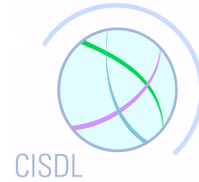




Global Drylands Initiative



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LAND TENURE REFORM AND THE DRYLANDS

CISDL / ACTS

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i. Executive Summary

“Property rights serve human values. They are recognized to that end, and are limited by it.”

- Chief Justice Joseph Weintraub, Supreme Court of New Jersey, USA

Land is a critical productive asset on which many livelihoods depend, particularly in the developing world. For the poorest drylands populations, land degradation is a major factor that affects the ability to achieve food security and enhance livelihoods. Because drylands typically have low vegetation cover, they are particularly vulnerable to mismanagement which removes grasses, bushes and trees that protect the thin layer of fertile topsoil from the ravages of wind and waterborne erosion. Through poorly-managed intensification of land use, and deforestation, productive drylands can be degraded into unproductive land that cannot support agriculture, or sometimes not even pastoralism.

International attention to the related issues of land reform and land degradation occurs mainly in the context of the 1994 UN Convention to Combat Desertification. More recently, discussion of these issues has been re-invigorated following the recommendations of the world's governments at the 2002 World Summit for Sustainable Development in Johannesburg, South Africa.

The reversal of land degradation is vital for the livelihoods of poor peoples living in drylands, and also for the conservation of the world's biological resources. This task requires significant investments in human capital and resource management systems, including land reform efforts. The issue of land tenure, in particular, is highly relevant. Land tenure systems which impose unequal access to and control of resources for marginal populations can contribute to the degradation of dryland areas. And effective, secure access to land resources can provide an essential incentive for land users to invest in sustainable land use practices.

Challenges of land tenure reform in drylands: what can decision makers Do?

Land tenure systems are a legal construct – a bundle of rights designed and enforced by the societies which grant them. How can we properly characterize all these different yet vitally important rights? Which rights pertain to which land user, how can they be recognized, and how can they be made secure enough to catalyze crucial investments for the drylands?

Poverty, land degradation and desertification lead to loss of livelihoods, especially for vulnerable drylands dwellers. These are manifestations of deeper structural social and economic problems, including land pressure, lack of access to land, poorly-defined land tenure regimes, and poorly managed land reform efforts.

Challenge 1: How can we ensure that land tenure systems and land tenure reform processes are truly participatory, accessible, and transparent?

Decision-makers must commit to transparency and public participation in land tenure. The efforts must be coupled with strong commitments to accountability, transparency and public information-sharing. This helps to ensure sustainability of the effort, and reduces the possibility that laudable goals are subverted by other interests. Decision-makers can explore multi-stakeholder approaches to identifying and responding to land use and land reform challenges.

Challenge 2: What institutional structures can be established at local, national and international levels to support legal aspects of land tenure security and reform?

In many countries, dry areas were (until recently) seen as 'wastelands', of little economic interest to central authorities. For this reason land rights remain ambiguous in many drylands, often with multiple and overlapping legal regimes – usufruct (claim by use), customary, religious - sometimes contradicting each other and the legislation of the state, which can lead to conflict.

In many cases, especially in emerging and transforming economies, land markets may require some state intervention. By themselves, markets will not do much to transfer land to the poor. Careful re-distribution of public lands, or state expenditure on land reclamation and subsequent allotment as private property can make assets available to those too disadvantaged to enter into normal land market transactions. Support is also needed for institutions to administer the necessary land acquisition and distribution mechanisms, and to advise prospective land owners.

In many developing countries, existing property rights with regard to land are ill-defined. When rights to resources are not well-defined, the poorest and most marginalized segments of society, especially women and children, suffer the most – exacerbating their daily struggle to meet basic needs. In such situations, more powerful members of society can use their access to information, political influence, and money to access land resources at the expense of the poor. In some countries, communities face the sporadic nationalization of land holding by the state, undermining the incentive to invest in the land. In fact, even where land tenure systems do function, they often have unequal effects on the society.

