

The opportunities and challenges presented by a land-based commons approach



September 2017

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CONTENTS

- 5 Preface
- 8 Acronyms and abbreviations
- 9 List of boxes
- 11 Acknowledgements
- 13 Executive summary
- 17 **Introduction**
- 21 **PART 1. The issues involved in a ‘commons approach’ to land practices**
- 23 Facilitating societal adaptation to global changes
- 24 Arbitrating conflicts of interest in access to land by private investors and local populations
- 25 Promoting respect for human rights and social justice when dealing with land matters
- 26 Supporting forms of land management that are conducive to peace and territorial balance
- 29 **PART 2. Adopting a flexible definition of ‘land-based commons’**
- 31 Entry point through resources
- 31 Entry point through appropriation regimes
- 32 Entry point through the ecosystem
- 33 Entry point through communities
- 34 Entry point through governance
- 35 Entry point through practices
- 37 **PART 3. An analytical framework to initiate the commons approach to land issues**
- 39 Looking beyond ‘common lands’
- 47 Going beyond community-based management
- 52 Understanding commons as ‘action situations’ .../...

57 **PART 4. Six guiding principles for the application
of a commons approach to land matters**

58 Principle 1: Recognise the prevalence of commons,
and where necessary ensure that is recognised

60 Principle 2: Improve understanding of the environments
in which commons targeted by international cooperation
interventions operate

62 Principle 3: Support and strengthen key commons

64 Principle 4: Ensure that behavioural changes proposed by
external interventions are socially acceptable

67 Principle 5: Proposed support should be based on joint
management and subsidiarity

69 Principle 6: Implement reflexive monitoring and evaluation

73 **Conclusion**

75 **Afterword**

77 **Bibliography**

85 **English-French lexicon of key terms**

PREFACE

These are trying times. Societies in the global North and South are beset by interlinked environmental, food, financial and economic crises, but ill-equipped to untangle them as the short-term outlooks of our institutions, accounting systems and public policies lack the long view needed to resolve such issues. In the meantime, our fixation with markets (hardly the most reliable source of guidance) diverts attention from the fact that natural resources are becoming increasingly degraded, scarce and hard to access for many actors, particularly the most disadvantaged. Supplies of potable water are dwindling from Cape Town to La Paz, in Syria (where disastrous management of the 2007-2010 drought contributed to the calamitous civil war), Amman (which draws some of its water from ancient aquifers 400m underground that may not outlast the next generation) and even the Mekong Delta in Vietnam, where reduced river flow (due to melting glaciers in the Himalayas) is intensifying alarm about rising sea levels that are pushing back coastal defences and threatening rice production and aquaculture.

If we are to avoid major regional or even continental collapses, we need a radical – and rapid – rethink of our relationship with natural resources. The international community was first alerted to this when the formidable Donella and Denis Meadows published their best-selling report back in 1972.¹ If we consider how the authorities responsible for the long-term universal interest responded to their warnings, we can see that there has been huge progress in terms of increased awareness among disadvantaged populations that have had to adapt their practices in order to survive. However, this is counterbalanced by resistance from elites who refuse to see why they should renounce their comfortable Texan lifestyles. In 2015, the Italian chemist Ugo Bardi re-sounded the alarm among the international community in his report to the Club of Rome,² which went largely unreported by the media... This year, amid growing concern about the increasing scarcity of underground natural resources, his dire warning was confirmed in a research paper produced by the French Development Agency (AFD).³

We need to consider the fact that the world could reach peak copper extraction before 2050.⁴ Copper is essential to modern industry, where the infrastructures needed for renewable energies consume even more resources than those powered by fossil fuels. Without copper, the transition to renewable energies could be extremely problematic.

1. Meadows D. H. (2012), *Limits to growth (in a finite world): 30 years after the Meadows Report*, Rue de l'Echiquier.

2. Bardi U. (2015), *Extracted: How the quest for mineral wealth is plundering the planet: [new shock report for the Club of Rome]*. Chelsea Green Publishing.

3. Giraud G., Mc Isaac F., Bovari E., Zatssepina E. (2017), *Coping with the Collapse: A Stock-Flow Consistent Monetary Macrodynamics of Global Warming, Updated version: January 2017*, AFD Research Paper Series, n° 2017-29 bis, January 2017.

4. Rostom F., Giraud G., Vidal O. (2015), Can the Interdependence Between Energy and Matter Resources Lead to an Economic Collapse? in *The Dynamic Energy Landscape, 33rd USAEE/IAEE North American Conference, Oct 25-28, 2015*, International Association for Energy Economics.

Nor should we forget the genocidal effects of failure to manage land and water resources effectively at the international level. Between the late 19th and 20th centuries, over 50 million people died in terrible famines that swept through India, Brazil, China and Africa, which were largely ignored by the West.⁵ Droughts and floods triggered by El Niño caused major epidemics, mass rural exodus, and uprisings that were brutally suppressed by colonial administrations whose ‘active neglect’ and blind faith in free trade lethally aggravated these catastrophic situations. Josué de Castro’s geography of hunger, published in 1953,⁶ showed that this problem was far from being resolved a century later. Major famines continued until the 1970s in India, Bangladesh and even China (during the infamous Cultural Revolution), as well as the Sahel⁷ and Ethiopia (the fall of the emperor). Are we going to be able to avoid a repetition of such tragedies?

Ecological, economic and social changes are urgently needed to enable us to develop the kinds of societies that we want. While they differ in their details, all these societies involve relinquishing an illusion that has persisted since the 18th century: the idea that the only way we can relate to natural resources is through private ownership. Most of our environmental problems stem from the privatisation of the world, from a system that allows American citizens to extract oil from their gardens, or industrial fishing fleets from all over the world to plunder the wildlife in our oceans. Private property is essentially a recent, late-19th century invention, imported from Roman law and rewritten by medieval jurists during the Gregorian reform. It may be that its initial inclusion in Roman law transferred the strange relationship between master and slave to the way that humans interact with things. In any case, it combines three types of relationships to things that should not necessarily be interlinked – the right to use something, the right to make productive use of something, and the right to destroy something.

Land, sea and the resources they can provide – water and minerals in the first instance, but also farm, fish and forest products – are central to these questions. Once we stop looking at things solely in terms of private ownership, it becomes apparent that a huge range of different land tenure regimes exist. Most include hybrid norms and institutions that developed out of inherited colonial systems and longstanding customary rights, creating interlinked and embedded property regimes that can be interpreted in many different, and potentially conflictual, ways. This can lead to violence, especially when ‘modern’ procedures and ‘public interest’ are invoked to assign vast tracts of cultivable and irrigable land to national or foreign investors, disregarding the rights of local farmers and herders (and their descendants) who are confined to small plots or denied access to the transhumance routes they need to survive. New forms of community regulation are needed, even where customary rights prevail. In the African Sahel, for example, customary systems can no longer deal with conflicts between farmers from the south and nomadic pastoralists from the north, which are triggered by denser crops, bigger herds and changing climatic conditions.

