock breeds (see chapter 7 on Rangelands).

The right to keep animals is jeopardised in the wake of pandemics, and especially Avian Influenza. In many countries, small-scale poultry keepers are not allowed to keep their traditional poultry in the vicinity of industrial chicken complexes, and in outbreaks of Avian Flu culling of the birds of small scale poultry keepers is regularly carried out with or without limited rates of compensation to the already poor farmers (FAO, 2008B, GRAIN 2008)<sup>22</sup>. Biosecurity requirements eliminate small farmers from the livestock business. The right to sell animals and their products across national boundaries has also become more limited, due to sometimes inappropriate animal hygiene regulations. Developing countries are being forced out of international markets and the major players are entering.

The right of livestock keepers to use and develop their own breeding stock and breeding practices may also be increasingly limited in the future by patenting. As a response, the concept of Livestock Keepers' Rights is gradually being articulated and gaining international acceptance.

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<sup>22</sup> [www.grain.org/birdflu/](http://www.grain.org/birdflu/) – a resource page on bird flu and their impact on small-scale farmers.

# Petroleum and minerals

## CHAPTER 11

Many developing countries are heavily dependent on income from various sorts of high-value, extractive industries such as petroleum and mining. These commodities are often politically sensitive and require very large investments. Extracting operations are often associated with social and environmental impact, including the expropriation of land and other resources. Appropriate arrangements are needed to maximise the benefits and minimise the costs of these operations for local resource users.

In most countries, ownership of these resources is vested in the state. Countries with such resources may lack the capital and technology to exploit them and therefore need foreign direct investments. Resource development is normally undertaken by private operators – often foreign multinational companies – on the basis of agreements or licences with the state. If appropriate conditions are not in place, investments based on natural resources may undermine the ability of local communities to access the resources on which they depend for their survival. This may take the form of expropriation of community lands without adequate compensation. Investors may also be granted exploitation rights that severely affect the ability of the local community to use the resources. The balance of bargaining power between local resource users and outside investors may be even more profoundly affected by the involvement of foreign capital in capital-poor countries.

Many developing countries have provided special guarantees for foreign investment through signing investment treaties, passing domestic, investor-friendly reforms and establishing specialised governmental agencies. In some cases, the state has ceded important sovereign powers and economic rights to private operators, virtually creating a state within the state.

Extraction operations often lack transparency in the flow of revenues from oil and mining companies to developing countries. This may conceal gross corruption and waste of these resources, contributing to political instability and even violent upheaval.

Initiatives such as the Kimberley Process, which aims to prevent diamond resources from being used to fund conflict activities, and the Extractive Industries Transparency Initiative (EITI), which aims to increase the transparency of payments and revenues in the extractive sectors, are two examples of recent positive developments.

# Global development agendas

## CHAPTER 12

A more comprehensive approach to development cooperation has emerged as a result of the lessons learned over the last 50 years. The international development community is putting together a coordinated and focused response, mustering the political will and establishing the frameworks and mechanisms for the organisation of a more effective assault on poverty.

It is an approach characterised by a set of key principles for effective development, and their embodiment in more programmatic approaches to delivering development assistance. The recently established global development agenda falls back on long-standing international conventions. These are legally binding undertakings by the countries that have ratified them.

Donors recognise that global development agendas play a crucial part in reducing poverty and encouraging progress in the developing world. As a result, donors have made these agendas the main focus of all of their work. Below, a short description is presented.

### **12.1 The Millennium Development Goals**

The Millennium Development Goals form one important element in the emerging consensus on development cooperation. The eight Millennium Development Goals (MDGs) were agreed at the United Nations Millennium Summit in September 2000 and nearly 190 countries have subsequently signed them. The goals include reducing global poverty and hunger by half, protecting the environment, improving health and sanitation and tackling illiteracy and discrimination against women. They were introduced as part of a wider attempt by the United Nations member states to encourage the international community to stop talking about making a

difference in the developing world and start doing something about it by joining forces.

Alongside the goals, a series of 18 targets were also drawn up to give the international community a number of tangible improvements to aim for within a fixed period of time, and make it easier for them to measure their ongoing progress. The intention is to achieve nearly all of these targets by 2015 (UN Millennium Project, 2005). There are targets and indicators specifically related to natural resource tenure, see Annex 1.

In addition to the Millennium Declaration, a number of other international arrangements and commitments have been established. Combined, these commitments are frequently referred to as the Aid Effectiveness Agenda. These commitments now constitute an international agreement not only on what is to be done in order to combat worldwide poverty and promote global development, but also how it should be done. Other international arrangements include:

- 2002 Johannesburg Summit
- 2002 Monterey Consensus
- 2003 Rome Forum on Harmonisation
- 2004 Marrakech Memorandum on Management for Development Results
- 2005 Paris High Level Forum on Aid Effectiveness, resulting in the Paris Declaration

## **12.2 The Paris Declaration on Aid Effectiveness**

Providing more effective aid and increasing its impact on development is one important contribution to reducing global poverty by half by 2015. With this belief, the “Paris Declaration on Aid Effectiveness: Ownership, Harmonisation, Alignment, Results and Mutual Accountability”, was developed. Approximately 90 countries and 27 development institutions attending the high-level forum, held in Paris 28 February–2 March, 2005, adopted the Declaration (OECD/DAC, 2005B).

The Declaration contains around 50 commitments to improving the quality of aid, which will be monitored by 12 quantitative indicators of progress. Targets, set for each of the indicators for 2010, involve action by donors and partner countries to help track and encourage progress in implementing these commitments.

Key principles for enhancing aid effectiveness are as follows:

- Partner countries own and exercise leadership over their development policies,
- Donors align their overall support with partner countries' national development strategies,
- Donor actions are more harmonised, transparent and collectively effective,
- Resource management and decision making are more results-orientated,
- Donors and partners are accountable for development results.

### **12.3 The OECD/DAC Guidelines for Poverty Reduction**

The Development Assistance Committee, DAC Informal Network on Poverty, in consultation with other international partners (the World Bank, the International Monetary Fund and the United Nations Development Programme) has produced detailed guidelines on poverty reduction intended to help donors mainstream poverty reduction throughout agency operations, and turn policy into practice (OECD/DAC, 2001A). The guidelines represent an emerging international consensus and a shared commitment and understanding of how to work together more effectively and efficiently to help developing country partners reduce poverty.

The guidelines outline a set of ten priorities for policy coherence, including increasing the power of developing countries in international arenas, the need to address the role of twelve or so arms-exporting countries involved in a trade worth about USD 10 billion and the need to implement the Marrakech Declaration on the differential treatment of food and agriculture for the least developed countries and net-food-importing developing countries.

### **12.4 Promoting pro-poor growth in agriculture (OECD/DAC)**

This policy guidance for donors considers agriculture's changing landscape and identifies a new agriculture agenda for enabling pro-poor growth (OECD/DAC, 2006). It recognises new challenges, such as HIV/AIDS, natural resource degradation, global competition, demographic change and migration as well as new opportunities through spatial and occupational diversity. Furthermore, it identifies the key priorities for action on the new agenda: enhancing sector productivity and market opportunities, promoting diversified livelihoods and reducing risk and

vulnerability. Against this background, donors will need to work effectively with their partners to promote sustainable, country-driven and programme-based development that recognises the importance of agriculture to pro-poor growth.

### **12.5 The DAC Guidelines on Conflict, Peace and Development Cooperation**

The publication (OECD 2001) presents the full range of DAC guidance on conflict prevention in one volume. Part I, *Helping Prevent Violent Conflict: Orientations for External Partners* (OECD/DAC 2001B) includes the 2001 ministerial statement and supplement. Part II, *Conflict, Peace and Development Co-operation on the Threshold of the 21st Century* comprises the first policy statement and guidelines (OECD/DAC 1997).

The guidelines can be used to help donors in their work with countries involved in conflict and with their own government counterparts in other ministries. They can also lend support to the international community as they strive to coordinate aid and assistance and provide guidance to partners in governments, civil society organisations and businesses in developing countries.

### **12.6 The EU Land Policy Guidelines**

The EU member states, recognising the importance of resource access to economic, social and political stability, commissioned the policy and operational EU Land Policy Guidelines 2004, through the EU heads of Rural Development and a task force of member states and commission experts. The guidelines are intended for EU donors supporting interventions in rural land policy and administration and are divided into two parts. Part I is the policy framework and Part II encompasses operational guidelines. Part I includes “What is land policy and why does it matter?” This discusses links between land policy and other major policy areas (e.g. poverty reduction, gender equality, conflict, governance, environment) and elements of a land policy programme. It also covers central issues for the design of land policy and land reforms (e.g. securing rights, titling, redistribution, key principles) and the implementation of land policies, including the role of different stakeholders. Part II includes a situational analysis, policy framework and opportunities for change, sustainability, monitoring and evaluation. The EU policy guidelines focus mainly on rural land and its relationship to agricultural and rural development and economic growth. The vital issues of urban land, forests, water, wetlands/coastal



resources, grassland, protected areas and wildlife, and genetic resources are not addressed.

## 12.7 Key development actors

There has been considerable movement concerning land issues by official development agencies in recent years. Policies and approaches have evolved and there is now greater recognition among donors of the importance of addressing land and resource issues. In addition to the European Union, the Food and Agriculture Organisation (FAO) and the International Fund for Agricultural Development (IFAD), the most active donors include the United Nations Development Programme (UNDP), the United Nations Human Settlements Programme (UN-HABITAT), USAID and the World Bank. Other donors, such as the Canadian International Development Agency (CIDA), the UK Department for International Development (DFID), the German Technical Cooperation (GTZ), the Norwegian Agency for Development Cooperation, (NORAD) and the Swedish International Development Cooperation Agency (Sida) are also active regarding these issues.

