

Communities and the State

Rethinking the relationship for a more progressive agrarian century

By Liz Alden Wily

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How is it that so many people in the agrarian world still don't own the land they live on and depend upon? The answer is that they do own their lands — but not in ways which national laws recognize. The number of people affected is up to three billion rural dwellers, most of them poor, and living in the 150 agrarian states of Africa, Asia and Latin America. These people have no formal titles to their individual and shared lands. They acquire rights as members of communities, in accordance with norms which the community itself defines and upholds. Inheritable rights may be allocated to individuals but more often to families, the community retaining shared rights to off-farm assets such as forests. Rules may be time-honored customs. Or the rules may be entirely novel, adopted to meet new challenges and aspirations. Either way, the localized and largely cost-free nature of community-based property systems (often called customary land tenure) gives communities unique advantages as practical and, of necessity, inclusive decisionmakers. After all, adherence to norms and practices requires majority consensus. The more stress and threat facing community-based rights and resources, the more purposive their governance regimes become. This explains why despite the odds, the community-based system of landholding survives and evolves with the times as a vibrant framework for owning land for rural majorities in most agrarian states. With legal support the regime offers a future upon which land-based society can be more fairly and durably built. In this way, “community lands,” as they are now known, are not just a construct for the past but for the future.

More than human rights and the remedy of past injustices over wrongful land takings or denial of rights at scale are at stake. Recognition that communities own their expansive lands, including millions of hectares of forests and rangelands, offers enormous potential for cheap and sustainable resource conservation and climate mitigation. Moving millions out of conditions of tenure insecurity will also safeguard livelihoods and contribute to the peace and stability that eludes so many agrarian nations. Their operating systems provide ready-made platforms upon which more devolved and accountable formal governance in general can be built, the absence of which is also a familiar thorn in the side of struggling countries.

So why have community lands not been absorbed into state systems, especially given such entrenched



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emphasis upon secure property rights as the backbone of the modern country? The answer lies in the narrow legal vision as to how “property” comes about, the forms it may lawfully take, and the means through which it is protected. To be short and blunt, the norms

of wealth accumulation through dispossession by which feudalism and capitalism got their grip die hard. For agrarian states following classical paths to wealth creation, it remains convenient for governments to keep millions of hectares of valuable lands close to hand as disposable assets for companies and well-heeled elites despite the fact these lands are traditionally the customary property of their citizens.

To sustain this with legal force requires maintaining the fiction that these lands are *terra nullius*, or unknown, long after feudal and colonial polities have disappeared. This means that sometimes more than 75 percent of a country’s area is deemed to be “without owners” and by default falls to the state. The rationalizations have remained remarkably stagnant for hundreds of years: that landed property only exists on the government’s say so, upon issue of its chosen form of recognition, that only individual and corporate persons are eligible for registration as owners (not families and communities), and that as rural rights are created by man’s and woman’s labor, community presumption of ownership of unfarmed forests, wetlands and rangelands is unwarranted.

More frustrating for latter-day policymakers is that many communities fail to concur with the idea that property can only exist if it is a tradable commodity, impeding a free market in land, the clarion call of market-led liberalism. Such communities insist that their collective ownership of the soil is not for sale, as these are estates held in perpetuity to which members of each generation duly secure rights, the terms of which each generation adjusts to meet its needs. Moreover, this is not only the position of pastoral communities and indigenous peoples but also the position of many modern farming communities, who see this arrangement as a foundation for shared culture, practical social security, and a bulwark against bad decisions and involuntary losses.

Such recalcitrance was not supposed to exist in the 21st century. As colonial and then international advisers insisted through much of the last century, the

communalism of customary or indigenous regimes is an impediment to the individualism that drives the concentration of landholding conventionally needed to trigger growth. Millions of aid dollars were invested in compulsory titling programs, especially in Africa. The aim was to replace customary rights with government-granted individual entitlements, of which the government would thereafter administer and regulate the sale — especially to those with means to develop the lands commercially. Homesteads were the target. Off-farm commons went the way that local waters, foreshores, and wetlands had gone before them: confirmed as state property. Conservationism helped, in its assumption that governments were the only safe pair of hands in whom forests could be vested and managed.

Things do not always turn out as intended. Extinction of community-based land rights and the regimes that support them has been noticeably unsuccessful in most agrarian regions. Only 10 percent of the African continent is subject to private statutory entitlement today. Similar low figures appear in Asia, Latin America, and Oceania, although less uniformly. Nor have governments everywhere proved to be ideal protectors of natural resources or the most transparent or equitable distributors of their values.