It is not a matter of dismantling all forms of private ownership or arguing for wholesale public ownership (the totalitarian tragedies of the 20th century showed that this can make

5. Davis M. (2006), *Génocides tropicaux - Catastrophes naturelles et famines coloniales. Aux origines du sous-développement*, La Découverte.

6. De Castro J., Buck P. S., Orr J.-B., Sorre M. (1953), *Geopolítica da fome: ensaio sobre os problemas de alimentação e de população do mundo*.

7. Meillassoux C. (1974), Development or exploitation: is the Sahel famine good business? *Review of African Political Economy*. 1(1), 27-33.

things worse⁸), but of thinking in terms of bundles of rights that can ensure universal, sustainable and equitable use of resources.

As part of its international efforts to reduce inequality and protect the environment, the French Cooperation has long argued for the need to reconcile the legality and legitimacy of the multiple forms of land tenure that exist around the world. This involves explicit legal recognition of existing established rights, whatever their origin (custom or State), and a proper assessment of the condition and potential of the natural resources concerned. These two dimensions – recognition of rights and knowledge of resources – would enable all stakeholders to play an active role in land policies that can deliver sustainable economic and social development in both rural and urban areas.⁹

This belief underpins the work that the ‘Land Tenure and Development’ Technical Committee (LTDTTC) has conducted over the last 20 years under the auspices of the Ministry for Europe and Foreign Affairs and the French Development Agency.¹⁰ With this new publication, which is the fruit of collective reflection on all kinds of commons, the LTDTTC aims to renew our understanding of the many different ways that land and natural resources are used. Commons rightly occupy a central place in this understanding. By ‘commons’, we mean any kind of resource that a community (possibly established for this purpose) undertakes to protect and ensure that members can access, knowing from experience that privative appropriation could lead to its disappearance. Protecting access to any resource (water, forest, minerals, etc.) entails learning to distinguish between the different rights to use it, and resolving not to make it into a commodity that can be assigned to the highest bidder.

Readers will understand that our capacity to administer our commons properly depends on the willingness of a significant portion of humanity to avoid the catastrophes mentioned at the start of this preface.

The combination of scientific issues and reflection by development practitioners presented in this paper provides an analysis of commons that can feed directly into political action. Far from being a naively Rousseauist vision of commons, and especially of customary rights – which are sometimes inegalitarian and undemocratic – this paper explores how public policies on sustainable development can implement and promote a ‘land-based commons’ approach. In doing so, it sketches out the political prospects for genuinely ‘sustainable development’ in societies where land is no longer pillaged on the scale that it is today, which will soon compromise the very conditions for the viability of certain sections of humanity. The development of a shared, more egalitarian world where everyone, women and men, young and old, will have access to the fruits of a protected Earth and fair pay for their work, regardless of the colour of their skin. ●

Gaël Giraud

*Chief Economist at the French Development Agency,
Director of the Chair for Energy and Prosperity, Research Director at CNRS.*

8. Perhaps the utopian ideal of full privatisation of social space is mysteriously linked to the equally destructive notion of the total absorption of this space into public ownership. Isn't that the ultimate meaning of Karl Polanyi's proposition?

9. In urban areas too, because what is a town or city if not a territory where certain services are shared? The problems that South Africa (and other countries) face in breaking down the geographic apartheid that continues to divide its major cities show that creating commons within populations that are reluctant to live together looks very simple in theory, but is extremely hard to put into practice.

10. *The White Paper on Land governance and security of tenure in developing countries (2009)*; *Large-scale land appropriations: Analysis of the phenomenon and proposed guidelines for future action (2010)*; and *Formalising land rights in developing countries (2015)*.

ACRONYMS AND ABBREVIATIONS

AFD	French Development Agency
CIRAD	Agricultural Research Centre for International Development
CPR	Common Pool Resources
FAO	Food and Agriculture Organization of the United Nations
IIED	International Institute for Environment and Development
LTDTTC	“Land Tenure and Development” Technical Committee
MEAE	French Ministry for Europe and Foreign Affairs
NGO	Non-governmental organisation
REDD+	Reducing emissions from deforestation and forest degradation and fostering conservation, sustainable management of forests and enhancement of forest carbon stocks
RNR	Renewable natural resources
SDG	Sustainable development goals
SESMA-CPR	Socio-Ecological Systems Meta-Analysis Database of Common Pool Resources project
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure

LIST OF BOXES

- 41 Using the concept of commons to consider land as national heritage: Civil society actions in Senegal (*C. Richebourg, E.H. Faye, A. Bâ*)
- 45 Historical overview of commons in countries in the Maghreb (*O. Bessaoud*)
- 49 Taking account of ecological, economic and social dynamics in order to ensure the sustainability of community fisheries in Cambodia (*J.-C. Diepart*)
- 55 Examples of collaborative international networks that promote commons (*C. Toulmin, M. Mellac*)
- 58 Recognising the prevalence of commons in the management of pastoral ecosystems in Morocco, Tunisia and France (*B. Bonnet, O. Barrière*)
- 61 Placing commons in their historical and political environment: management of pools in Gwendégué, Burkina Faso (*P. Lavigne Delville*)
- 63 Hunting commons: citizenship by default for Pygmy communities in Cameroon (*L. Boutinot*)
- 65 Establishing a procedure to secure commons in a context of legal pluralism in Comoros (*M. Said, E. Le Roy*)
- 67 Incorporating community-managed forests into landscape-based projects: a local development issue in Madagascar (*A. Vogel, M. Linot, S. Aubert*)
- 69 Opportunities and limitations of support for commons: the role of the Land Observatory in Madagascar (*R. Andrianirina Ratsialonana, P. Burnod*)

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It can be downloaded from the website <http://www.foncier-developpement.fr>, and is also available in French. ●

EXECUTIVE SUMMARY

Contemporary societies face a wide range of issues associated with pressure on land and natural resources, high levels of unemployment, urban expansion and large-scale land appropriations. All these processes contribute to land and food insecurity in local communities and the emergence of new forms of migration that are potential vectors of conflict.

International frameworks such as the Voluntary Guidelines on Responsible Governance of Tenure (VGGT), Sustainable Development Goals (SDGs) and the Paris Climate Agreement highlight the collective nature of these risks and the need to frame responses in coordinated actions. The commons approach proposed in this paper places collective action at the centre of efforts to analyse, assess and resolve these issues. It can be used to facilitate the emergence of institutional arrangements involving the different groups that interact at various levels through their efforts to tackle specific local problems. In doing so, it questions the externalisation of regulations that are alternately or simultaneously based on the market/ State dichotomy.