Natural resource tenure issues are on the donor agenda, not only because of the coexistence of the landless/resource poor and inefficient, large landholdings in dualistic systems, but also because of the enormous influence of prospects for sustainable management of natural resources. As resource tenure reform is extremely costly and complex in political, legal and production terms, donor support to natural resource tenure reform may be of importance. Growing recognition among donors is reflected in a number of recent multilateral and bilateral donor rural strategy documents that urge the donor community to do more and not avoid this fundamental issue simply because of its controversial nature.

## Summary and conclusions

While natural resource tenure includes rights over land, it encompasses other natural resources as well. The property may be farm land, grazing land, forest land, a river, a fishery, wildlife or some other resource, including minerals. Each of these resources has particular physical qualities and technical constraints concerning its use, yet it fits into an integrated ecosystem. The above assessment has shown that natural resource tenure is inherently complex. Incomplete understanding, and ignorance or disregard for fundamental complexities, may lead to erroneous policy prescriptions and ultimately, to conflict about these resources.

Given their fundamental complexities, blanket prescriptions and approaches to natural resource reform are destined to fail and, again, lead to conflict. A more country-grounded approach to analysis of major resource tenure policy issues and strategically focused interventions is needed. Beyond generic principles, there are no universally applicable approaches or solutions. Titling and the formalisation of land rights may be important in specific urban, peri-urban and other high population areas, especially where land markets are active and where titles already are a dominant form of tenure and in demand by the poor. Tenure formalisation processes require careful prioritisation and integration into local contexts. No single tenure option can solve all the problems. Policies on land as well as tenure and property rights can reconcile social and economic needs by encouraging a diverse range of options, adapting and expanding existing systems when possible, and introducing new ones selectively.

The complexity of natural resource tenure reform requires an integrated approach. Lack of appropriate information and coordination among government departments can lead to different institutions issuing concessions and rights to the same piece of land, most likely without consulting the local people whose ancestral territory and livelihoods might be

affected. With better administrative systems in place – including procedures for integrated planning as well as participatory, environmental and social impact assessments – “messy” situations could be prevented.

Failure to meaningfully consult and include full and informed participation of communities whose resources, livelihoods and cultural identities might be affected by the outcomes of decision-making – whether through policies or projects – is a key catalyst for conflict. There is increasing recognition that centralised, top-down decision making about land and natural resources not only creates social conflict but also fails to take into consideration local knowledge that could help avert ecological disaster.

It is important to ensure that the policies and practices in resource administration for operations at the country level will fully incorporate the principles of subsidiarity – decentralised recognition of customary tenure and the governance of the commons – as opposed to the continuation of technically-driven programmes for systematic registration and titling.

The balance has decisively shifted in favour of legal recognition and positive treatment of customary tenure arrangements. However, a more nuanced understanding of customary tenure is needed. In addition to legal recognition, customary rights need to be supported by institutional arrangements involving customary authorities and local democratic structures backed and regulated by the state.

The importance of secure communal property rights and access (e.g. rangelands and forest resources, protected areas and biodiversity) needs to be stressed because of the significance of the commons for livelihoods, food security, vulnerable groups and environmental quality. Land policy and land administration systems must cater to the commons and provide for decentralised governance through the recognition of group and multi-stakeholder rights and management arrangements.

Given the importance of natural resources for economic and social development, good governance, environmental sustainability and the fulfilment of human rights, the importance of paying attention to resource policy and resource access for poverty reduction needs to be fully articulated. Land/resources require more emphasis in Poverty Reduction Strategies. The recently established global development agendas and the increased recognition of resource tenure rights among donors provide strong grounds for donor’s enhanced commitment and implementation of the full potential of pro-poor and human rights approach to resource tenure.

Resource tenure reform are, by definition, such large scale and complex interventions that it is impossible to act as a single donor without very strong commitment from the government and other donors. There is con-

sequently a need for sustained, coordinated land reform support programmes that involve governments and donors, as well as a need for carefully considered, appropriate mechanisms for the provision of the necessary financial and technical assistance.

Donors may continue to work in international arenas and may harmonise their support with each other, multilateral agencies and development banks working on natural resource tenure in order to avoid duplication of efforts. They may work cooperatively to encourage governments with urgent resource tenure problems. This may include involvement with the European Union, the international financial institutions and the UN, and include multi-donor strategic initiatives such as the joint World Bank and UNCHS (HABITAT) funded Cities Alliance, the CGIAR and similar organisations.



Degraded forest and pasture lands in Albania, Southern Europe. Although for over 50 years formal rights to all land in Albania belonged to the central government, villagers kept track of traditional family lands for cultivation and communal lands for grazing. Incentives for villagers to protect forests from fires and grazing were low, as the government did not recognise the right of farmers to harvest or sell timber. A current reform is transferring land rights from the central government to municipalities, where villagers are supposed to manage forests and pastures through user associations. Early results indicate e.g. less forest fires on land managed by user associations. (See e.g. Chapters 1, 7 and 8.)

*Photo: Margareta Nilsson.*



Harvest of red beans by Mosquito woman in Sirsirtara, Honduras. Women's rights require strengthening in both formal and informal tenure systems. The active use of opportunities embedded in the CEDAW Convention provides the legal preconditions for change, even if there are many other factors that influence the situation. Through the use of CEDAW the governments are entitled to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development. In particular, state parties shall ensure to such women the right to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform.

(See e.g. Chapter 1.2.7 and Annex 2.)

*Photo: Margareta Nilsson.*





Women from the Andean highlands in Bolivia are serving lunch at a school meeting. Strengthening rights to access land for women is critical as they are the major contributors to local food supply and family nutrition in most countries, yet they frequently lack secure access to the land where the food is produced. (See e.g. Chapter 1.2.7 and Annex 2.)

*Photo: Margareta Nilsson.*



A woman of the Kenyah people in Sarawak, Malaysia, weaving a basket from forest fibres. The traditional knowledge of the Kenyah people is under threat, together with their customary lands, when the forests of Sarawak are converted to acacia and oil palm plantations. Such threats could be counteracted through e.g. the ILO Convention No. 169 concerning Indigenous and Tribal Peoples and through the UN Declaration on the Rights of Indigenous Peoples. (See e.g. Chapters 1.2.9, 8.2.5 and Annex 2.)

*Photo: Margareta Nilsson.*



Access to water is a daily struggle for women in the Volta basin, just as it is for many women around the world. In this village from early morning, women and young children travel to and from the well to collect water for their families' needs. In addition to water for drinking, women need to bring water to prepare and cook food, bathe the whole family, wash cooking and eating utensils, do laundry and provide water for the cattle. Whilst women do the work, they often lack a voice to be heard in decisions affecting water use and management. Most decisions about water – whether in local communities or in global arenas – continue to be made by men. Few women are part of decision making about strategies on how to ensure clean water, how to slow global warming, how to maintain water as a public or private resource. There is a need for increased scope for negotiating women's interests in resource use and management. (See e.g. Chapters 1.2.7, 5 and Annex 2.) *Photo: Nighisty Ghezae.*





At the entrance to Lengatei in Tanzania this sign proudly announces the successful establishment of community-based management of the village's natural resources supported by the Land Management Programme. Upon arrival at the village visitors are, in a clearly-stated manner, asked to follow Lengatei's regulations regarding use of its natural resources. (See e.g. Chapter 1.2.4.)

*Photo: ORGUT Consulting AB.*

Local seed fairs. These exhibit and expose farmers' own cultivated varieties, facilitate exchange of both seeds and the related knowledge around each variety and its characteristics. Food security through local seed supply systems and crop diversity for family nutrition is thereby strengthened. A diverse agriculture, with many different crops and varieties, reduces the risk that an entire harvest will be lost for example due to drought or pest invasions. It can also contribute to flexibility in labour input in the field and a more nutritious diet which improves the health of, for example, people infected with HIV/AIDS and their families. Farmers' rights are still the backbone of food security for many small-scale farmers in developing countries as saving their own seed, enhancing the crops through their own selection

and exchanging seeds with other farmers remain their main seed source. Particularly in many African countries the public seed supply system has been weakened and seed is not always delivered on time or of the varieties farmers in the area prefer. In addition, many poor farmers cannot afford to buy expensive new varieties. Here is the diversity of varieties of corn, beans, local herbs and other crops from only one family farm exhibited at a local seed fair in Uzumba Maramba Pfungwe (UMP) in Zimbabwe.

(See e.g. Chapters 1, 3 and 10.)

*Photo: Pernilla Malmer.*







In a community seedbank such as this, households can store and safeguard seeds for coming seasons. This is a community seedbank in Douentza, a semi-arid region in Mali. Keeping local seedbanks is a strategy for making sure that enough seed is available for sowing, for keeping a security reserve of seed to use if the first sowing fails, and also to enable exchange of different varieties with one another for testing. Community seedbanks could thus play a crucial role in seed security strategies, in particular related to climate change. Due to changing weather conditions, there is nowadays an increasing need to sow more than once if the first sowing fails due to erratic rainfall. In addition, due to climate change there is a need to test a diversity of new varieties in order to adapt the crops to the new weather conditions. Access to, and cultivation of, a wide range of varieties means more resilience in the agricultural system. (See e.g. Chapters 2.2 and 10.)

*Photo: Sara Elfstrand.*



Picnic in the Andean highlands of Bolivia. Improved access to land allows a family to increase household food consumption and may enable the family to increase income by producing a surplus for sale in the market. (See e.g. Chapter 3.)

