

## **Liz Alden Wily**

**Independent Political economist and associate fellow of the Van Vollenhoven Institute,  
University of Leiden**

*Interview conducted by Camilla Toulmin*

---

Camilla Toulmin introduces the project, background, and the LTDC/AFD. Having taken ‘the commons’ for the next theme, one of the elements is to conduct a set of interviews. The plan is to run through a series of questions, record the interview and then write a transcript which I will share with you to correct and agree that it properly reflects our discussion. We have a total of 25-30 interviews and will follow a set of standard questions in order to have comparable discussions, which will be recorded and transcribed. The process will be to run through a series of questions, share the transcript with you and present it in a publication alongside other interviews. AFD is interested in looking at some of the global issues surrounding commons in a broader context than the LTDC, which focuses on commons and land issues in the countries it supports.

### **Q1. Can you tell us about your first encounter with the commons? How did you get started in this field?**

LAW: It was in 1972, in Botswana in the middle of the Kalahari Desert. I went there when I was 24, to set up the first school for hunter-gatherer San. I lived with two bands, and the person who had been assisting these bands raised funds to sink a 355ft borehole as a permanent water source. Being in the middle of the Kalahari, the borehole attracted agro-pastoral BaKgalagadi with their cattle herds. At first they came just for one or two days to water their stock. Then they wanted to stay. The 110 people in the two San bands had only a handful of animals themselves, around eight cattle and eight donkeys. They were shy and often fled into the desert when they saw the dust of the BaKgalagadi on the horizon coming their way. So defending their right to hold the borehole and decide who could and who could not visit and use it was how I became politicised about land rights. This taught me two things: how important it was for customary landholders to secure their territory and become strong enough to speak on their own behalf and defend their interests (the term ‘empowerment’ had not entered our vocabulary then). The issue was not houses or farms – they had only grass huts, which they often moved, and there were no farms in the arid Kalahari. It was about the whole territory and their shared ownership of it over many hundreds if not several thousands of years. So that’s how I became conscious of commons and the idea of collective property (again, these were not terms I was familiar with in those days).

I have to say I tried. Within a year I visited the Office of the President and asked to see the President (I was young!). I laid out clearly for his (bemused) Permanent Secretary what I, at the tender age of 25 and who had never read a book on land matters, declared needed to be done. It was centred on securing San lands (we did not call it ‘land rights’ then) and their right to choose their own lifestyle, and not be forced to settle and give up hunting and gathering. He sent me over to the Ministry of Lands and it was there I was appointed Bushmen Development Officer in 1974. This title was soon changed to Remote Area Development Officer after the South African Press gleefully pointed fingers at the Botswana Government, saying “you see, you people want Bantustans too”. I went to the Attorney General, the chief agricultural adviser and others, and tried to get them to find a way to recognise that *a group* could own land. They couldn’t and they didn’t. They said it was only possible for individuals to own land, and that as the Bushmen (BaSarwa, or San) had no animals or farms or even ‘proper’ houses, there were no grounds for them to get certificates. And that it was state land

anyway (it remained so until the late 1980s). Additionally, they should stop roaming around and settle down like 'normal' people. I pointed out that they were settled – in their own lands, and that they never went outside their boundaries. But the authorities still couldn't find a way.

So then I had to go through the route of 'settlement schemes', which is how the initial land claims occurred, in the framework of settlements schemes. I also went to Cabinet to demand that some of the freehold farms in Ghanzi were returned to the San, who had then become labourers. Although this was not accepted, I did get several of the newly-expanded ranch areas allocated to San. None of the San allocations ever got title, and today most of these schemes have been invaded by non-San or are required to accept outsiders sent to them by the government. I set up a national programme (Remote Area Development Programme) that operated in most districts covering health, education, water and 'settlement' frameworks, but it was never popular. Key senior officials, including ministers, felt that I wasn't doing the job I was appointed for – which they had envisioned as handing out food and clothing to 'their' poor Bushmen living on 'their' cattle posts in the desert. The fact that their ranches were on San land was not accepted, and when new formal ranch blocks were established on San land, special areas were set aside outside the ranches for them to live in. The Remote Area Development Programme was arguably the first land rights programme on the continent. Although a lot was achieved in the 1970s, this was eaten away during the 1980s. It became principally a welfare programme, and although the programme still survives today, the land rights agenda it was built upon has disappeared.