The wave of industrialization and societies based entirely upon wages has also begun to recede. Assumption that industrial transformation is the only path to modernization has begun to erode. Governments of today are less sure of the need for, or as willing as their predecessors to engineer, the dispossession at scale upon which mass migration and factory labor has been historically built. Nor is the expected disconnect between rural and urban populations evolving in classical ways. More nuanced co-dependency is evident in which urban dwellers retain sociocultural links and surety of eventual land access in home villages, reconstructing the social community in city neighborhoods. Livelihood sources become more diverse and intertwined. Rural communities themselves seem to consolidate and thrive, remaking in diverse ways.

Maturation of local lands into community lands with clearer perimeter boundaries and comprising increasingly well-defined distinctions between family and common properties, has been a noticeable transition. The reasons are not hard to identify. First, lands and resources are the primary capital of communities. Most of these assets are naturally collective, as in the forests, rangelands, and seasonally useful barren and floodable lands that do not survive or serve so well when carved up into private parcels. Their prominence in the community land sector is less surprising when one considers that despite housing over half the world’s population, urban areas take only 3 percent

of global land space. Or that only 13 percent of the world is cultivated farmlands, where an individualized or family-based approach holds more resonance.

The same developments that threaten local tenure also bring awareness. There is declining acceptance that the state is, after all, the rightful or even logical owner of unfarmed lands, or wastelands, as some governments still define them. Nor are poorer majorities, seeing the size of their farms decline with population growth to the point of extinction, as willing as in the past to ignore encroachments into shared commons, or to tolerate the deals their own traditional leaders may be enticed to make on their behalf. Demand for more inclusive decisionmaking also mounts, bringing traditional norms into more democratic territory. Where local chiefs have become used to controlling rights and even imagining themselves as the real owners, the transition can be slow and rocky.

Critical awareness of the weak legal status of communities' land rights is also rising. Globalization aids this, as each new surge reaches more deeply into their domains. The digital era helps. Social media allow even remote communities to become aware that their sense of threat is not unique and to build solidarity. Good governance initiatives also help, as do devolution of institutions, greater autonomy for judiciaries, and human rights developments in new laws and constitutions. Even the demands of neoliberalism to open up land markets has played its role, producing a wave of land law reforms that were, in the event, forced to focus on the unequal status of community lands not yet subject to formal entitlement.

The result has been an ongoing wave of agrarian tenure reform that has been forced to focus on the status of community-based tenure systems and the rights they deliver.) The more progressive new land laws do not make formal registration prerequisite to their protection, placing the burden of proof that lands are unowned upon the land seeker. Some new statutes now recognize for the first time that registrable customary rights legitimately extend beyond the family farm to include common lands and that families and communities are juristic persons for the purpose of land holding.

The implicit shift from *terra nullius* to *terra communis* — community lands — should not go un-noted. Moreover, this is not only in the form of discrete native titles issued to indigenous peoples, and which on the whole have sturdily avoided disturbing traditional meanings of property, locating these entitlements as tolerated exceptions to the rule. More dramatic re-

forms in this sense derive from countries where the status of customary rights is radicalized. Take, for example, the new land laws of Tanzania, Mozambique, Uganda, Burkina Faso, and South Sudan. By the stroke of a presidential pen, rural majorities were turned overnight from permissive occupants on public or state lands into lawful landowners due constitutional protection for their property, whether they had identified their landholdings or not. The vast holdings of the state, and its status as majority landowner and landlord, were by the same action struck down.

Attempts by wary governments to backtrack on such reforms, especially in both Africa and Asia, have not been slow in coming, as the harsh reality of surrendering vast lands in favor of little more than regulatory oversight comes to bear. However, as each country begins to find, such steps are difficult to recant in these more popular, empowered, and mobilized times.

At times leading, but more often running to catch up, international agencies have also changed their tune. The World Bank now advises governments to avail collective entitlement alongside opportunities for farmers to secure individual title — advice that may intend that common properties as well as family farms will thereby enter the marketplace, to be snapped up by investors. This too may be more difficult to apply at scale than imagined. Ghanaian and Mexican communities, long assured collective tenure, are among those which have not taken up legal opportunities to sell off their commons. As practically important is a sea change in attitudes to smallholder farming, recognizing that it provides most of the world's food on one quarter of all cultivated lands. While foreign direct investment continues to be important, and industrialization and job creation encouraged, governments and agencies now work harder to find routes through which this can be farmer or community based, or at the very least, linked into commercial enterprises and in ways that do not require or necessarily anticipate involuntary dispossession as its end route.

Almost without notice, it is now accepted that agrarianism itself is here to stay. This is not after all merely an unhappy phase to be endured while factory-based industrialization and corporate ruralism take root, but a potential basis for growth in its own right. This represents perhaps the most adventurous reform of all; an entirely new phase of the agrarian state could be in the making. Community-owned and -governed lands promise to be a key part of this new agrarian future. **TEF**

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