This study, which was initiated by the LTDC, is intended to support MEAE in international negotiations and contribute to ongoing reflection on commons by AFD's research department, which began in 2015. The aim is to provide a frame of reference for commons that international cooperation agents can use when formulating, implementing and evaluating investment projects that have an impact on the formalisation of land rights in rural areas.

The four sections of the study respectively 1) justify, 2) identify, 3) implement and 4) promote a 'land-based commons' approach that can be used to support sustainable development.

Part 1 uses studies that the LTDC has conducted over the last 20 years to identify the strengths of a commons approach to land matters. These include its ability to capture the gap between formal rights and actual practices, and understand who formulates, enforces and changes the 'rules of the game'. These elements of analysis help better contextualise public aid issues and show that the commons approach is particularly suited to situations where:

- > societal adaptation to climate change leads to the design of adaptive modes of managing natural resources and the ecosphere;
- > there are conflicts of interest between local populations and private investors, and debate about the formulation of rules that include and/or exclude certain groups from the benefits derived from resources;
- > the formulation and implementation of public policies does not take sufficiently explicit account of vulnerable populations, thereby raising questions about the nature and purpose of public action;

- > the territories concerned are abandoned or environmentally vulnerable, and social links need to be recreated in order to understand security- and development-related issues.

The second section discusses the three intertwined elements of commons (one or more resources, a community, and rules), and uses six complementary entry points to develop a flexible definition of commons that can hopefully be used as an analytical and practical tool in the field. Resources are a useful entry point for understanding the economic and cultural issues at stake in situations where these resources are appropriated by different actors. Modes of appropriation can be used to identify the logics followed by each group of actors and highlight the competition and/or synergies that drive them. Ecosystems provide insights into the cultural patterns that develop out of people's relationship with nature, and raise questions about the sustainability of their planned activities. Communities provide an opening to consider the dynamics that shape inclusive social links; while governance raises questions about the viability of the political organisations that are responsible for commons. Finally, practices can help us understand how actors behave and thus how commons evolve. These different entry points build up a picture of complex action situations where effective land governance should enable a given population to secure and use their resources and livelihoods in a sustainable manner.

The third section of the study provides a framework for the analysis of action situations involving common resources. The aim here is to enable development assistance practitioners to use the commons approach to feed into reflection on land appropriation and territorial governance, and contribute to public policy formulation.

It starts by suggesting that land issues can be captured through a functional approach to the land relations between different stakeholders. This involves distinguishing between use rights (fundamental rights based on claims associated with the social reproduction of groups of rights holders to shared resources) from user rights (an attribute of ownership). It should also be noted that the groups that develop around commons are constantly evolving, and cannot not always be institutionalised.

The second proposition is that the legitimacy of operational rules based on close social relations should be explored and, if necessary, strengthened. Social cohesion in interlinked territories needs to be rebuilt from the bottom up, through landscape-based projects whose design is not limited to a jurisdictional or administrative approach to space. Commons can then develop into hybrid arrangements that are nested in each other and embedded in other types of institution.

The third proposition is that participation is the key to moving beyond community-based management and envisaging a transition to appropriate social institutions. This can be done by determining the social function of shared resources in a collective and democratic manner, and then considering which is the best level of organisation to control activities that are causing the problem that needs to be addressed. In this context, 'commoning' is an iterative process of trial and error that evolves through individual and collective learning. It expresses the inclusive logic of commons, both within a group of rights holders to shared resources and in the relations that this 'community' has with the outside world. In these conditions, a commons approach can support different forms of solidarity and create them where they do not exist.

The fourth and final section of this study proposes six guiding principles for a land-based commons approach. These principles can inform interventions by international cooperation

actors and be used to implement the approach through action-research, development projects and ex-post analyses of their outcomes, in order to increase access to information, improve actors' knowledge and understanding of commons, and enhance their ability to use these insights constructively.

Principle 1: ensure that intervention operators and stakeholders recognise the potential of commons, by seeking to understand the role and importance of shared resources. This entails introducing 'commons' into the international cooperation discourse and recognising the plurality and systemic nature of resources, actors and activities at different levels.

Principle 2: find ways to better understand the commons environment, through systematic and detailed analysis of action situations in the setting where the intervention is planned.

Principle 3: adopt a pragmatic approach to identify key commons that need support, to ensure access to livelihoods and safeguard the wellbeing of groups of rights holders to the shared resources targeted by the intervention(s).

Principle 4: initiate and develop procedures and processes that can be anchored in actors' practices, in order to facilitate discussions about the intervention's aims and methods, and encourage holders of rights to shared resources and their partners to appropriate the intervention.

Principle 5: propose support based on jointly designed and subsidiary interventions that include and link diverse shared resources in distinct territories, to ensure that governance systems are more firmly embedded in different organisational levels of the social fabric.

Principle 6: prioritise monitoring and evaluation systems that include holders of rights to shared resources in the design and use of these systems. This entails giving all the actors concerned (including international cooperation agents) tools that will enable them to work on a trial-and-error basis, facilitate learning, and ensure that information is available long after the intervention has ended.

Interest in commons is growing as practitioners, researchers and activists become increasingly critical of development models and trajectories that fail to take account of the limited nature of the planet's natural resources and the imperative to care for them. The land-based commons approach proposed in this study is driven by the need to tackle multiple pressing problems at the local and global level in a new way, through collective actions. As part of its mandate to address governance issues, the French Cooperation plans to listen to and work with a broad spectrum of actors in France and at the global level, in order to address these key, land-centered problems more effectively. ●

Introduction

Our societies are having to adapt to multiple global climatic, economic, institutional and political issues. Demographic growth is intensifying pressure on land everywhere, and limited employment in rural areas is driving more and more people into the outskirts of cities where job opportunities are also scarce. In the global South, local people's rights to resources are weakened by massive land acquisitions that undermine their livelihoods and compromise food security at the local and national level. Violent conflicts are on the increase, often triggered by land and agrarian issues. These fragile situations lead to new forms of migration and the forced displacement of large numbers of people, often from one developing country to another. Such movements themselves contribute to conflicts over access to land, especially in situations where worsening climatic crises have degraded land and depleted water resources, reducing the availability of natural resources.

Effective responses to these issues are urgently needed, with innovative approaches that can take account of the scale of the problems and operate seamlessly at several levels.

Recognising the need to restructure their actions in order to address a challenge of this magnitude, many countries have adopted international frameworks to tackle these global development and natural resource management issues. The Voluntary Guidelines on Responsible Governance of Tenure (VGGT), Sustainable Development Goals (SDGs), the Addis Ababa Declaration on Financing for Development, and the Paris Climate Agreement provide strong guidelines for action in several areas. The VGGT clarified the concept of 'legitimate' land rights and highlighted the need to reconcile the legality and legitimacy of rights to own, manage and use land and land-based resources, whatever the origin and nature of these rights (customary or State, individual or collective, temporary or permanent).