I would even say that Botswana ranks in the lowest 10 countries in Africa on land rights matters. This is curious, because Botswana, like Ghana, provided properly for customary land rights straight after Independence – but not for San, and not for registrable holding of collective lands. It has never got to grips with this requirement, and its absence deeply affects the land rights of not only San (a minority) but also the majority of rural citizens, who have watched their rangelands turned into 'unowned' tribal land that can only be secured through leasehold – as ranches leased to individuals with many livestock and the funds to sink private boreholes. Also, millions of hectares that are earmarked as wildlife management areas in San areas have slipped into the class of state land. They're not even administered by district councils, but by central government, which has recently allocated these San lands to private safari and tourism operators. If anything, the Botswana Government has become more, not less resistant to making collective tenure viable, unlike more progressive countries on the continent today. A draft policy document on this is written periodically and filed away. This affects all Botswana citizens, not just the San. It means that even in the Tswana village where I lived while I was working in the Ministry of Lands, villagers could only get their house and farm occupancy recognised. They had no way of securing their most precious asset - their remote shared grazing lands – without first forming a commercial entity and proving significant livestock ownership. So since around 1980 there have been steady land grabs by elites who co-opt communal land under 99-year renewable leaseholds. Botswana is not a successful case of rural land security for either majority or minority groups ... So that was my first encounter with the commons.

**Q2 & 3. Can you describe a particular case – a research project or action that testifies to the importance of the commons as concept and tool? And what are the main lessons or elements that you draw from this experience?**

LAW: Let me ask you a question first. There has been a debate over the last four or five years as to whether the commons refers to all lands held by community members, including homesteads held by individuals or families, or only to off-farm shared lands such as forests, rangelands and marshes. When AFD refers to commons, what do they mean? My own construction has always been a bit different, that landed commons refer to all lands and resources that fall within the jurisdictional area of a

community and which, whether held individually or collectively, are governed by its rules. Does AFD's conception accept this?

*CT: Yes, it does. Essentially it involves set of resources, a particular group linked to them and a set of rules ... but with an awful lot of diversity and fuzzy boundaries in terms of the nature of the resources, group membership and the strictness, clarity and effectiveness of rules that might relate to how those resources are used, and by which people.*

On Question 2, the case I have just described is very old, although it continues today. Another really good example of a commons issue linked to changing laws is community land areas and community-owned forests in Tanzania, which I worked on through the 1990s until 2002. There is a ton of literature on village lands, but the Tanzania case is important and there are now around 12,000-14,000 villages with discrete domains governed by elected village governments. Another case, which is interesting for other reasons, is Namibia. I worked there in 2013-2014, trying to get a change in the law to make it possible for every community on 'communal lands' to be allowed to define its respective community land area, plan its use and get a collective title for the off-farm lands. This met a lot of roadblocks. The idea was far too late for Namibia. It should have been done in the 1990s and been part of the 2002 Communal Land Reform Act. I said this at the time, during a mission there in 1993. There was simply too much vested elite interest. Namibians weren't ready to recognise that adjacent grazing belongs to the village, and are even less ready to do so now because there have been such lucrative 'sales' of their people's communal lands by chiefs to influential people, officials and politicians living in towns. It's an important case because so much is said about conservancies in Namibia, as if they are community land units. They're not. Some of them include 10-20 villages covering many miles, and half the residents don't even know they are members of the conservancy. Conservancies are vast ecosystems, especially in the northwest. This is appropriate when defining wildlife zones, but too large to be meaningful for community landholding and governance. In some of the work I did there we worked with villages within conservancies to arrive at rational sub-divisions of these areas according to traditional areas, but this wasn't acceptable to some conservancy committees or chiefs, who are always ex-officio members of those committees and have significant powers.