*Photo: Margareta Nilsson.*

This photo is taken at Adis ena Gulit, East Gojjam, Amhara, Ethiopia and shows cadastral surveying by global positioning system, GPS, by the surveyors and farmers from the Land Administration Committee. This was an activity in the multi-sectoral Sida-Amhara Rural Development Program, SARDP where an important component has been the delimitation and formal registry of farmers' user rights to the land they cultivate. SARDP has been designed to support the communities at Woreda level by relying on a participatory approach and refining the roles of Woredas and bureaus in the region, along the lines of decentralisation and promotion of grassroots-based sustainable development. (See e.g. Chapter 3.)

*Photo: ORGUT Consulting AB.*







Exploding city slum just in front of a Kampala hospital. Almost half of Kampala's population live in the swiftly expanding unplanned slums, now covering up to one fourth of the total area of the city. Rapid urbanisation is taking place in Africa and city slums are growing at twice the speed of cities. These slums are characterised by overcrowded small dwellings in poor sanitary conditions, where contagious diseases are widespread. Communities are often unsettled as they are not recognised by governments and conflict is rife. A large number of people live without access to essential services, adequate security of tenure or property rights. They are highly vulnerable to dispossession. (See e.g. Chapter 4.)

*Photo: Nighisty Ghezae.*



**The Volta River Basin in the semi-arid region of West Africa, is a transboundary river basin, the ninth largest basin in Africa and one of the biggest shared basins in West Africa. The basin is of vital importance to approximately twenty million people. Irrigation and hydro-power generation are the major water uses in the basin. The stakeholder countries are Benin, Burkina Faso, Cote d'Ivoire, Ghana, Mali and Togo. It is a complex ecosystem and management challenges are extremely varied. Action needed ranges from managing information and data sharing to measures necessary to stop soil and land degradation which is leading to the silting up of river channels and reservoirs and the growth of aquatic weeds. (See e.g. Chapter 5.2.)**

*Photo: Nighisty Ghezae.*



Transboundary rivers present not only environmental and management challenges but also risk of conflicts resulting from increasing competition among various water users and uses. Until recently the Volta Basin remained one of the few transboundary river basins without formal legal and institutional arrangements for the management of its water and other natural resources. After a long process, a Convention on Volta Basin Organisation was adopted in 2007. The establishment of this legal and institutional framework could contribute to reducing conflicts and the risk of conflicts between the basin states. The Volta Basin Authority has a mandate to contribute to poverty alleviation, the sustainable development of the parties in the Volta Basin, and for better socioeconomic integration in the sub-region. (See e.g. Chapter 5.2.)

*Photo: Nighisty Ghezae.*





**Aerial view of a river running through the agricultural frontier in the east of Nicaragua. Land, water and other natural resources have many different users and overlapping uses. Linking resource use such as that between water, forests and agricultural land requires coordination and cooperation among authorities. (See e.g. Chapter 5.3.)** *Photo: Margareta Nilsson.*



**Fishing boats in Bilwi, a town on the Atlantic coast of Nicaragua. In many developing countries, tenure and tenure rights related to coastal fishery resources are insufficiently defined and regulated. However, a number of good examples have been identified, which are relevant to the tenure of coastal resources and also of wetlands. (See e.g. Chapter 6.)** *Photo: Margareta Nilsson.*

**Female shepherds in Albania. Inappropriate tenure policies are major contributors to environmental degradation in arid/semi-arid grazing systems as when grazing areas are reduced or animal movements restricted, overgrazing becomes a problem. Furthermore to the very poor, uncultivated land is most important for resources such as firewood and raw materials for construction and handicrafts. By identifying a piece of land as “range-land” only there is a danger that other uses and users will be forgotten or excluded. Normally the poorest tend to rely on the “bush” the most. There are different strategies and measures to counteract these problems issued by e.g. the FAO that could be applied. (See e.g. Chapters 1 and 7.)**

*Photo: Margareta Nilsson.*



**Small boy in a cayuco on the Awastigni River in Nicaragua. Awas Tigni Village has struggled to have its customary lands recognised which has drawn international attention as the case was successfully brought up in the Inter American Court in Washington. (Mayagna (Sumo) Awas Tigni Community v. Nicaragua, 2001. Judgement of August 31, 2001. Ct. H.R., (Ser. C No. 79). (See e.g. Chapter 8.)**

*Photo: Margareta Nilsson.*





Farmer carrying wood harvested in the community forest of Tonicapan, Guatemala. Community groups have their own challenges as concerns building and transforming traditional governance systems in order to manage their forests so that they meet modern demands.

(See e.g. Chapter 8.2.3.)

*Photo: Margareta Nilsson.*

Rice field in the rain forest of Sarawak, Malaysia. In this area, shifting cultivation is the most common form of agriculture, which means that rice fields are left to recover after a few years of use, and are thus naturally reforested. However the state only recognised “visibly” cultivated land as customary land when delimitations for industrial timber concessions were made. Large areas used for shifting cultivation were then converted to fast-growing timber and oil palm plantations – and the communities lost both their forests and their agricultural lands. (See e.g. Chapter 8.)

*Photo: Margareta Nilsson.*







Under Tanzanian Law, the revenues generated by the sale of forest products, including timber from the Suledo Forest, will be retained by the nine villages. To this end two pilot areas of approximately 500 hectares have been identified. In each area trees were marked for selective logging and only trees of certain species above a certain diameter were chosen. The aim is that companies will tender for the right to harvest the selected trees. (See e.g. Chapter 8.)

*Photo: ORGUT Consulting AB.*



In order for a community in Tanzania to allow harvesting in their domain they must have a special seal provided for them by the Forestry and Beekeeping Division at the Ministry of Natural Resources and Tourism. The seal certifies the origin of the timber and is used to identify the timber as it makes its way to the market. No harvesting can take place in Tanzania without a seal. Consequently the issuing of a seal for Suledo was the final formality before harvesting could take place. (See e.g. Chapter 8.)

*Photo: ORGUT Consulting AB.*









Biofuel production is expanding rapidly in the South. This is an oil palm plantation in Sabah, Malaysia. The expansion of oil palm plantations, often on forest lands with unclear land rights, boomed again with the rise of oil prices in 2007–2008. Developing countries with favourable climates and cheap labour attract investors to plan large scale plantations. Locally produced liquid biofuels could lead to national and local benefits such as reduced pressure on forests, increased local energy security, employment opportunities and reduced dependency on oil imports. However, large-scale production for export is not as likely to have these effects. (See e.g. Chapter 8.2.5.)

*Photo: Maria Palm.*

▶ The UNDP Equator Initiative Prize. At the World Summit on Sustainable Development held in Johannesburg in September 2002, the Suledo Community in Kiteto District, Tanzania, was awarded the United Nations Development Programme Equator Initiative Prize for “extraordinary efforts to reduce poverty through the conservation and sustainable use of biodiversity”. Suledo was one of six projects throughout the world that received this honour. The Suledo Forest in Tanzania is composed of nine independent villages that have come together to form a Joint Village Forest. The Suledo forest is “owned” by the nine villages and managed by a Zone Environmental Committee consisting of representatives from each village.

(See e.g. Chapter 8.)

*Photo: ORGUT Consulting AB.*



A man of the Van Gujjar tribe harvests leaves as winter fodder for cattle. This is a customary practice and a user right that has clashed with the forestry laws of the Indian State. However, the indigenous peoples of India have recently gained increased recognition and their resource rights have been strengthened by “*The Scheduled Tribes and Other traditional forest dwellers (Recognition of Forest Rights) Act*” that entered into force 2006. The new law also provides for ‘Community Rights’ and rights over ‘Community Forest Resources’, thereby ensuring rights and ownership of tribal and traditional forest dwelling communities over ‘Common Property Natural Resources’. A democratic model of biodiversity conservation is also envisaged in the law, in the form of Critical Wildlife Habitat in Sanctuaries and National Parks (India Together, August 18, 2008). (See e.g. Chapter 9.3.1.)

*Photo: Margareta Nilsson.*

Women in a resettlement for Van Gujjar people – an effort from the Indian government to have them taken out of the National Park where they used to harvest winter fodder for their cattle. The Van Gujjars came into conflict with the state as a protected area was established on their traditional lands for winter grazing. The conflict between



park rangers and Van Gujjars was accentuated when the villagers revealed how forest guards were hunting illegally in the park. (See e.g. Chapter 9.3.1.)

*Photo: Margareta Nilsson.*



A lemur in Lemur Park, Madagascar. The majority of Madagascar's forests have been cleared for subsistence agriculture. The impact of human agriculture, fuel wood collection and livestock activities has resulted in wide-range habitat loss for the lemurs and has decimated populations, leaving many species of lemurs and other endemic species extinct or endangered. In addition to these direct threats, tropical rainforests are highly sensitive to climate change which means that their threatened species are becoming even more endangered. Local communities, the government, donors, scientists and conservationists are trying to improve the situation through management plans and other activities. (See e.g. Chapter 9.)

*Photo: Nighisty Ghezae.*



The Mantilla frog feeds on small insects. Often wetlands constitute "bio-diversity hotspots" which contain important ecosystem services. The ongoing degradation of coastal resources and wetlands is, to a great extent, caused by the absence of tenure policies, or inappropriate policies. The Mantilla frogs, endemic to the island of Madagascar, are under distinct pressure because of loss of habitat and are also threatened by trade. There is no specific national legislation protecting Mantilla in Madagascar; however the frogs benefit from legal protection given to all species in protected reserves and a hunting license is required for collecting these frogs. A total ban on collecting and exporting some of the species has been suggested. Internationally the Mantilla species are the subject of discussions on trade restrictions and inclusion in CITES, the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(See e.g. Chapter 9.)