The inclusion of SDGs in the development agenda and a focus on governance then led to three significant changes in attitude:

- > SDGs are now regarded as systemic and universal;
- > the focus of public policies has shifted from simply managing resources to the intelligence of the institutions that are responsible for their care;
- > sustainable development is understood as 'processes'.

All these international frameworks recognise the collective nature of the climatic, social, political and institutional risks we face, and the need to frame responses to them in collective actions.

In order to respond to these challenges, the 'Land Tenure and Development' Technical Committee (LTDTTC) initiated a process of collective reflection on commons. It chose the term **'land-based commons' for several reasons:**

- > **it is a flexible name for communities that are based on social relations;**
- > **it captures their hybrid arrangements, which are nested in each other and embedded in other institutions.**

The approach focuses on the functions and purposes of commons, rather than their structures.

It can be argued that developing a land-based commons approach is relevant in several respects:

- > it allows us to take account of the different levels (particularly territorial levels) at which resources are managed and social issues are addressed, by recognising the central role that communities of actors play in managing and governing natural resources;
- > it focuses attention on the way that collective action develops through sharing problems and working to address and resolve them collectively. This process is known as 'commoning';
- > commons enable us to go beyond the single dichotomy between publicly administered institutions and private market-based management (market-State dichotomy), which ignores the many different types of governance needed to manage natural resources. The commons approach is open to other, hybrid forms of governance, as it takes account of actors such as users' associations and socio-professional, village and lineage group organisations that can work with other territorial actors and regulators;
- > as proposed by the international agenda for SDGs, the commons approach enables us to understand how actions are jointly developed in a positive procedure that not only focuses on the objective but also, and especially, on how it will be achieved.

The LTDTTC saw this process of collective reflection on different land-based commons as an opportunity to reconsider the importance of taking land practices into account when tackling development challenges. The hope is that this publication will contribute to better understanding of the diverse forms of land appropriation and management.

This document adds another layer to international initiatives to rethink the guiding principles for development policies, and thus policies on land and natural resource management. It enriches existing recommendations, particularly the VGGT and the FAO technical guide on *Governing Tenure Rights to Commons*. For French Cooperation actors, the results of this collective reflection tie in with the LTDTTC's previous analysis of agricultural investment projects that affect land and property rights, and the programme launched by AFD's research department in October 2015, *The Commons: a form of collective governance*.

The study uses previous analyses of commons, accounts of initiatives to support them, a literature review, and a series of individual interviews with resource persons as reference points to help international cooperation actors and their partners understand and support land-based commons in developing countries.

It is divided into four sections. Part 1 highlights the complementarities between the commons approach and the LTDTTC's previous work to support land policies. Part 2 provides

a flexible definition of “land-based commons”, and Part 3 presents an analytical framework that can be used to apply the commons approach to land matters in the field. These elements are synthesised in Part 4, which sets out six guiding principles that will enable international cooperation agents to use the commons approach in operations where land issues are involved.

To enhance readers’ understanding of the approach, the text is interspersed with boxes describing concrete actions in real situations. ●

PART 1

The issues involved in a 'commons approach' to land practices

The LTDC has always emphasised the central role that overlapping rights to space and resources play in land approaches in both the North and the South. This entails looking beyond State laws and analysing land practices; in other words, looking at what actually happens on the ground.¹

Central role of overlapping rights to land and resources



Focus on land practices

This position enables us to identify associations or coalitions of individuals who take responsibility for producing, applying and updating the rules that regulate how land and land-based resources are mobilized. It is the basis for a commons approach that has enabled the LTDC to extend its reflections on land governance by simultaneously working on four issues that international cooperation actors intend to address (see table on the next page):

- > facilitating societal adaptation to global changes;
- > arbitrating conflicts of interest in access to land by international investors and local populations;
- > promoting respect for human rights and social justice when dealing with land matters;
- > supporting land management methods that are conducive to peace and territorial balance.

The French Cooperation White Paper (LTDC, 2011, p.110) defines land governance as “the set of rules, procedures and structures that define and organise access to land, its use and transfer, and the settlement of land-related conflicts.” Proponents of the ‘commons’ approach first outlined by E. Ostrom (1990) advocate an alternative to the approaches that have been used over the last 35 years to support land governance and the privatisation of resources. The commons approach draws on analyses and practices which show that certain resources (forests, pastures, fisheries, etc.) tend to be collectively managed by communities of

1. “Analysis of the nature of rights to use, manage and transfer resources should be based on fieldwork, independently of the way that these rights are regarded or ignored by existing normative systems” (Merlet, 2010, LTDC Briefing Note, p. 3).

THE ISSUES INVOLVED IN A 'COMMONS APPROACH' TO LAND PRACTICES

(issues specific to commons are shown in normal type; those tackled by the IIDTC are shown in italics)

HAZARDS	IMPACTS ON LAND TENURE	ISSUES	COMMONS APPROACH
<p>1. Facilitating societal adaptation to global changes</p> <ul style="list-style-type: none"> Global changes. 	<ul style="list-style-type: none"> Increased vulnerability in certain geographic zones. The organisation of land practices is disrupted. 	<ul style="list-style-type: none"> Facilitating societal adaptation. 	<ul style="list-style-type: none"> <i>Recognition of decentralised resource management systems.</i> Focus on the resilience of local populations and communities of interest. <i>Securing local rights.</i> Identifying the most relevant levels of organisation to promote adaptive management of ecosphere resources.
<p>2. Arbitrating conflicts of interest in access to land by international investors and local populations</p> <ul style="list-style-type: none"> <i>Arrival of investors in agri-business.</i> 	<ul style="list-style-type: none"> <i>Increased vulnerability of small farms.</i> <i>State regulations on land access do not take account of certain local rural development issues.</i> 	<ul style="list-style-type: none"> <i>Ensure that land investments contribute to and help secure long-term food and tenure security, job creation and security, and sustainable territorial development.</i> Conflict arbitration. 	<ul style="list-style-type: none"> <i>Respecting land users' rights.</i> <i>Ensuring that private uses are compatible with the general interest.</i> Explicit territorial development strategies that consider the conditions for formulating rules that include and exclude certain actors from the benefits derived from resources.
<p>3. Promoting respect for human rights and social justice when dealing with land matters</p> <ul style="list-style-type: none"> <i>Land reform = generalisation of standard procedures for formalising land rights.</i> 	<ul style="list-style-type: none"> <i>Little account taken of collective rights.</i> <i>Complex and expensive procedures to secure rights.</i> <i>Hard to update land information.</i> 	<ul style="list-style-type: none"> Promoting human rights and social justice. Social and territorial inclusion of the most disadvantaged. <i>Better understanding of the evolution of agrarian systems.</i> Redefining the nature and purpose of public action. <i>Consensual adoption of strategies for effective and transparent land governance.</i> 	<ul style="list-style-type: none"> <i>Focus on derived rights and ways of transferring rights.</i> Focus on the dynamics of historical, customary and opportunistic modes of appropriation based on constantly updated strategies for diversification. Focus on social inclusion of the most disadvantaged. Recognising existing rights. <i>Organising broader debates on social projects and land policies.</i>
<p>4. Supporting modes of management that are conducive to peace and geopolitical balance</p> <ul style="list-style-type: none"> Overpopulation or depopulation of rural areas/ human mobility. Crises at different levels of organisation due to worsening social, economic and political inequalities. 	<ul style="list-style-type: none"> Over-exploitation of RNR. Conflictual settlement of migrants. Development of no -man's-lands. 	<ul style="list-style-type: none"> Re-socialising security- and development-related issues in severely degraded or depopulated territories. Equitable resource access and distribution. 	<ul style="list-style-type: none"> <i>Reflection on models of local governance and agriculture to be promoted in a forward-looking vision.</i> <i>Defining societal choices in a world with limited natural resources:</i> <ul style="list-style-type: none"> > in terms of contributing to 'glocal' development (solidarity, circular, collaborative or distributive economy); > in terms of citizenship (self-management, participatory democracy). <i>Reintroduction of systematic economic evaluations of projects (benefits and complementarities of commons?).</i>