Then there is South Sudan, where I spent 2004-2005 trying to get restitution procedures in place for the millions of feddans (a feddan is approximately an acre) that were taken from communities and given to investors back in the 1970s. This had become a major driver of the civil war between the north and south. That's also relevant to securing commons, especially rangelands and woodlands – their value is so high. Even then, the idea was to create a breadbasket for Sudan by allocating these lands to commercial mechanised agriculture. The only people who had the means, funds and education to do this were elites from Khartoum. Millions of acres were transferred from local Nuba and Funj (Blue Nile) to politicians, army generals and senior officials with 'the means' to buy or rent tractors and enter agreements for sorghum and sesame cultivation. It failed because the area was too arid to sustain mechanised agriculture – it became a dustbowl within five years – all a bit like the Tanganyika Groundnut fiasco in the 1950s. But that mass dispossession helped trigger civil war (the Nuba and Funj joined the Southerners and over a million of them died). The Government of Sudan's failure to adhere to the Peace Agreement and its own new Constitution and return those lands has also been a major factor in the Nuba and Funj returning to war and being bombed regularly. This has created the mass migration into South Sudan, which rarely appears in the press these days. Darfur is similar. And the Beja land grabs in the North. I put out an article in 2008 looking at this issue of who owns the commons in Liberia, Afghanistan and Sudan, and what happens when customary rights are ignored. (I worked in all these countries). In all three cases, this was one key and seriously under-acknowledged driver of long civil wars.

CT: *Thank you. You've sent us a wonderfully detailed reference list to draw from.*

**Q4. From your point of view, what are the main challenges and issues at stake when taking a commons approach to land tenure in terms of (i) governance, (ii) territory/landscape and its evolution, and (iii) public policy?**

LAW: All three frames are critical. Let me take the last first. One of the most important benefits of enabling majority poor communities to secure land under various collective means isn't just the asset values that the poor can thereby secure and develop – it's a governance issue. We've seen this a number of times in Africa, slowly expanding, but the key case was Uganda in 1995 with its new Constitution, which overnight turned the majority from being tenants at the will of the State (on presumed unowned lands) into lawful landowners in their own right, a condition entrenched in the 1998 Land Act. The impact this has on the 'state of the State' is important and is probably the biggest factor today. The issue here is the extent to which agrarian states are democratising, and state property (however defined) is made available to land-dependent majorities. Is this not a critical plank in the maturation of the agrarian state, even if it's hard for governments to let go of their landlordship? I did a lecture on that in Washington last year – on the governance implications of property rights reform, which are massive.

To be honest, if I had to choose between securing land rights and securing community-level governance, I would always choose governance, because securing a title on its own is fragile unless there is empowerment and legal rights to regulate land relations in the community land domain (and titles can always be sold off as a result of manipulation by community elites). That's how important the link is between who actually controls the land legally and the kind of society or democracy you have.

The question on territory and landscape (environmental stability, climate change, carbon stocks), that's important too. It's one of the things I have always pushed for – if you want to save a forest, or a degraded rangeland, or even local waters, the best option is to vest ownership or at the very least acknowledged control based on recognised possession, in the local community. And that's what the whole Tanzanian community forest conservation was about. I mobilized that in Arusha Region in 1994/1995, and it became a national programme by 1999 and embedded in law in 2002.

I'm still dealing with this issue here in Kenya. The inability of the State, in this case the Ministry of Environment or the Kenya Forest Service, to even conceive that a nationally important landscape could be viably and safely owned by a community has not sunk in, so the overlap of customary ownership and the State's out-dated and seriously incorrect conviction that it is the only safe pair of hands to own a forest, a valuable wildlife area or even a river bank, remain highly contested and volatile. Yet the advantages of community owner-conservator rights are obvious. First, the community has a vested interest in sustaining intact ancestral forests or useful wildlife areas; and second, it may be held to account in a way that no government can be. If you take the case of traditional forest people who still live in Kenya's last natural montane forests, they can easily be issued community titles, with an encumbrance that they may not sell the land or clear or degrade forests. This goes back to governance – surrendering ownership to citizens also changes how the State behaves. Their hands are necessarily 'cleaner' without all that property to dispose of as they will and to whom they will, because they have a different set of institutional 'interests' – to do their advisory and watchdog jobs well.