*Photo: Nighisty Ghezae.*





Participatory plant breeding, where farmers and scientists develop their knowledge together, is an example of how farmers' rights to save, reuse and exchange seeds, including doing their own breeding work, in practice contributes to the strengthening of local livelihoods. The participatory approach has shown to be an efficient tool for combining conservation, development and use of agrobiodiversity, with farmer empowerment, income generation and strengthening of resilience in local society. *The Community Biodiversity Development and Conservation and Biodiversity Use and Conservation in Asia Programme* is successfully working with the participatory plant breeding strategy in Southeast Asia. (See e.g. Box 7, Chapter 10.) In many places the varieties developed are becoming very popular and well received, even within in the official seed supply system. Their popularity has made it necessary for local government authorities, in e.g. Vietnam, to develop local certification systems as by law farmers cannot trade or sell seed across province borders if the seed is not certified. The photo is from a joint field trip with farmers and plant breeders, taking an interested look at the farmer's variety in a paddy field; Bohol, the Philippines.

Photo: Pernilla Malmer.

Bohol, the Philippines. Systems of integrated rice – duck – fish production have been common all over Southeast Asia. Integrated production using both plants and animals is a good example of how farmers' locally-developed traditional knowledge related to genetic resources is a tool for producing a diversity of nutritious food on limited land areas. Food security is improved through the resulting options for a more varied diet. A rich and varied biodiversity, both wild and cultivated, strongly contributes to reducing malnutrition amongst poor people who often cannot afford to purchase foodstuff for a varied diet. However, small farmers' rights to keep animals is jeopardised in the wake of pandemics, especially the Avian Influenza. In many countries, small scale poultry keepers are no longer allowed to keep their traditional poultry in the vicinity of industrial chicken complexes.

In outbreaks of Avian Flu culling of the birds of small-scale poultry keepers is regularly carried out with or without limited rates of compensation to the already poor farmers. (See e.g. Chapter 10.)

Photo: Pernilla Malmer.







**Biodiversity-based agriculture has potential: cultivating a diversity of species and varieties makes crops less vulnerable to pests and diseases, as well as climatic variation. Rights related to land, water and seeds form the backbone of small farmers' wealth and livelihood. A small farmer can, through diversified crop system such as using a broad range of genetic resources, combine a mixed diet for the household with generation of more income, provided that there is good access to a market for the products. This Philippine farmer in Bohol, with less than one hectare of land, cultivates rice and over twenty kinds of vegetables, beans, bananas and other fruit for continuous delivery to the local market over the course of the year. In addition, he is a skilful farmer-breeder of rice, and has actively taken part in the public debate over the Philippine National Plant Variety Protection Act. (See e.g. Box 7, Chapter 10.)**

*Photo: Pernilla Malmer.*



Preparation of sorghum and millet, staple food in this semi-arid area of Douentza in Mali, is part of women's daily work. These women are also involved in market gardening; i.e. that is they make use of a wider range of genetic resources such as beans, lentils, vegetables and fruit trees, made possible and introduced after the construction of wells in the area and after improved access to seeds. This illustrates the strong association between rights to genetic resources and rights related to land and water for small farmers' wealth and the strengthening of livelihoods. The genetic resources used in market gardening come both from traditional local varieties in their own seed system and varieties brought from other parts of Mali, and tested by the women for their local conditions. More diversified crop systems contribute to resilience in the local community, and provide options for adaptation to climate change. Their work with market gardening provides these women with extra income, making it possible for their families to stay in their village all year round as they do not have to migrate for work, something which they regard as very positive. (See e.g. Chapter 10.)

*Photo: Pernilla Malmer.*



## Policymaking and implementation

### CHAPTER 14

Donors play an important role when cooperating with partners in developing countries to assess and implement the full potential of a pro-poor and human rights approach to resource tenure. In doing so, as a general principle, donors may acknowledge that tackling the challenges of resource tenure reform is a long-term process, which requires long-term and ongoing commitment. Significant harm may result from short-term interventions. Resource tenure reform needs to be driven and owned locally and donors may recognise that while lessons of good practice can be shared, the highly diverse history, environment and cultures of different nations demand that approaches to resource tenure be tailored to local circumstances and that there is no one-size-fits-all solution. Donors may therefore emphasise country ownership, show sensitivity to the local context and call for an understanding of the background (and historical) context of land/resource policy and administration.

Donors may address natural resource tenure at different levels. Six entry points for policymaking and implementation are described below:

- action within the framework of poverty reduction strategies, budget support and sector-wide approaches,
- action in projects/programmes that are not primarily resource tenure related,
- action in projects/programmes that mainly address natural resource tenure,
- action related to specific groups,
- action related to specific resources.

### **14.1 Action within poverty reduction strategies, budget support and a sector-wide approach**

Poverty reduction strategies provide a key opportunity for donors to address natural resource tenure in the wider context of poverty. Joint donor sector-wide approaches at the country level are also making progress amongst donors and, in some cases, involve multilateral agencies in issues such as agriculture, natural resources and land governance. Given the need for coherence and a reduction of the transaction costs involved in a multiplicity of small projects, budget support to governments is becoming increasingly attractive. Donors may thus work with governments committed to poverty reduction that address resource tenure issues in the context of poverty reduction strategy processes, sector-wide approaches and budget support. Any decision to do so – and the modalities, scope and scale of support – will be determined through dialogue concerning country assistance planning processes. Issues that might be tackled include unclear resource tenure, tenure insecurity among vulnerable social groups (the poor, women, ethnic minorities), resource tenure-related conflict, resource tenure hindrance to pro-poor growth and the impact of climate change on tenure security.

### **14.2 Programmes and projects not primarily tenure-related**

In programmes and projects that are not primarily tenure-related, both in rural and urban development programmes and programmes focusing on democratic governance or peace and security, donors may introduce natural resource access as an issue. Through their interventions, donors may actively ask their partners about their handling of natural resource tenure and governance issues. The answers to these questions may open a dialogue and identify issues to be addressed, either within the same programme or within a new programme addressing this particular issue.

### **14.3 Projects and programmes primarily addressing natural resource tenure**

In developing countries where there is a need for pro-poor policy formulation in projects and programmes primarily addressing natural resource tenure, donors may continue their involvement with processes of land/resource policy formulation, so as to put pro-poor policies in place. Programming activities may depend on specific opportunities and the needs of the country in question. The following support may be offered:

- Support to the formulation of a comprehensive, inclusive and transparent national land resource policy upon which land tenure reforms are to be based. Improved resource laws and regulations are needed to establish rules for property use and ownership, including the protection of fragile lands and the creation of national forests and parks. Improved resource policy and administration impacts positively on peri-urban and urban areas as well, where secure access to a house plot may represent the foundation of expanded livelihood options.
- Support efforts assuring that a sufficient and consistent level of participation of all relevant stakeholders is established, and in particular for the rural and urban poor without a voice. Donors may actively promote the rights of poorer groups (such as popular organisations, indigenous communities, peasants, pastoralists and women) to fully participate in the formulation, implementation and enforcement of policies.
- Support in preparing pro-poor land policy for new functions of land e.g. the protection of biodiversity, climate, water retention, leisure, tourism and to acknowledge the critical role the rural poor may play in this context.
- Support to research for pro-poor land reform. There is a considerable body of recent ongoing research into different aspects of land policy and land reform. Donors may promote the effective use of the knowledge generated by this research in the operationalisation of land policy for pro-poor development. In doing so, donors may use different mechanisms: dissemination of research findings through media to target different audiences, development of learning resources and training programmes with partner organisations, development of policy recommendations, implementation and institutional development at local, national and regional levels and establishment of participatory learning groups and citizen juries on land policy in key countries.
- Making an effective contribution to improved policy and its implementation requires working within the policy process and creating feedback mechanisms for learning. Donors may encourage thinking, research and debate in a two-way, micro-macro linkage from policy to local level

and vice versa. This may require more than policy research by central departments or the international community. Development of new ideas can only happen on the ground, supported by regional and international lesson learning. Donors may provide support in order to develop local capacity and strengthen universities through support to local research, skills training and professional development.

#### **14.4 Implementation of pro-poor tenure reforms**

Once the pro-poor land/resource policy is in place at the national level, addressing implementation issues is vital. The implementation of pro-poor tenure reforms is a highly complex issue and an immense challenge. How can tenure regimes be designed so they enhance the livelihoods of people in areas of customary tenure? How can tenure-related laws and regulations be harmonised and how can insecure tenure be upgraded? Once land/resource laws have been passed, implementation and full operationalisation take a long time. Donors may help speed up policy implementation by, for example, providing support to:

- building up the capacity of public-sector land institutions,
- working with NGOs and civil society groups,
- sharing knowledge.

##### **14.4.1 Building up the capacity of public sector land institutions**

Land policy reform is unlikely to have significant poverty-reduction effects unless sufficient institutional capacity is in place. In many developing countries, land administration infrastructure is weak and, in almost all cases, land reform involves strengthening and rehabilitating land institutions or developing new ones. Institutional capacity building and the supply of information technology are often linked to land registration and titling programmes through donors. Capacity building has frequently been decoupled from effective land policy and planning reform, and from the establishment of appropriate institutions for land administration and management, thus failing to deliver real benefits. Donors may, in particular, support governmental capacity building by providing the necessary information to develop a coherent, cost-effective and responsive plan for implementing land/resource legislation. Capacity building requires much time and considerable funding. Long-term projects and programme cycles, as well as sufficient funding, are needed to make this choice of intervention work.