users who establish specific ways of sharing the use of these resources, and that generalising the use of (private and exclusive) ownership rights can be cumbersome, onerous and inappropriate.² These collective resource management systems are based on the social factors that shape resource use in different societies, and show that it is hard to think of 'one' resource independently of the others with which it interacts in an ecosystem. It is these two factors that enable populations to reproduce in their ecosystems (Weber, 1992).

Facilitating societal adaptation to global changes³

Many actors and commentators agree that the increasing scarcity of natural resources will cause major upheavals in the years to come because the ecological footprint of the global economy far exceeds the planet's 'carrying capacity' or 'limits' (Rockstrom, 2005; Rifkin, 2016; Bauwens, 2015).

Climate change has particularly significant impacts on land management. Random and sometimes drastic variations in rainfall, wind and/or temperatures are disrupting the way that land practices are organised in many countries. Competition for land and natural resources is intensifying, especially when their different characteristics and, above all, their location, directly affect the perceived risks of future natural or anthropogenic disasters. Although there is still considerable uncertainty about the scope of current global changes, including those caused by globalisation and the climate, it is clear that certain geographic zones are more vulnerable to global changes than others, and that these changes will ultimately affect us all.

Which land practices should be supported to help increasingly vulnerable land and natural resource rights holders? Which land policies should be adopted? And how and by whom should this be done?

While international negotiations on climate change largely focus on ways of regulating greenhouse gases by creating new property rights, and the international community struggles to find satisfactory ways of controlling human activities that alter the climate (Dahan, AFD conference, 2016), it is important to recognise the part that decentralised resource management systems can play in societal adaptation to global changes. Securing local rights⁴ increases producers' capacity to invest in their land (LTDTTC, 2015) and helps establish mechanisms that meet land users' needs, particularly the imperative to conserve soil and water and protect timber and non-timber plant resources that fulfil various functions (providing shade, protection against wind or drought, food for livestock and/or humans, storing carbon and maintaining biodiversity). Part of the solution lies in maintaining the flexibility and mobility of the systems that have been developed to manage common pool resources (especially pastoral and forest resources) consistently across different territorial levels.

Reflecting on land-based commons enables us to explore how (and where) individuals, communities and humanity as a whole operate in complex, interdependent social and natural systems. We can then consider which levels of organisation are most relevant when looking at the articulation between customary, formal and informal rules and practices, and apply these insights when developing adaptive forms of natural resource management.

2. Especially for resources with low and very variable levels of productivity.

3. Climate, economic, institutional and political changes.

4. Particularly by creating new legal categories that take account of derived rights, agricultural arrangements, forms of indirect land use and collective rights.

Arbitrating conflicts of interest in access to land by private investors and local populations

The extension of trade liberalisation policies, proliferation of investment-friendly public policies and worldwide search for new growth areas have encouraged many investors to look beyond their national borders for opportunities to expand their agro-industrial structures. Producers have responded to this growing threat to their livelihoods by forming political alliances and pushing for more equitable and transparent measures to resist and address it. The mixed results of these measures and numerous controversies caused by growing awareness of large-scale land grabbing prompted the LTDTTC to start a process of collective reflection on the phenomenon, which generated a publication (LTDTTC, 2010) and an **official French position** paper on the issue. This position is based on the belief that the key to tackling large-scale land appropriations lies in optimising the contribution that land investments⁵ make to achieving the objectives of food and tenure security, job creation and security, and sustainable development. The two guiding principles of this position are that:

- > all investments must respect users' legitimate rights to natural spaces (land, vegetation and wildlife), whether these rights are formal or informal (customary/traditional), individual or collective;
- > private uses must be compatible with and serve the general interest, and food security should be regarded as a global public good.

Since then, the French Cooperation has focused on three main themes:

1. Developing knowledge and expertise on issues relating to the availability of land and the impact of different types of agriculture (commercial and family farms).
2. Strengthening global governance of land matters by producing tools that enable all actors to identify and implement responsible investments which facilitate more equitable distribution of the potential wealth of natural spaces⁶ (distribution of land and vegetation) between States, local producers and other actors in the international community.⁷
3. Better integrating land issues into development assistance.

The commons approach can be used to identify different, competing or complementary modes of appropriation in situations where the conditions for developing inclusive/exclusive rules on the benefits derived from resources and the distribution of rights to use land and natural resources are discussed. This perspective allows us to question how territorial development strategies and levels of organisation will affect the future of the most sought-after land (particularly cultivable and irrigable land), and *"land that is used for grazing and wildlife, forests and woodlands, mountaintops, sacred sites, lakes and rivers (...) which are generally the most vulnerable to land grabbing."* (ILC *et al.*, 2016, p. 13).

5. Land resources exist prior to any form of ownership. Obtaining user rights to land does not constitute an investment in the sense of building productive potential that will depreciate; real investments are developments, constructions and equipment. The main issues with land are the distribution of rights to use land, how holders of use rights fund productive investments (private funds, loans, gifts) and the place given to financial markets or regulatory systems.