So that issue still needs highlighting. Most of the Congo Basin has not reached that point. The Republic of Congo has done it for Pygmies, under a special law, but the law is just paper as no application decree has been issued after five years. Nor do non-Pygmies have the same privilege to secure their community land areas without securing individual titles, which are irrelevant to their main resources. DRC keeps hesitating at the brink, it doesn't really want community land ownership because the lands are too valuable for logging, for oil, and to carry out their version of how conservation should be done

by the National Parks, etc. Cameroun is resistant, Gabon even more so. Resource-wise the Congo Basin is second only to the Amazon as a carbon sink, but it is disappearing. The most sustainable and incentivised framework for retaining and rehabilitating degraded forests would be to enable communities to secure those lands under certain conditions.

**Q5. Over the last few years, have you seen an evolution in how the commons are seen and understood – in terms of their characteristics and what’s at stake? If so, why do you think this change or shift in thinking has come about?**

Yes. There are two aspects to this. One is the notion of the commons as something completely different to material landed commons – the Internet being the best example. The whole notion of commons, how you operate as a commons group, even to new forms of the State, breaking down boundaries, is exceptionally interesting. Ironically, there is quite a movement that focuses on commons not as common property but as the opposite – open access resources with an open common interest base. Bitcoin is one example. We need new terminology to make a distinction between landed commons (material commons) and intangible commons.

Also, in the latter case, especially with landed commons, there’s been a big change in recognising the importance of community-based authority and tenure. The construct of collective tenure is coming to the fore. The meaning and scope of private property has changed (see my latest publications examining this). The implications for state powers over ‘private land’ (inclusive of such common property) are also maturing, although very much an early work in progress.

I’m just reaching the end of detailed analysis of all the constitutions in Africa, and to be honest, 10 at most have usefully provided for collective tenure as a recognised form of property, which is registrable as such. As you know, back in 2003 IIED published a piece I wrote on governance, and the main point I made then was that the group, the community, must be treated as a legal person for the purposes of formal entitlement. It doesn’t have to establish a legal entity at great cost. Which of course has been a major problem. For example, in Cote d’Ivoire, only one community has begun the process since 1998. And throughout North Africa it involves tremendous investments to set up co-ops, so that’s an important thing that is changing. Some new land laws no longer require this, as in Kenya, where that particular issue was debated for several years.

Do refer to the indicators that we use in LandMark to assess the quality of community land security. One measure is whether the law requires a community to form a legal entity in which to vest collective title.

We (LandMark) are also working hard to identify the commons estate globally. You will have seen the figures for African states and the grounds I use for calculating this. We have to use proxies, as data simply do not exist except in a few countries. We are testing its application globally – with mixed results. But on numbers of ‘landed commoners’ – this is definitely high. People still get nervous when I use the figure of three billion people for rural customary landholders who depend on the land for their livelihoods, and who – more importantly – define, hold and transact rights through community-based tenure regimes (customary, Sharia/customary, etc.). But my calculations are as close as we can get, given the absence of good data. I recently re-did my calculations – and if you include India and China, it’s definitely three billion people. They traditionally hold up to 60% of the total global land area. Most of this is under contradictory categories of state, public or government land so they are not recognised ‘owners’. Unpacking the overlaps and enabling community land ownership is what my work for 30 years has been all about.

CT: *Flagging the scale of the commons and people reliant on them, is this why commons have received a new energy and recognition?*

LAW: It's an output of accumulating individual and country-based efforts around the world. A lot of this comes through the Indigenous Peoples movement, particularly in Latin America and a few Asian countries, such as the Philippines. In Africa, I've adopted a more balanced approach because we can't focus on indigenous people alone. They may account for a maximum of 25 million people, while the effective rural population, who are 'commoners' in the sense of holding lands under community-based systems, is 650 million at the moment. If population trends continue, despite urbanisation, there will be 1 billion people in the rural sector in Africa by 2050. Globally, there are possibly 400 million indigenous people, compared with 2.5 to 3 billion rural people. The whole IP thing has a profile, energy and emotional charge that ordinary communities don't have. But strategically we need a conceptual framework so that the majority, who effectively face exactly the same denial of land rights, are not excluded.