Simply providing title to land, however, does not in itself guard against this process. Even providing legal title to land users in a transparent manner, however, not only allows for the land to be used as collateral for loans, but also often leads to default to usurious lenders, leading to concentration of land ownership. The very act of deciding who owns land is frequently manipulated by powerful groups, with the result that the state ends up legitimizing and enforcing inequalities. Furthermore, providing title in the name of the 'head of the household', typically considered to be men, often leads to sale of land which may in fact have been worked by women. This situation is exacerbated in the case of polygamy. It is not surprising, therefore, that the pattern and process of land ownership and distribution in many countries is simply a reflection of deeply embedded power relations, and it may be naïve to believe that one can change this pattern without addressing the structural conditions which created it.

It is important to develop effective, accessible information systems which provide data on land use patterns, land values, availability of water, traditional land-users and title-holders. An accessible land registration system is also vital. In the best cases, this also involves public information efforts to encourage those with valid claims to come forward. Establishment of forums for public consultation and involvement in decision-making, and for peaceful dispute resolution, is also crucial.

Challenge 3: How can national processes address the overlaps and contradictions between formal and informal, customary and modern land tenure systems, and 'hybrid' systems?

A key is developing systems of land tenure which respect local and customary traditions. Harnessing community traditions of self-organization, has emerged as a key to successful land tenure reform. Policies can also explore creative approaches to the use of customary land systems, including in some instances their codification. It is important however that the communities coming under such

codified systems are highly involved in the process and are 'self-identifying', as issues of communal identity are often complex and contested.

Past failures to combat desertification have been linked to a lack of local resource-user involvement and to an absence of solutions compatible with indigenous cultures and land tenure systems. The rights in question can take myriad forms. They can be held by individuals, firms, organized groups and the state at all levels. Their precise nature often depends on context-specific statutes and by-laws, which may pose restrictions on land and resource-use. The creation of property rights in land is complicated by the co-existence of formal and customary legal systems. Often, traditional legal arrangements are unwritten, and therefore may be 'invisible' to external institutions. Many societies in developing countries have deeply embedded preferences for customary law approaches to questions of rights to access, use, inherit or transfer title over land. These laws can be fundamental expressions of culture and tradition, derived from a combination of spiritual beliefs, geography, economics and history. In these instances, urban, 'modern' biases must be adjusted to consider the views and needs of rural peoples, especially in developing countries.

Challenge 4: How can the rights of marginalized groups, including, women to control over land be promoted and protected?

Special emphasis is needed on developing ways to ensure that marginalized groups -- be they pastoralists, nomadic groups, poor dryland communities, or women -- are able to benefit from land distribution programs. Legal means -- such as joint titles for married couples -- could be accompanied by awareness-raising and civic education exercises.

Gender-sensitive technologies and natural resource management systems -- addressing access to water, for example -- also have great potential.

Challenge 5: How can land tenure systems and land tenure reform processes take a holistic, comprehensive and co-ordinated view of the institutional and physical environment?

Land issues can have international repercussions where resource degradation (e.g., land or water) or tensions arising from it spill into neighbouring countries. Regional approaches are useful, and developed countries and other donors can and must increase their commitment to provide technical support, skilled personnel and funds to local administrative units responsible for areas suffering land degradation.

Also, policies need to be set in place to protect and manage the natural resource base for economic and social development. Land reform efforts are particularly successful when built on the foundations of broader natural resource management and income-generation programmes to enhance sustainable livelihoods in vulnerable areas.