6. Here, 'wealth' refers to the benefits that ecosystem functions can provide in natural spaces (soils and vegetation).

7. It is important to note that the problem cannot be dealt with simply by relying on the goodwill of 'socially responsible' businesses: a binding legal framework needs to be progressively put in place at the global level, along with policies and mechanisms that reward labour and economic efficiency by redistributing income through land taxes.

Promoting respect for human rights and social justice when dealing with land matters

By putting land rights into written and legal form, land policies can lead to exclusive and potentially conflictual behaviours and situations. In 2015, the LTDTTC led a process of critical reflection on policies to formalise land rights, analysing the tools, benefits, risks and shortcomings of these policies and their implications for tenure security. Although progress has been made with certain alternative procedures,⁸ these policies have had very mixed results. Standard procedures that are often presented as obvious solutions (systematic, large-scale procedures whose sole focus is private/individual ownership) take little account of collective rights or overlapping rights to the same spaces, involve complex and expensive procedures, and have chronic problems updating land information. Furthermore, their 'proprietary' bias, which focuses on stocks of existing rights to the detriment of derived rights and the circulation and transfer of rights (flow), is an impediment to social and territorial inclusion of the most disadvantaged actors.⁹ The lack of technical skills needed to implement procedures to formalise land rights also means that many local people do not appropriate these procedures, but continue to adopt historical, customary or even opportunistic modes of appropriating agricultural spaces.¹⁰

There is no magic formula or universally replicable model for formalising land rights, as formalisation policies can only succeed if certain (variable) sets of political, institutional, technical and financial parameters are in place. Nevertheless, the LTDTTC (2015) has identified several courses of action to promote sustainable and inclusive policies to formalise land rights:

- > **recognise existing rights**, whatever their origin (normal practices,¹¹ customary rules or State norms) or nature (individual or collective), and thereby acknowledge the importance of different modes of access to natural resources. This recognition is essential, especially for the most vulnerable groups that use the natural resources most often targeted for private appropriation by various actors, including the public authorities (water, arable lands, products from forests, hunting or fishing);
- > **organise wider debates on social projects and land policies**, with all the actors concerned (central and deconcentrated administrations, local authorities, elected officials, civil society, customary authorities, private actors, etc.). This is a second essential step in

8. Issuing certificates or attestations, reducing costs, increased cooperation between different levels of organisation.

9. "Smallholder farmers, landless people, tenant farmers, agricultural labourers and people living from traditional fishing, hunting and herding activities are among the most discriminated and vulnerable people in many parts of the world. Every year, thousands of peasant farmers are the victims of expropriation of land, forced evictions and displacements - a situation that is reaching an unprecedented level owing to the new phenomenon of the global 'land grab'. At the same time, traditional fishing communities are increasingly threatened by the industrialization of fishing activities; people living from hunting activities, by the creation of development projects; and pastoralists, by conflicts with farmers over land and water resources. All together, these people constitute 80 per cent of the world's hungry." (Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas, 2012, para 73).

10. "The main aim of rural societies (in West Africa) is to reproduce themselves, and reconcile growth with survival. Their behaviours are motivated by adaptation to all kinds of changes, the need to anticipate risks, manage uncertainty and variable conditions of production. The resilience and flexibility of socio-ecosystems comes from strategies for diversification in all their components, the ability to reinvent custom, reconfigure institutions, reorganise land, recombine activities and finally, to innovate without compromising the foundations of these systems" (Cormier Salem et al., 2013).

11. The guide to procedures for securing land tenure (LTDTTC, 2017) introduces this third category as legitimate.

designing and implementing land policies that are adapted to local realities. Civil society has a particularly key role to play here, suggesting alternative options primarily aimed at securing family farms;

- > consensual adoption of strategies to implement realistic and progressive policies. This is part of another **major challenge: establishing effective and transparent land governance**. It is often assumed that a reform is complete when the policy has been defined and the laws promulgated, but operational strategies are equally important. The ability to test innovative mechanisms for managing rights and models of land appropriation over time is crucial in determining the financial, economic, ecological and social viability of different forms of land and resource use.

Finally on this point, the commons approach specifically focuses on the social dynamics of the most disadvantaged populations and groups in crisis situations. Some address the *"question of equity and sharing, and the desire to sort things out collectively"* to build what David Bollier (2015) calls 'subsistence commons'; others are excluded from existing commons and are unable to invest in them or create new ones. From an inclusive perspective, the way that agrarian systems evolve in response to the social, economic and ecological realities in the territory are part of an explicit social project.¹² Commons could be an instructive setting for learning about the technical, social and political changes needed for the ecologically intensive or diversified systems promoted by agronomic research. Because the commons approach is based on cross-cutting reflection, it provides an opportunity to redefine the nature and purpose of public actions, especially in periods of political transition. Intermediate levels of governance and multi-actor platforms are key spaces where commons can be recognised, particularly by the State and the market.

Supporting forms of land management that are conducive to peace and territorial balance

History has repeatedly shown that land management policies are often the expression of asymmetrical power relations, and that they can exacerbate social, economic or political inequalities. As such, they are a major cause of political crises that can lead to extremely violent conflicts at any level of organisation.

Overpopulation and depopulation are important indicators of geopolitical equilibrium. Saskia Sassen (2016) highlights the destruction of habitats and opportunities for local economic development as a recurring cause of human migration in the global South. Development policies that have helped concentrate populations in urban or fertile areas have also led to the depopulation of vast tracts of less productive land. The abandonment of these spaces and the minority populations that subsist in them¹³ creates migratory flows to areas where population densities are already high and new arrivals can inflame tensions, as well as the development of no-man's lands that are occupied and exploited by armed groups. These

12. *"One cannot (...) claim to reform a society, in terms of land policies, without delving into the ethos of a society in order to transcribe its future expectations and trajectories in a dynamic and responsible manner. The universalist model of 'turnkey' reforms has had its day"* (Le Roy, 2011, p. 113).

13. Traditional forms of solidarity that organise the administration of these spaces have not survived the break-up of forest, agricultural and pastoral societies, whose respective territorial, investment and mobility strategies did not correspond to the assumptions about accumulation and sedentarisation promoted by development policies.

environmentally vulnerable or forsaken spaces need to be re-socialised, although it is hard to see how this can be done when the dominant economic theories and legal systems offer no obvious solutions to global population growth or questions about infinite State expansion.

While developing a guide to due diligence of agricultural investment projects that affect land and property rights, the LTDC (2014) highlighted the importance of asking broader questions about the models of local governance and agriculture that should be promoted in the future: *"we need to ask what constitutes an investment and what kinds of investments the world needs to ensure food security, provide jobs and protect the environment, by distinguishing between investments and the privatisation and often exploitative use of common resources. We need to look at these key global issues and the creation and distribution of wealth in terms of how they serve the general interest, and not just the interests of entrepreneurs (...). And ensure that the debate about different models of production, agribusiness or small-scale production does not blind us to real societal choice whose issues are vital for our survival"* (LTDC internet summary, 2010).