One of the main things about the push to 'go global' on community land rights and the commons is that for once it is not donor driven. It is individual and civil society driven. For example, in 2012 a few of us decided that it was the right time to go global on the sorry state of community-based land rights, and we had a meeting on this in early 2013. There's now enough factual evidence to be able to do that. The plan has been institutionally co-opted by several big civil society agencies, which has costs, but even that's fine as it shows a level of maturation and incorporation into global governance norms that we didn't have before – it was country-by-country battles.

Common lands security is crucial to all these other factors – climate stability, environmental sustainability, governance. There has been a big change. Even the fact that the LTDC is interested in commons is an indicator of this. The Voluntary Guidelines on Community Lands should appear soon, which is another indicator. But these developments have not led the way, they are *the result* of several decades of hard work 'at the front' on several continents.

There are quite a few cases where innovative approaches have been a jumping-off point. But in the lead cases we have also seen pushback over the last decade – in Uganda, Tanzania and Mozambique we now see attempts to renege on the massive recovery of rights that ordinary communities had gained. It's a balancing act. By focusing on majority rights, minority elite interests also come to the fore. Large-scale land allocations are an important factor, but they're not the only reason for widespread state/elite resistance to recognising that rural lands are generally already owned, and always were. It's not the customary owners but the laws and government policies that need to change to adapt to this more inclusive and democratic reality.

And even with the surge in large-scale acquisitions, the concentration in landholding is accelerating in agrarian economies, with domestic elites taking over lots of land even without injections of foreign company investments. Landlessness is booming, and it's a big prompt for urban migration. There's a lot of stress around the issue. This is social transformation at work, and the question is how far should old pathways be trod and involuntary landlessness accepted as an inevitable cost of this, or structural bases for sustained majority rural landholding be reconsidered and invested in? Tenure reform is central to this. In the interim, there will be continued tensions between the interests of elites and majorities, between people and their governments, on the critical issues of overlap between public and community lands, processes of land concentration, etc. These are in tension and will remain so unless there are breakthroughs on new forms of an inclusive modern agrarian state.

The movement around land rights is also politicising communities, which are speaking out against unlawful and even lawful but wrongful dispossession. Taking the State to court has become a small but significant trend in Asia and Africa, and of course in Latin America, focusing on IP rights. I'm involved in defending communal land rights in two cases in Kenya, one of which is the first land case to be heard in the African Court. The digital age helps. Connectedness enables even poor communities to get online and post blogs. These issues are always in contention in society, and it will go on this way until a sound and fair route to modern agrarianism (land-based economies) has evolved. Commons tenure reform is central to this.

**Q6. What kind of actions might it involve?**

LAW: There are plenty of experiences that can be drawn upon and analytically constructed. Despite the digital age and mobility, there is still striking insularity, even within continents like Africa. Steps to overcome this need support. In Africa this could draw on francophone and anglophone approaches, which are pursuing rather different paths with lessons that may be learned from both.

There are also issues in commons tenure that keep falling through the gaps and not being sufficiently addressed. One is pastoral tenure, which has more complex demands, but where efforts in this field seem to have flagged. Millions in Central Asia and the Sahel-North Africa/Middle East are still unable to achieve reasonable tenure security that is fit for pastoral tenure purposes and land use systems – with predictable repercussions for conflict.