Donors may help provide technical support for a range of services, including land administration. Outdated, inefficient and incomplete land registers generate conflicting claims and fuel disputes. Simple methods to bring together existing records and make them open to public scrutiny are key to establishing transparent and accountable management of land and property rights. There is little doubt that new tools and technologies, such as computerised land registries, comprehensive land information systems and GPS enable rapid, inexpensive and highly accurate land surveys. However, while the supply of advanced technology may assist in building capacity for resource reform and better resource administration, its application may not ensure delivery of social and economic benefits. Technology cannot address the fundamental social and cultural issues that pertain to any transformation of land rights; these situations must therefore be handled with caution. It is also important to recognise that new tools and technologies can become additional instruments in local politics and power relations, especially if controlled (or understood) by the educated and literate elites only. Nonetheless, there is scope for new administrative tools and technologies to contribute to pro-poor reforms of land administration systems, particularly when these are appropriately designed through the collaborative effort of policy-makers and technical specialists.

#### **14.4.2 Strengthening the work of NGOs/civil society organisations**

Natural resource management is a realm of serious political power as it involves crucial economic and livelihood decisions. One important challenge is how best to develop inclusive and conflict-free resource management interventions. NGOs and civil society organisations can play an important role in providing checks and balances on government decision-making and resource policy implementation.

The effectiveness of civil society in assisting the poor to pursue their resource claims, gain access to and make effective use of natural resources is contingent on the political environment of each country. Where there is limited political room for manoeuvre, social mobilisation is likely to lead to a coercive response. On the other hand, if a permissive environment prevails there is scope for civil society to play a more active role in influencing policy.

It is also important to remember that NGOs and civil society are, by their very nature, composed of many elements that may consist of competing interests and constituents. Supporting them is therefore not a neutral process and may lead to the emergence of new actors and organisations that merely adapt to existing, deeply rooted (and not pro-poor) social institutions and values. It is therefore important that: civil society should

not be considered as an autonomous sphere which should be strengthened to put pressure on the state but as a collection of interest groups that are in and of themselves reliant on effective state institutions being in place, and which form and reform in response to state action – and inaction.

A set of new land reform networks and coalitions now exists. These offer multiple approaches, from direct support and resource reform movements to making room in international arenas and the donor community to discuss and seek action on land reform. Examples of such networks include The Association for Land Reform and Development (ALRD) in Bangladesh, the Asian NGO Coalition for Agrarian Reform and Rural development (ANGOC) and the Popular Coalition to Eradicate Hunger and Poverty. This coalition includes IFAD, FAO, WFP, the World Bank, the European Commission and civil society networks from all the regions. The growth of local, national and international NGOs and other forms of civil society has brought about an opportunity for greater effective mobilisation of the poor and, in the long term, the basis for effective democratic development in many countries.

Donors may work closely with these local, national and international NGOs and other forms of civil society to strengthen their efforts towards more effective mobilisation and creation of opportunities that help redress the lack of economic and political power faced by those who are poor in resources. It may build citizen capacity through extending knowledge about new laws and providing opportunities to acquire and safeguard resource rights.

#### **14.4.3 Sharing knowledge: lesson learning**

Given the emerging need to strengthen regional capacity and the need for expertise among governments involved in land issues, donors can promote lesson learning. Some donors are doing this: DFID provides support to regional networks as platforms for debate and learning amongst different stakeholders in response to demands from land tenure practitioners in Africa (DFID, 2002). FAO's Land Tenure Service has a mandate to provide technical assistance and information services to the governments of developing countries (Munro-Faure, 2002).

There is now a body of sound, innovative local practices upon which to build new institutional innovations. Examples of this include public/private partnerships in urban housing, linking customary and formal systems, strengthening local conflict and dispute resolution mechanisms, new forms of land leasing and the promotion of rental markets and slum upgrading. In this respect, donors may facilitate South-South cooperation and the sharing of knowledge and information.

# Support aimed at particularly affected groups

Women, indigenous peoples and pastoralists have been identified as particularly affected by the current tenure systems or by the consequences of the modernisation of resource tenure.

## 15.1 Women

A number of initiatives have been undertaken to strengthen resource rights for women, through revision of constitutions and land laws to provide equal property rights for women and men. These legal provisions do not necessarily translate into de facto changes in customary land practices or local bureaucratic decision-making. Women continue to be denied access to resources through legal, bureaucratic and customary inheritance practices in many countries. Until social norms and practices that discriminate against women have been eradicated, implementing equal opportunity may well require affirmative action.

Women's rights require strengthening in both formal and informal tenure systems. Constitutional and inheritance laws also have a role to play alongside land law and institutions. The main legal requirements involve establishing women's right to own property and the recognition of the principle of spousal co-ownership of land. In addition to establishing the constitutional principle of women's rights to own property, the laws and regulations governing the implementation of land registration and resettlement programmes should ensure that women's land rights are fully recognised and included. Donors may help to identify and redress gender imbalance. They may actively support equality of access to land and asset-based development for both genders.

Inheritance practices often determine women's actual entitlement to land, regardless of whether surviving female spouses and daughters are

allowed to inherit land or whether their rights are circumscribed by those of male relatives. Customary rights often discriminate against women, and in particular widows and female orphans. Often there is no independent security system for them, when land returns to the husband's family. Donors may focus attention on the need for reform of inheritance laws.

HIV/AIDS exacerbates women's limited opportunities to access land securely even further. Donors may support the development of mechanisms to strengthen women's position and to prevent forced eviction of widows from land after their husbands have died from HIV/AIDS, without disrupting the existing social fabric.

Donors may support the development of incentives for traditional authorities to protect widows' and orphans' access to land.

## **15.2 Indigenous and tribal peoples**

Indigenous and tribal peoples are affected by the changes that are 'modernizing' resource tenure for land, water and forests as well as by the biopiracy of genetic resources. Donors may support indigenous and tribal peoples in their efforts to gain recognition of their tenure system. This requires careful analysis that explicitly considers indigenous as well as formal tenure regimes, and inheritance and family law, with special attention given to the rights of indigenous peoples.

Donors may help to acknowledge that these peoples are often the most important users of the resources and key actors in their protection.

## **15.3 Pastoralists**

Pastoralist nomads and indigenous people are traditional users of various resources (land, water, forest) without claiming exclusive rights to any one location. These groups rarely own their land, but they do own their livestock.

Changes in land use and tenure administration lead to the increased exclusion and marginalisation of these groups. Donors may thus encourage the sustainable and productive management of rangelands that ensures the customary rights and lifestyles of pastoralists and small-scale livestock keepers. Rather than transform the tenure of grazing land, programmes may be more about managing it. Tenure reform measures for communal land should underpin the adaptability and responsiveness of existing customary systems, without constraining local coping strategies.



# Support aimed at different areas of resource tenure

## 16.1 Agricultural land

Large numbers of a developing country's poorest live in rural areas and depend upon secure access to, and productive use of, land for their livelihoods. Donors may offer support to reforms providing tenure security and clear property rights to small farmers. Land tenure security has been approached using comprehensive land registration and titling. Titling has proven to be costly, long-term, poorly prioritised and poorly integrated into local contexts. Under appropriate conditions, donors may support titling. But no single tenure option will solve all problems. Donors may encourage a diverse range of options, adapting and expanding existing systems when possible, and introducing new ones selectively.

When ownership of land is inequitable, land redistribution for the poor is politically complex and contentious. Much opposition from land owners and vested political interests may arise and successful land reform requires a long-term commitment from both the government and civil society. Where there is broad consensus in society and political resolve, donors may support the improvement of land distribution. In areas characterised by weak political commitment, donors may support a range of policy alternatives that do not require full-blown land redistribution in order to improve the situation and to secure access to land for the rural poor.

Subsequent to the redistribution or restitution of land to original land-owners, the consolidation of fragmented farm plots into commercially viable holdings has become an important issue today. Donors may support de-collectivisation and farm restructuring, using new models of land privatisation and farm-restructuring mechanisms.

## 16.2 Land and water reform

For the poor, securing access to land and water is a key element of both survival and livelihood strategies. While many reforms seek to strengthen the poor's land tenure rights, the relationship between water rights, poverty and livelihoods is less clear. Reducing poverty is rarely a priority of water rights reform (exception: South Africa). Donors may work to overcome this by providing more information about how the absence of individual water rights constrains poverty alleviation.

Donors may address the question of securing rights for water user associations and individual irrigators. Unless this issue is addressed, community-based irrigation management is unlikely to succeed. The impact of land tenure regimes on community-based irrigation management needs to be more clearly understood. Donors may support the clarification of this issue.

Donors may support countries attempting land and water reform by improving their knowledge base and access to information, as well as identifying a development path that avoids marginalisation of the poor and damage to the environment. The key question is whether the current trend towards a European model of separate land tenure and water rights systems provides the solution. Donors may support a critical analysis of whether this trend is suitable for the conditions found in developing countries.

Even though current land tenure and water rights reform are taking place parallel in some countries (for example in Kenya), and officials involved in the two processes are at least consulting one other, much of the discussion about the reintegration of land and water rights has begun with and focused on state law and institutions.

Donors may support the recognition of the usefulness and importance of examining how land and water rights and management have been linked in a range of customary institutions. Donors may then seek to identify principles upon which appropriate land and water rights linkages may be constructed, and particularly so at user level.

## 16.3 Urban land

Great progress has been made in addressing the issue of urban land tenure and new innovative approaches are available that seek to increase security and provide access to available services and credit.