The issue of land-use-specific tenure also needs to be considered. Much of the theory and practice of land tenure is implicitly predicated on the assumption that land users use one piece of land, as in most temperate agricultural systems. In areas of rainfall too low to support crop production and lacking economically accessible groundwater, however, there is an ecological imperative for mobility; to follow the rains wherever they may fall. In the case of mobile land use, the key challenge in land tenure reform is to ensure that there are reciprocal agreements of access between land users. Land titling on the basis of title in the name of an individual in such a system would be inappropriate, as it would confer right of disposal, potentially taking a part of the resources out of the land use system. This is precisely what is happening in many areas which are marginal for agriculture - in particular where the state is investing in water development, often in uneconomic schemes and under pressure

from better connected groups – to the detriment of the traditional land users. Indeed, conflict between agriculturalists and pastoralists is another major challenge for land tenure reform in drylands

Further Thoughts

The key now is implementation. There might be the most progressive land tenure legislation on the books in a capital, but if it is not implemented at the local level it will not bring sustainable land use practices or equity.

As such, land tenure - and in particular land tenure reforms – are not only a legal issue but also one of governance. Security of tenure is most sincerely guaranteed by the political neutrality of the bodies which write and enforce legislation, and by the transparency of land reform processes. This illustrates the central importance of genuine broad-based participation in land reform processes. Facilitating these conditions is a great challenge: but a precondition for meaningful change.

Questions of access to, as well as ownership and distribution of land, are politically complex. Experience suggests that secure land tenure systems can help encourage productive investment, create incentives for conservation, improve livelihoods and stimulate economic development in both rural and urban areas of countries with large areas of drylands. On the other hand, there is also evidence that inappropriate land tenure systems - those which result in unequal access to and control of resources for marginal populations - are a major obstacle to poverty reduction. Efforts to implement land reforms often challenge vested interests and provoke social tension, while the failure to pursue land reform can spark conflict or even revolution. Failure to implement meaningful reforms, however, can contribute to the continued degradation of dryland areas¹, which in turn will create the social conditions under which it is difficult to carry out such reforms - a vicious circle.

To break this cycle, the formulation of land tenure systems must become a wiser and more strategic process, involving analysis of the dynamic nature of dryland livelihoods in the 21st century. The case studies below reveal a series of general lessons learned. Drylands have complex ecologies and can shift quickly from a productive to unproductive state - and vice versa. In many regions, drylands are occupied by the poorest of peoples, who depend on these lands for their livelihoods. The needs of poor dryland communities are often overlooked in policymaking, particularly when decision-making is concentrated in urban areas. There is now an urgent need to focus on the poorest of the poor, but draw lessons from all experiences.

This paper raises many questions and challenges. There are few simple or straightforward answers. Without new energy and strong commitment to change, the future is grim for the economies of many developing countries and the people of the drylands. The more serious challenge facing policy-makers, academics, nongovernmental organizations and members of dryland communities is to engage in a sustained, inclusive, and honest process of dialogue.

ii. Land Tenure Definitions

This section looks at some specific property terms and concepts relevant to land tenure reform, from a 'western' and also a 'customary' point of view.

Property rights are entitlements. They establish a relationship between the holder of property and a certain set of resources. The legitimizing norms and institutions of societies maintain this relationship over time, and defend it against trespass or other interference. In western or post-colonial countries, rights are usually divided into *usus*, *fructus* and *abusus*, the rights to use, enjoy the fruits of, and dispose of (or alienate, sell) property. By establishing these relations, property rights are intended to expand incentives for economic activity, providing a basis for investment. These rights can concern land (including soil and sub-soil resources), but also related (or non-related) rights over water and air, access to navigable waters, wildlife, genetic resources or intellectual creations.