Because the commons approach raises questions about contributions to 'glocal' development and citizenship, it can help **resocialise security- and development-related issues in different territories**, especially those that are heavily degraded or depopulated. The approach questions political mechanisms that no longer work in the general interest, and looks at the way that individual actions, individual projects and individual enterprises affect the future of society as a whole, before considering the opportunities for self-management, participatory democracy and the 'solidarity', 'circular', 'collaborative' or 'distributive' economy. But **would commons be more 'economically beneficial' for society?** Could they really provide the sole societal foundation for nation-states in the early 21st century? (Le Roy, 2016). To extend this line of thought and answer some of the questions it raises, we need to distinguish between different interests that legitimately meet, combine, compete or cancel each other out,¹⁴ and remember that our conclusions about the possible contribution of this approach will always be partial and dependent on the level, context and issues we use to measure it. ●

14. France was the first international actor to introduce a method that made it possible to evaluate the effects of a project on society as a whole. Unlike the World Bank's cost/benefit and reference price analysis, this method allows us to assess the issues associated with better wealth distribution and reduced inequalities. The LTDC (2014) suggested that AFD reintroduce systematic 'economic' evaluations of its projects, conducted from a societal point of view rather than as a financial evaluation based on the viability of the project from the investor's viewpoint.

PART 2

Adopting a flexible definition of ‘land-based commons’

Since Ostrom (1990) and Bollier (2015), it seems to be generally accepted that commons invariably include three inextricable elements: a community of users, a resource, and rules that this community formulates to regulate use of the resource in question. Commons can be understood in terms of community-based organisations, in terms of the resource(s) or ecosystems concerned, and in terms of the management rules or some of their characteristics. As these are all inseparable aspects of a common’s functionality and aims, it does not seem appropriate to define commons according to the intrinsic nature of just one of these dimensions.

Land-based commons can take very different forms, but are always understood as collective action situations.¹⁵ The LTDC uses several ‘entry points’ to identify, deconstruct and analyse complex action situations,¹⁶ and to identify registers of solidarity, sharing, practices, etc. that will help inform and qualify these ‘action situations’ in a new way. In the first case, it is a matter of capturing commons in order to understand their dynamics. The approach is descriptive; its results help generalise the concept of ‘commons’ and highlight its limitations or relevance. In the second case, it is a matter of understanding commons in order to determine how a development project that touches on access to and shared use of land and resources should intervene. Both aims are naturally complementary and should be pursued simultaneously, but it is also important to make a pragmatic distinction between them. Given the current state of knowledge, the complexity of the situations encountered, and the inherent unpredictability of various aspects of existing development projects, some degree of uncertainty has to be accepted in this field, along with the fact that project stakeholders will need some kind of support ‘along the way’ in order to achieve the global objectives. This is particularly true for communities with a strong stake in commons of one form or another.

The LTDC has identified several ‘entry points’ that can be used to characterise land-based commons in a given situation, regardless of the specific purpose of this exercise.

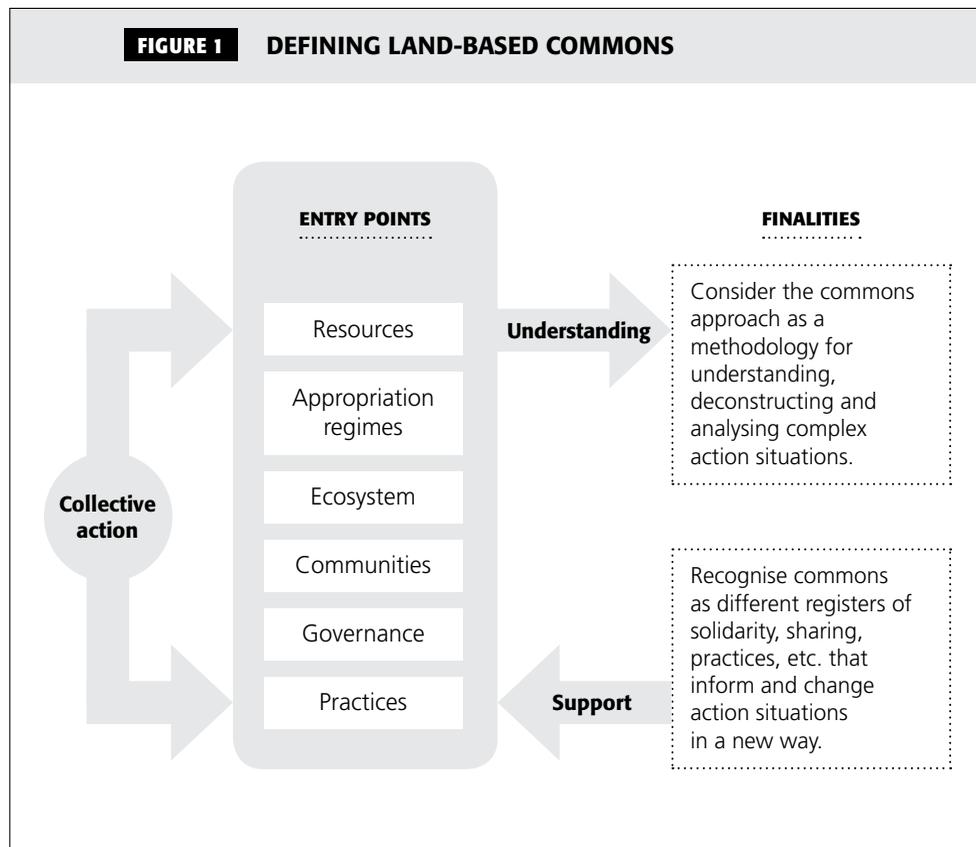
These entry points, which can be used in any order, are:

15. The reference to collective action is intended to highlight the organisation of actors’ interests. *“Commons are the result of collective action that organises the interests of stakeholders in the common, based on the principle that they are not necessarily identical”* (Ostrom, 1990). For a discussion about the definitions of collective action, see Cefai, 2007.

16. *“An action situation is a social space where participants with diverse preferences interact, exchange goods and services, solve problems, dominate one other or fight”* (Ostrom, 2005). If the initial structure is described, the external factors that affect and change it can be determined. The action situation is described in terms of an operational framework, a reading grid that can be used to evaluate problems with shared management; IAD Framework (Kiser and Ostrom, 1982; Ostrom et al., 1994).

- > resources;
- > appropriation regimes;
- > the ecosystem;
- > communities;
- > governance;
- > practices.

Each entry point will shed a particular light on one key aspect of the characterisation of the commons. Used systematically, they can guard against certain assumptions that would prevent commons from being read as a 'total social fact', and promote a transdisciplinary approach to something that cannot be understood through the lens of a single discipline.