Donors may support these approaches to strengthen the rights of squatters and slum dwellers; instead of forced evictions, negotiated solutions may be enabled.

Donors may support phased approaches in interventions aimed at upgrading the rights of the poor over time. They may support tenure policies that have the assurance of protection for all households from forced eviction as their primary objective. This need not involve public sector agencies losing long-term control, or private landowners losing their land, but people being given due notice and reasonable options for alternative accommodation. In addition, from the perspective of slum dwellers' willingness to invest in the land, sub-chapter 4.2 showed that it is perceived and not actual tenure security that matters for the poor. Complete tenure rights could therefore be a goal in the longer perspective.

Donors may also support interventions that involve improved access to livelihood services and credit – normally in that order.

Donors may work closely with UN-HABITAT on its global campaign for secure tenure based on developing processes of negotiation as an alternative to forced evictions. UN-HABITAT's Global Land Tool Network (GLTN) is building a cross-functional network of land professionals, academics, bureaucrats and NGOs to highlight and share innovations so as to scale up and change attitudes and behaviour patterns within governments; this includes attempting to cross sectoral boundaries.

#### **16.4 Wetland/coastal resources**

The significance of wetlands and coastal resources for the poor and their potential to alleviate poverty are rarely acknowledged in national policies. A stronger pro-poor focus of policies and programmes in these two sectors is necessary. Strengthening the capacity of national and regional institutions to enforce effective tenure policies for coastal fishery resources is also necessary. Donors may support increased integration of the two sectors as well as increased targeting of the fishery sector in national poverty alleviation strategies.

Customary tenure systems are relatively common along coasts and in wetlands. Systems perceived as legitimate by local resource users must be better understood by policymakers and recognised by national policy. Donors may support capacity building among local communities and indigenous peoples, and may promote legislation and trends formalising and securing customary and common rights to wetlands and coastal resources for local livelihoods, including ensuring equal access rights for women and men.

In cases where wetlands are managed as common property resources, privatisation or state appropriation may lead to unsustainable utilisation, resource grabbing or undesirable changes in resource use. Donors may

support traditional common property management systems, including the ability of the system to evolve and to adjust to changing circumstances.

### **16.5 Rangelands**

Rangelands (semi-arid/arid) are often not fertile enough to support agricultural production (i.e. non-irrigated cultivation due to factors such as salinisation<sup>23</sup> and lack of secure water). Thus, livestock (or wildlife or camels, i.e. animals best suited for the particular environment) grazing is the optimal, productive choice.

However, inappropriate tenure policies are major contributors to the degradation of arid/semi-arid grazing systems as when grazing areas are reduced or animal movements restricted, overgrazing becomes a problem. Clear tenure systems for rangelands could encourage investments in land improvement. There are different strategies and measures that could be applied. It has been suggested by FAO that overgrazing could be reduced by e.g. grazing fees and by removing obstacles to mobility on common property pastures.

### **16.6 Forests**

Local use of forests is often invisible to outside observers but may be crucial for the poor or other vulnerable groups who derive a significant proportion of their household income or subsistence from the forest. Formalised, customary and/or collective rights to natural forests for local livelihoods increase access security for the poor. In addition to being a rights issue, there is also evidence that local communities, with secure tenure rights, can manage forests sustainably.

Donors may support capacity building among local communities and indigenous peoples, and may promote legislation and trends formalising and securing customary and common rights to natural forests for local livelihoods, which includes ensuring equal access rights for women and men.

Donors may support traditional common property management systems, including the ability of the system to evolve and adjust to changing circumstances.

Donors may strive to ensure that consequences for vulnerable groups resulting from changes in forest tenure (e.g. formal titling and concessions)

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<sup>23</sup> Salt is normally stored deep in the soil below the root zone of native vegetation. Problems arise when previously unaffected land becomes salty due to widespread land clearance and replacement of native vegetation with annual crops and pastures that use less water. This may exert deleterious impacts on native ecosystems that are not accustomed to persistent elevated salinity.

and/or conversion of forest land are taken into account in development plans.

The issue of how the *Reduction of Emissions from Deforestation and Forest Degradation*, REDD should be designed is evolving quickly, however it is already clear that a mechanism that only meets the goals of emission reduction, without taking into account development perspectives, could be the starting point for a new type of colonialism; climate colonialism.

For REDD to really deliver a decrease in Green House Gas emissions there is a need for transparent, well-functioning governance. In most developing countries massive financial and technological support from developing countries will be necessary in order for the mechanism to work properly. Furthermore, support to REDD functions has to take in aspects of biodiversity and equity if it aims to be considered as development support. There is a risk that if enough resources are transferred to make *Reduction of Emissions from Deforestation and Forest Degradation* function, other “sectors” of development cooperation will decrease despite all parties being aware that this should not be the case.

### **16.7 Protected areas and wildlife**

Wildlife, non-timber forest products, aquatic resources (e.g. fish) and grazing areas are often important and function as vital safety nets for the local livelihoods of marginal groups. These resources are (more or less by definition) often most abundant in biodiversity hotspots, and hence highly relevant to formal protection. However, when protected areas are established, benefits are more often captured by governments, private foundations or tourist companies while local communities often pay a high price since they are often excluded from access and use.

Donors may promote protected areas as part of broader strategies and plans for rural development, land use planning and land allocation – while fully ensuring that the issue of rights and access of local communities and indigenous peoples is addressed. This should, as a minimum, include ensuring that protected areas do not lead to further marginalisation of local communities and indigenous peoples, particularly the land situation of local communities living directly outside protected areas.

In addition, donors may ensure that wildlife resources, and/or conservation areas can be accessed and/or used by local communities for sustainable harvesting as well as non-consumptive use, and a basis for local businesses, including eco-tourism, hunting quotas and other small-scale and local businesses.

Donors may also encourage collaborative and community-based management and collective local user rights to wildlife resources and/or areas with high conservation value, provided these are managed sustainably.

When planning the location of refugee camps, it is essential that they are not located near (>15 km) PAs, which otherwise suffers extensive illegal impact of unsustainable resource use inside the areas.

## 16.8 Genetic resources

Genetic resources include both domesticated (crops and livestock) and wild diversity. Both are essential for ensuring food security and income. Today's diversity in crops and varieties, along with associated traditional knowledge, is based on the collective work of farmers and local communities spanning thousands of years. One key aspect of this is the traditional right of farmers to save, reuse, exchange and sell seed from their own harvests.

Donors may support policy research and policy development related to access to, and the fair and equitable sharing of benefits from, genetic resources and related knowledge of biological diversity.

Efficient and improved use of genetic resources through, for example, plant and livestock breeding is a key factor in the development of natural resource-based production. Countries need good systems to assure clearly-stated rules for the tenure of such resources. An analysis of the local situation is crucial for the understanding of how a good balance may be struck among the different norms and interests.

In many countries, the public seed supply system has been weakened. This has underlined the importance of the traditional rights of farmers to save, re-use, exchange and sell seeds from their own harvests. The farmer's right to a choice among market-based and other alternatives should be reinforced based on the local situation. Public plant breeding schemes and public gene banks should be strengthened, and ongoing efforts to develop an international regime on access and benefit sharing are important.

Access to livestock genetic diversity on the part of small-scale farmers and pastoralists, as well as opportunities to develop their own breeds, requires increased attention by governments and other development actors.

Biopiracy and misappropriation of genetic resources is a major issue. It refers to the appropriation of traditional knowledge and genetic resources (plants, animals) of local communities by individuals or institutions seeking exclusive control over these resources through intellectual property rights, without the agreement of local communities or without the consent of relevant government authorities.

## 16.9 Petroleum and minerals

These are high-value commodities characterised by political sensitivities and very large investments. In most countries, ownership of these resources is vested in the state. Resource development is usually undertaken by private operators – often foreign multinational companies – on the basis of agreements or licences from the state. In some cases, the state has ceded important power and economic rights to private operators, virtually creating a state within a state.

Extraction operations are often associated with social and environmental impacts, including the takeover of land and other resource rights. Appropriate arrangements that maximise the benefits and minimise the costs of these operations to local resource users need to be made.

Extraction operations often lack transparency in the flow of revenues. This can hide gross corruption, squander resources and contribute to political instability and violence. Initiatives such as the Kimberley Process, the aim of which was to prevent diamond resources from being used to fund conflict activities, are examples of recent positive developments. The Extractive Industries Transparency Initiative (EITI) is another good example.

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## Annex 1 Targets and indicators related to natural resource tenure in the first and seventh Millennium Development Goals

At the Millennium Summit in September 2000, world leaders adopted the UN Millennium Declaration, committing their nations to a new global partnership to reduce extreme poverty and setting out a series of time-bound targets. The Millennium Development Goals are the world's time-bound and quantified targets for addressing extreme poverty in its many dimensions – income poverty, hunger, disease, lack of adequate shelter and exclusion, while promoting gender equality, education and environmental sustainability. These are also basic human rights i.e. the right of each person on the planet to health, education, shelter and security. A number of UN organisations have been assigned to supervise progress towards the goals.

The internationally agreed framework of 8 goals and 18 targets was complemented by 48 technical indicators to measure progress towards the goals. These indicators have since been adopted by a consensus of experts from the United Nations, IMF, OECD and the World Bank. Each indicator is linked to millennium data series as well as to background series related to the target in question.