Land reform is a general term referring to the redistribution of property rights over land and related resources (which can include water and other resources). Land reform is used as an instrument to promote more efficient and equitable distribution of land and landed resources. It is usually undertaken for the benefit of the landless, tenants and farm laborers.ⁱⁱ

Land tenure reform is a critical aspect of land reform and refers to changes in the way in which societies confer bundles of rights and obligations to land holders - that is, it focuses on the terms and conditions on which land is held, used, and transferred. Land tenure reform systems typically involve a combination of the following:

- Provision of social, political and economic support to make the institutions governing transactions of property rights operate with more efficiency, effectiveness and fairness.ⁱⁱⁱ
- Verification and registration of land titles for those with a demonstrable claim to the land. By replacing doubt and contention with certainty, securing land title can encourage the title holder(s) to invest time and effort in the land and thus stimulate development.
- Development of effective, accessible information systems which provide data on land use patterns, land values, availability of water, traditional land-users and title-holders.
- An accessible land registration system. In the best cases, this also involves public information efforts to encourage those with valid claims to come forward.
- Establishment of forums for public consultation and involvement in decision-making, and for peaceful dispute resolution.

Customary systems are the *de facto* systems of land tenure in operation in many dryland zones, rather than statutory laws. In Africa, for example, most people hold their land under indigenous customary systems irrespective of the formal legal position.^{iv} Some significant aspects of customary land access in dryland areas are described below.

Systems of multiple resource use are particularly common in dryland areas. They include different categories of users (e.g. individuals, households, ethnic groups), users of different status (e.g. owners, secondary and tertiary users), different uses (e.g. hunting, collection of wild products, grazing), and different kinds of rights (e.g. seasonal access, rights of disposal, rights of occupancy).^v They are often very complex, and often allow for symbiotic relationships between agriculture and

pastoralism. A typical example of this is for herders to graze their animals on the stubble of harvested crops. In return for allowing livestock to eat the crop stubble, the farmer benefits from the animal dung which fertilizes the field. In Somalia's Shabeelle Valley during the 1950s and 1960s, even irrigated areas had land set aside for animals to graze and take water from the canals.^{vi} In order for such systems to work, herders require rights of seasonal access to fields, and the system must be adequately policed.

Specific areas of resource abundance are often key to livelihoods in the drylands and hence have special land tenure regimes. These include dry-season grazing areas and pastures reserved for times of drought, wooded areas and seasonal rivers. Such areas, which comprise just a fraction of the total arid land area of the world, form 'lifelines' for local communities, and are often managed under systems of multiple resource use.^{vii} Degradation of these areas, or their conversion into other uses, may have negative impacts on livelihoods across a wide area. The patchwork of key resource areas within the wider drylands landscape is often far more significant to dryland communities than modern notions of territory: in E. Africa for example, the dry mountain forests of Turkana-Moroto, on the Kenya-Uganda border, are crucial dry season grazing reserves, used by communities from both countries who cross the border frequently.

Water is a prime determinant of access to dryland areas; it is the key to dryland life and development. For example, if a borehole is privatized in an otherwise arid area, then a wide swathe of land around that borehole is effectively being privatized. Without access to the water, people, and livestock cannot use the land. Amongst most dryland peoples, ownership of water sources is usually vested in the local community (e.g. lineage group, or village) rather than the household. Water is traditionally rarely 'owned' exclusively even by these groups however: access by others is often allowed. Often a distinction is made between different water uses. Amongst the Sukuma of Tanzania for example, any water source, even those found on private land, were traditionally free for *domestic* use by anyone. However, as regards water for cattle, it was possible to charge people for use of a private watering-hole.^{viii} Pastoral societies have developed wide-ranging kinship networks that allow negotiated access to water. Political structures have been shaped by the distribution of this precious resource.

Communal tenure is a common feature of customary land tenure systems in the drylands, with overall authority for land use vested in the traditional leaders of the cultural group (typically older men). Carefully negotiated systems for common pool resource management provide a number of goods and services essential to livelihoods in the drylands. These include material items such as timber, water, and food; off-season opportunities such as production of local handicrafts; and wider social and economic gains including water recharge and biodiversity conservation. In traditional pastoral societies, livelihoods are based almost entirely on common pool resources. Even in areas where private land holdings are predominant, common resources are important: in some areas of India for

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