**Q7. From your point of view, would it be helpful to agree on a classification of different kinds of commons? If so, what criteria might be used? If not, why?**

*You mentioned earlier that there are different kinds of commons. Immaterial commons are significantly different. Would it be helpful to get nuanced terms and language?*

LAW: Yes. On criteria, yes there is a difference between material and immaterial, intangibles such as the Internet. Where boundaries are important and ownership is critical, then there is one big issue that has always worried me – scale. I think the commons as a community-based construct is really important in reference to landed commons, and things run into problems where the community becomes too large to work as a decision-making unit. Tribal lands tend to run into this problem. Botswana is a case in point, also Namibia, and Ghana where land is vested in paramount chiefs. It has to be a workable construct, to be community governed or have the capacity to be community governed. That's why I don't see the wildlife conservancies in Namibia as such ... They do have a committee, but many villagers don't know they're members, they can't go to meetings, can't participate in decision-making. It doesn't mean they're not common resources. Use criteria for what's important. Governable criteria matter greatly.

**Q8. Given that the French co-operation agency AFD plans to support the commons as they relate to land and natural resources in the South, how might this best be done?**

First, it's important for any agency to support what's already happening instead of setting up parallel work. There is so much going on. It should be a basic principle, but even coalitions can be bad at this, with competing initiatives.

Second, it's a new decade. We need to recognise the huge importance of CBOs, now is the time to move beyond just working with INGOs and leading local NGOs. There is such a wealth of CBOs – they are often very poor and often not well-organised, but reaching that level of real communities is critical.

Third, it's tough if AFD is focused in just a few countries. Bring together Asian and African experiences so that it's not just Africa-centric. And as I mentioned above, there's also a need to cross the boundaries between different languages and legal systems. Every time I review progress, I see the value of bridging experiences in francophone and anglophone Africa: there are such different legal traditions and diverse policy positions that people could learn from. Some French researchers are beginning to do this, but is AFD doing this in its programming?

**Q9. What promising opportunities and/or obstacles do you think the French Development Agency might come across?**

As I said earlier, a lot of what's already going on needs support, rather than setting up new overlapping or competing initiatives. A good example is LandMark, an initiative that I'm closely involved with. A handful of us invest a massive amount of free time in trying to bring accurate regional and global facts about the status of community lands/commons into the public arena. We've only got one set of indicators up on site thus far, examining what the law says about community/customary land rights in 116 states. We have plans to expand the critique with several other panels of indicators, such as "so what happens in practice?" We have these new panels under development, but in truth we don't have the funds to do the work to bring them into reality. We're mulling over approaches, one being to work through regional nodes for sustainable collation of facts over time (e.g. the African Community Land Index, which I will talk about in a minute). We also want to expand coverage – the francophone world is poorly covered as yet, but we don't have money to pay for the work to be done, so even covering that would help, not a great expense. We are also expanding collaboration with agencies with specific interests in order to cover specific topics, such as water, carbon within community lands, and so on.

The Index is another interesting initiative. I've helped 40 NGOs in 10 or so West African/Congo Basin states set this up to measure and compare the reality of community land rights (commons) in their countries. It has no funding, so it hasn't got off the ground yet, but the idea is to expand it to all 54 states over time. I'm working with other interested people to establish a group of African land experts. There are also many country land alliances, although, frankly, these have often become so bureaucratized that some have a good deal less utility than in the past, and they also enjoy massive INGO support.

If I had all the money in the world, I would select a couple of issues to focus on that are not being covered, rather than try to do all things. I would look at how the conflict dimension of community land rights/commons is becoming more and more important – civil war, civil conflicts in the Sahel, CAR, even the Middle East. In many places there is some driver in the dispossession of very important lands. I've looked closely at Libya with a Libyan colleague, and when I explained to him what community lands are, he suddenly realised what a major issue community land loss has been in the current situation. The added complexity comes from the value of oil, who controls those lands, and how benefit-sharing works. I would also focus on pastoralism, and pastoral areas. Being focused instead of trying to do everything matters.

**Q10. Can you tell us about any work, bibliographic references or people that we should include in this work being taken forward by AFD?**

There is so much. Go to various sources – RRI, ILC, GLTN, etc., and blog sites like the Land Portal, the Community Land Rights Now Call to Action. Also look at my bibliographic list. I sometimes get overwhelmed with all the literature.