### **Goal 1: Eradicate Extreme Hunger and Poverty**

*Target 1.* Halve, between 1990 and 2015, the proportion of people whose income is less than \$1 a day

#### **Indicators**

1. Proportion of population below \$1 (1993 PPP) per day (World Bank)
2. Poverty gap ratio [incidence x depth of poverty] (World Bank)
3. Share of poorest quintile in national consumption (World Bank)

*Target 2.* Halve, between 1990 and 2015, the proportion of people who suffer from hunger

#### **Indicators**

4. Prevalence of underweight children under five years of age (UNICEF-WHO)
5. Proportion of population below minimum level of dietary energy consumption (FAO)

## **Goal 7: Ensure Environmental Sustainability**

*Target 9.* Integrate the principles of sustainable development into country policies and programs and reverse the loss of environmental resources

### **Indicators**

25. Proportion of land area covered by forest (FAO)
26. Ratio of area protected to maintain biological diversity to surface area (UNEP-WCMC)
27. Energy use (kg oil equivalent) per \$1 GDP (PPP) (IEA, World Bank)
28. Carbon dioxide emissions per capita (UNFCCC, UNSD) and consumption of ozone-depleting CFCs (ODP tons) (UNEP-Ozone Secretariat)
29. Proportion of population using solid fuels (WHO)

*Target 10.* Halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation

### **Indicators**

30. Proportion of population with sustainable access to an improved water source, urban and rural (UNICEF-WHO)
31. Proportion of population with access to improved sanitation, urban and rural (UNICEF-WHO)

*Target 11.* Have achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers

### **Indicators**

32. Proportion of households with access to secure tenure (UN-HABITAT)

Source: Goals, targets and indicators quoted from the Millennium Project, website: [www.unmillenniumproject.org/goals/gti.htm](http://www.unmillenniumproject.org/goals/gti.htm), May 2009.

## Annex 2 Conventions and declarations on human rights concerning natural resources – selected conventions and articles

*Conventions* and *covenants* are legally binding on the countries that have ratified/signed them. *Declarations* are international agreements in which countries express a willingness to comply, however these are not legally binding.

The Universal Declaration of Human Rights, UDHR (see UDHR Article 17 below) is, however, an important exception as it has become legally binding via countries' application of it – this is known as common or customary law.

Each country that has ratified ICESCR, ICCPR, CEDAW and CERD (see below) undertakes to, with a certain periodicity, report on how they have fulfilled their undertakings as concerns each convention. These countries submit their reports to a UN-based committee whose role is to monitor the undertakings of the countries, answer their reports and give concluding observations and recommendations. These two reports – those of the countries and the views and recommendations of the independent committee – together provide good levels of information on the situation in a country. Consequently this is information that may contribute an important basis for dialogue and analysis and for programme design.

At the Office of the High Commissioner for Human Rights' website, [www.ohchr.org](http://www.ohchr.org), all the countries' reports can be found as well as the relevant committee's observations and recommendations.

Below is a description of a selection of articles from various declarations/conventions that are of relevance to natural resource tenure rights. This overview makes no claims to be comprehensive.

### **The Universal Declaration of Human Rights, UDHR**

*Article 17* (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

### **The International Covenant on Economic, Social and Cultural Rights, ICESCR**

*Article 1* enshrines people's right to self-determination to pursue their economic, social and cultural development as well as their right to be in no case deprived of their own means of subsistence.



*Article 11* recognises the fundamental right to be free from hunger and the right of everyone to an adequate standard of living for her/himself and her/his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.

### **The International Covenant on Civil and Political Rights, ICCPR**

*Article 1* enshrines people's right to self-determination to pursue their economic, social and cultural development as well as their right to be in no case deprived of their own means of subsistence.

*Article 26* states non-discrimination as a central human right.

*Article 27* protects the rights of minorities.

### **The Convention on the Elimination of All Forms of Discrimination against Women, CEDAW**

*Article 5.* States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

*Article 14-1.* States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

*Article 14-2.* States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

*Article 15-1.* States Parties shall accord to women equality with men before the law.

*Article 15-2.* States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude

contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

*Article 15–3.* States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

*Article 16–1.* States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

*Article 16–1 (h)* The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

### **The International Convention on the Elimination of All Forms of Racial Discrimination, CERD**

*Article 5 (v).* The right to own property alone as well as in association with others;

*Article 5 (vi).* The right to inherit.

### **Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (also referred to as): The ILO Convention No. 169 concerning Indigenous and Tribal Peoples**

*Articles 13–19* of this convention safeguard the rights of indigenous peoples to their lands and territories in a comprehensive manner and

*Articles 21–23* concern the rights to vocational training, handicrafts and rural industries.

### **The United Nations Declaration on the Rights of Indigenous Peoples**

The UN Declaration on the rights of Indigenous Peoples recognises an inalienable, collective right to the ownership, use and control of lands, territories and other natural resources and recognises their rights in terms of maintaining and developing their own political, religious, cultural and educational institutions along with the protection of their cultural and intellectual property. The Declaration highlights the requirement for prior and informed consultation, participation and consent in activities of any kind that impact on indigenous peoples, their property or territories.

## Annex 3 Key messages from Sida's position paper, 2007

1. Secure tenure for the poor is key to poverty reduction and the realisation of fundamental human rights.
2. Tenure interventions must build on local conditions and include a thorough understanding of local practices and customary tenure systems.
3. Women's tenure security needs special attention. Women responsible for household income, food and children often lack secure access to resources owing to discriminatory norms and practices.
4. Tenure security may be promoted through formalisation of rights, which may be done in different ways. What best serves the poor depends on the context. While individual titling is relevant in some cases, registering collective rights or long term use rights is more appropriate in other cases.
5. Control over natural resources is an important source of power. Establishing pro-poor tenure systems requires tackling power relations at all levels by applying principles of democratic governance.
6. Securing tenure requires tackling both technical and political issues. Enabling access to the resource tenure system on the part of the poor is key to avoiding elite capture and ensuring equitable benefit sharing.
7. Weak tenure systems and resource competition are root causes of conflict. Addressing tenure may be a key step towards consolidating peace in post-conflict societies.
8. Secure tenure promotes sustainable use of resources. Environmental degradation is often the result of inappropriate tenure systems.
9. Land, water and other natural resources have many different users and overlapping uses. Distinct tenure arrangements apply to different resources and uses.
10. Linkage of resources, such as between land and water or between urban and rural land, requires coordination and cooperation among authorities. Similarly, this applies to nations sharing trans-boundary resources, such as rivers and wetlands.

Source: Natural Resource Tenure, A position paper for Sida, (p. 7, Sida 2007).

## Annex 4 Key definitions on Land Tenure and Rights from the FAO and the EU

### Definitions from the FAO Multilingual Thesaurus on Land Tenure, 2003

*Tenure* is the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land and associated natural resources. Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, and under what conditions. (Ch. 1.T.4, p. 36).

*Private property* is property that is held privately, whether individually, jointly or corporately. Private property and the associated rights of ownership are a keystone of market economies. In those countries that have written constitutions, the right to hold private property is usually enshrined as a fundamental human right. Although different economic systems have different attitudes to the private ownership of real property, the human right to hold private property is generally acknowledged. The Universal Declaration of Human Rights of the UN includes at Article 17 that (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property. (Ch. 1.P.8, pp. 28–29).

*Rights* are defined by the legal framework and provisions under a given regime. Different societies have different attitudes and so the nature of these rights varies, notwithstanding that there are some rights that are fairly universally acknowledged under declarations such as the Universal Declaration of Human Rights. The owner of real estate enjoys a wide range of rights including, where appropriate; natural rights (support, air), rights of alienation, rights of enjoyment (freedom of use, everything in, on or above the land, waste). Where property rights are infringed it is common for there to be some form of compensation. (Ch. 1.R.10, p. 33).

*Common property* is typically land and other resources in which entitled beneficiaries, whether individual or community defined, have specific common rights. For example, community members can use a common pasture for grazing their cattle independently of one another. The community controls the use of common property and can exclude non-members from using it. Common property in this sense is distinct from “open access systems”, where there is no control on access and no-one can be excluded. (Ch. 1.C.2, p. 7).

*Custom* results from practice since time immemorial. Use rights can be created in land on the basis of custom. These rights are often created by the use of the land over a long period of time. They are often the rights created by ancestral occupation and use of land by traditional societies. The creation and recognition of boundaries where these exist for such land will often use natural features, or planted trees or hedges. Although custom and customary use rights are most frequently associated with traditional societies, western societies may also recognise such rights. (Ch. 1.C.11, p. 11–12).

*Customary land law* regulates rights to enjoy some use of land that arises through customary, unwritten practice rather than through written or codified law. (Ch. 6.C.3, p. 128).

The *land tenure system* in a given jurisdiction comprises the set of possible bases under which land may be used. As such this range encompasses both rural and urban tenure and includes ownership, tenancy and other arrangements for the use of land. The land tenure system in an English Common Law based jurisdiction will, to a greater or lesser extent, usually comprise a range of different types of tenures. (Ch. 1.L.4, P. 20).

*Land reform* is the generic term for modifications in the legal and institutional framework governing land policy. Land reform is intended to implement changes in land policy that are designed to realise desired changes in a changing political, economic and social environment. The most common types of land reform are probably those dealing with reallocations of land and those redistributing legal rights of ownership. “....” (Ch. 3.L.5, p. 69).

*Secure* tenure is related to the degree of recognition and guarantee of real estate rights. Improving security of tenure is seen as necessary:

- to encourage investments to improve the productivity of agriculture
- for conservation and the sound use of natural resources
- to encourage the use of temporary rights for the use of the land including leasing
- to reduce the number and the intensity of conflicts relating to the use and transaction of real estate.

Conversely, insecurity of tenure is characterised when the users and holders of land, whether rural or urban, consider that their rights to the land are at risk to other actors, and uncertain in their duration. (Ch. 3.S.2, p. 76).

*Adjudication* is the process of final and authoritative determination of the existing rights and claims of people to land. This may be in the context of first registration of those rights, or it may be to resolve a doubt or dispute after first registration. Adjudication is also a standard procedure prior to the operation of a land consolidation scheme.

The process of adjudication should simply reveal what rights already exist, by whom they are held and what restrictions or limitations there are on them. In practice, of course, the mere fact of a final and definitive recording of these rights is a significant change in those jurisdictions where previously there had been uncertainty. "...” (Ch. 4.A.1, p. 83).

Source: Quoted from Multilingual thesaurus on land tenure, English version, Edited by Gérard Ciparisse, FAO, Rome, 2003.

### **Definitions from EU Land Policy Guidelines, 2004**

*Land tenure* should be defined broadly as the “system of access to and control over land and related resources”. It defines the rules and rights which govern the appropriation, cultivation and use of natural resources on a given space or piece of land. Strictly speaking, it is not land itself that is owned, but rights and duties over it. *Land rights* are not limited to private ownership in the strict sense, but can be a very diverse balance between individual rights and duties, and collective regulations, at different levels (different levels of family organisation, communities, local governments or state), private or family ownership being one possible case. The rights and duties that individuals or a family hold are themselves embedded in a set of rules and norms, defined and enforced by authorities and institutions which may be those of rural communities and/or the state. No system of land tenure can work without a body with the power and authority to define and enforce rules, and provide arbitration in case of conflict. Thus a *land tenure system* is made up of rules, authorities, institutions and rights. *Land administration* itself (maps, deeds, registers and so on) is only one part of a land tenure system.

Source: Quoted from EU Land Policy Guidelines. Guidelines for support to land policy design and land policy reform processes in developing countries. EU Task Force on Land Tenure, November 2004, pp. 2–3.

## Acronyms

ABS	Access and Benefit Sharing
AIDS	Acquired Immune Deficiency Syndrome
ALRD	Association for Land Reform and Development
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
CAMPFIRE	Communal Areas Management Programme for Indigenous Resources
CBD	Convention on Biological Diversity
CBDC	Community Biodiversity Development and Conservation Programme
CBDC- BUCAP	The Community Biodiversity Development and Conservation and Biodiversity Use and Conservation in Asia Programme
CCD	Convention to Combat Desertification
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CGIAR	Consultative Group on International Agricultural Research
CIAT	International Center for Tropical Agriculture
CIDA	Canadian International Development Agency
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CP	Common Property
CPRM	Common Property Resources Management
DAC	Development Assistance Committee
DFID	Department for International Development (UK Government)
DNA	Deoxyribonucleic Acid
ETC-group	Addresses the socioeconomic and ecological issues surrounding new technologies that could have an impact on the world's poorest and most vulnerable.

EGDI	Expert Group on Development Issues
EITI	Extractive Industries Transparency Initiative
EU	European Union
Euro	European Union Official Currency
FAO	Food and Agricultural Organisation
FARA	Forum for Agricultural Research in Africa
FLEGT	Forest Law Enforcement, Governance and Trade
GDP	Gross Domestic Product
GDPRD	Global Donor Platform on Rural Development
GHG	Green House Gases
GLTN	Global Land Tool Network
GM	Genetically Modified
GURTS	Genetic Use Restriction Technologies
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit/ German Technical Cooperation
HABITAT	United Nations Human Settlements Programme
HIV	Human Immuno-deficiency Virus
ICCPR	International Covenant on Civil and Political Rights
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute,
IIED	International Institute for Environment and Development
IGC	Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore
ILA	International Law Association
ILC	International Land Coalition
ILC	International Law Commission
ILRI	International Livestock Research Institute
IMF	International Monetary Fund
IPCC	Intergovernmental Panel on Climate Change
IPR	Intellectual Property Regimes
IRT	Individualised Land Registration and Titling



ITPGRFA	International Treaty on Plant Genetic Resources
IUCN	International Union for Conservation on Nature
IWRM	Integrated Water Resources Management
KIT	Royal Tropical Institute/Koninklijk Instituut voor de Tropen
LAMP	Land Management Programme
MA	Management and Exploitation Areas for Benthic Resources
MDG	Millennium Development Goal
MEABR	Management and Exploitation Areas for Benthic Resources
NARSIS	Natural Resources Information System
NEPAD	New Partnership for Africa's Development
NFP	National Forest Programme
NGO	Non-Governmental Organisation
NLBI	Non-Legally Binding Instrument
NORAD	Norwegian Agency for Development Cooperation
NRI	Natural Resources Institute
NRT	Natural Resource Tenure
OA	Open Access
OUA	Organisation of African Unity
ODA	Overseas Development Assistance (foreign aid)
ODI	Overseas Development Institute
OECD	Organisation for Economic Cooperation and Development
OP	Operational Guidelines
PAS	Protected Areas
PDR	People's Democratic Republic (Lao)
PRA	Participatory Rural Appraisal
PRS	Poverty Reduction Strategy
PTO	Patent and Trademark Office (US)
REDD	Reduction of Emissions from Deforestation and Forest Degradation
RRI	Resource Renewal Institute
RSA	Republic of South Africa

SARDEP	Sida-Amhara Rural Development Program
SFLP	Sustainable Fisheries Livelihoods Program
SLU	Swedish University of Agricultural Sciences
Sida	Swedish International Development Cooperation Agency
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TURFS	Territorial Use Rights in Marine Fisheries
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFCC	United Nations Convention on Climate Change
UNFF	United Nations Forum on Forests
UN-HABITAT	United Nations Human Settlements Programme
UNIFEM	United Nations Development Fund for Women
UNPFII	United Nations Permanent Forum on Indigenous Issues
US	United States
USAID	United States Agency for International Development
USD	us Dollar
UPOV	The International Union for the Protection of New Varieties of Plants
VPA	Voluntary Partnership Agreements
WFP	World Food Programme (UN)
WIPO	World Intellectual Property Organisation's
WRI	World Resources Institute
WTO	World Trade Organisation
WWF	World Wildlife Fund
ZINWA	Zimbabwe National Water Authority

## Notes on the editor and the contributors

The Editor, Dr. *Nighisty Ghezae* is the Head of the Scientific Programme at the International Foundation for Science, IFS. Dr. Nighisty has 20 years of work experience as a water resources management specialist, researcher/lecturer/training organiser and programme evaluator/management advisor. She has written two Ph.D. theses in addition to other publications.

At Uppsala University, Humboldt-Universität and Asmara University she conducted research work and taught several courses in socio-economic fields; Development Economics, International Economics, Resource Management, Transboundary Water Issues and Rural Development. At these universities she was responsible for the administration of field studies. At the Rahad Irrigation Scheme, in the eastern region of Sudan, she worked and participated extensively in both the main and the on-farm management systems of the irrigation project. Part of the work included exploring the interface of land tenure rights and water rights and how these regimes compare.

At the Global Water Partnership she was responsible for several Integrated Water Resources Management projects, as a Programme Manager she followed the work programme of four regional offices in Africa and in the Mediterranean region, and was also coordinator for EU Water Initiative activities in Africa. She has conducted several training inputs and workshops in e.g. Integrated Water Resources Management and Transboundary Water Issues. Dr. Ghezae has carried out consultancies on property rights and resource tenure, water governance, water demand management, integrated water resource management at local level, irrigation water management and water and climate change. Furthermore she has evaluated a number of development policy projects.

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*Gloria L. Gallardo Fernández* was born in Chile in 1953, and after university studies in Chile, Poland and Mexico, obtained her doctoral degree in 1998 from the Department of Sociology at Uppsala University, Sweden. She is currently the Director of Research Studies of the CEMUS Research Forum, Cefo which is part of the new Uppsala Centre for Sustainable Development – an education and research platform for interdisciplinary studies on sustainable development jointly funded by Uppsala University and the Swedish University of Agricultural Sciences, SLU. Dr. Gallardo has worked as a Senior Lecturer at Uppsala University, Swedish University of Agricultural Sciences and Mälardalen University. Published in England, Colombia, Argentina and Sweden, Dr. Gallardo's research output has focused on issues concerning rural development, property rights and tenure structure with emphasis on common land property, management of marine coastal resources, sustainable development and fishing organisations and communities. In her work she has applied theoretical insights from historical and institutional sociology, economics, environmental and development studies and participatory and interdisciplinary research.

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*Susanne von Walter* is a forester who possesses extensive experience in the environmental aspects of forest management as well as in local (community) forest management. Through her studies, research and work she has gained a sound understanding of the complex interface between the management of natural resources and land in general and in society. She has specialised in the uses of non-timber forest products as alternatives, as well as their role in food security at household level. In addition, she has also concentrated on the social, economic and political aspects of common property resource management. Susanne is currently working at the Swedish International Biodiversity Programme (SwedBio) at the Swedish University for Agricultural Sciences, SLU.

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A first workshop on 6 June 2006 formed the basis for developing a discussion paper, which was discussed in a second workshop on 15 August 2006. This meeting was well-attended with many lively, or perhaps even heated, debates. Comments arising from this workshop, written comments provided after the meeting as well as the parts provided by various contributors, were incorporated into the discussion paper. This resulted in a document which has served as background document for the preparation of the Sida Position Paper on Natural Resource Tenure.

The background document was further edited and updated to emphasise principal NRT issues and disseminated to a wide audience of donors, partners and academics who helped to create this present document. A number of individuals have contributed to its development. The editor acknowledges with gratitude the following individuals and groups for their efforts, assistance and advice.

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