The opportunities, limitations and complementarities of these different entry points are presented below. Each one enables us to identify elements of a definition that varies according to the purpose ascribed to the commons, and they can be combined to situate land-based commons in a system of interactions that helps us understand how they operate and determine how they can be supported.

Entry point through resources

Here, it is a matter of identifying 'resource systems' (typically fisheries, forests, pastures)¹⁷ that are used in specific ways. *"We use the term 'common-pool resources' (CPRs) to refer to resource systems independently of the rights relating to their appropriation. CPRs include natural resources or resources that humans have developed, where: i) it is often necessary, but difficult and costly, to exclude other users outside the group from using the resource through technical or institutional means, and ii) where one person's use subtracts from another's use"* (Ostrom, 1999).

"Any resource shared by a group of people is regarded as a common resource" (Hess and Ostrom, 2006).

➔ OPPORTUNITIES AND LIMITATIONS

The advantage of using resources as an entry point is that it shows how things are used. One important aspect of this entry is that it shows how a 'thing' becomes a 'resource' when it is ascribed a value in order to meet a need. The particular characteristics attributed to resources (natural resources, renewable natural resources, intangible resources, shared resources, etc.) also capture some of the constraints associated with their management.

However, if resources are the only criteria used to analyse commons, there is a risk that they will be regarded in terms of their status as 'goods'. This legal and economic status gives things properties and monetary value that determine how their circulation is regulated.

Entry point through appropriation regimes

"We will use the term 'commons' to refer to a resource, or collection of resources over which private property rights have not been established" (Anderies and Janssen, 2016).

"Common property is a formal or informal property regime that allocates a bundle of rights to a group. Such rights may include ownership, management, use, exclusion and access to a shared resource" (Schlager & Ostrom, 1992, 1998)¹⁸.

E. Le Roy (2011) proposes a matrix model of 'common' appropriation for different types of land management where legal relations are structured on a triangular relationship between status (position and function in the group), use (preferred type of activity) and medium (category of space or resource). In these conditions, three interdependent regimes should be taken into consideration to cover all the circumstances in a given situation and envisage how they might develop: the land allocation regime, the regime for circulating/distributing produce from the land, and the land use regime.

➔ OPPORTUNITIES AND LIMITATIONS

Using appropriation regimes as an entry point enables us to identify and describe the rights and responsibilities accorded to holders of rights to land and land-based resources. Generic rights and responsibilities can be identified through laws and regulations, and

17. Although in certain conditions this definition could be extended to other objects (genes, scientific knowledge, etc.).

18. <http://commons.world/wiki/commons.world/digital-library-of-the-commons>, 9 December 2016.

specific rights and responsibilities through land arrangements and agreements. However, defining commons solely in terms of being antithetical to privative appropriation means that open access situations¹⁹ could be considered as commons, and removes the distinction between the two (Hardin, 1968). There are also situations where regimes with and without private appropriation overlap, which are associated with new types of commons, or 'neo-commons'.²⁰

Commons can be characterised in many different ways from a legal viewpoint, as bundles of rights can be recognised in common law, and different uses of a thing recognised in civil law. This inevitably raises questions about how different rights holders are prioritised when conflicts of interest arise, and how more or less legitimate hierarchies are established in space and time. Furthermore, the uses of a thing are formalised in terms of ownership.²¹ E. Le Roy's proposal enables us to avoid these limitations by using 'legality' to 'escape from juridical science'. We need to use 'game theory' (1999) to understand the dynamic of these modes of appropriation,²² and identify how all the basic parameters for organising the life of a society can be constantly adjusted and adapted according to the evolving and changing issues that constitute this life. This is certainly an extremely complex undertaking, but it is the only way it can be done.

Entry point through the ecosystem

A common is an ecosystem in which one person's enjoyment of the benefit derived from the resource (substance/flow) prevents someone else from enjoying it (a resource used by one right holder is no longer available for another right holder). Human activity is likely to degrade or eliminate the benefits that the ecosystem provides for people, so if actors in the ecosystem/common want it to be sustainable, they need to establish rules that enable them to maintain or even improve the ecosystem functions of the common that are beneficial for humans. The sustainability of the common also depends on these rules being recognised by the actors who belong to and are excluded from the ecosystem (insiders and outsiders). Commons require rules of inclusion and exclusion, and will collapse if insiders and outsiders are unable to establish, respect and enforce rules that ensure their sustainability (Levesque, 2016).

19. See Platteau, 2003, for a definition of 'open access' in terms of the absence of private ownership rights.

20. "Neo-commons would be a contemporary innovation, a deeply hybrid construct that provides a better (or less bad) mix of the typical requirements of longstanding commons (collective, resource, own management rules), but reinterprets or even reinvents them to give a more or less decisive place to commodification. Here, the place of private ownership is critical, as it must use new models to serve the desired collective purposes" (Le Roy, 2016, p. 622). We can talk about 'neo-commons' when perceived interdependence around resources leads to the creation of new commons.

21. An ownership regime based on rights defined in the most categorical way technically corresponds to 'ownership' (not 'property'), and would ignore exclusive but not definitive modes of appropriation where rights of disposal are subject to unavoidable conditions, such as the obligation to obtain what could be described as 'prior, free and informed' consent of all stakeholders.

22. Weber and Revéret (1993) identified five levels in each mode of appropriation: "(i) representations or perceptions; (ii) possible alternative uses of resources; (iii) modes of access and control over access; (iv) ways of transferring resources or the fruits of resources, which are not necessarily market-based; (v) modes of distributing or sharing resources and/or the fruits of these resources. Fundamentally, we consider that a mode of appropriation defines the state of a system of relations between nature and society. But it does not reveal how it works."

➔ OPPORTUNITIES AND LIMITATIONS

This entry point enables us to identify a system of functions and human needs in a particular setting,²³ – what some call 'primary goods' in Rawls' sense of the term (2009²⁴) – and then reconstruct the appropriation or ownership systems and their corresponding forms of administration and management. It can be used for an alternative 'commons approach' that is not based on comparisons of the effectiveness of three different systems (State/market/commons), and which looks at "the needs of ecosystems that include human populations" rather than their "functions and capacity to meet the needs of human populations in the ecosystems".

In contrast to this 'humanist approach', it is worth noting that the term ecosystem is also used in a naturalist interpretation of social organisation based on concepts of habitat and symbiosis, which sets up a reality based on a 'scientific' construct that associates societies with a collection of human beings. This interpretation reverses the primacy that the commons approach gives to meeting the needs of the people in the ecosystems concerned. A naturalist vision that prioritises the needs of the ecosystem raises the question of who is properly qualified to identify what ecosystems need...

Therefore, using ecosystems as an entry point raises questions about the relationships between science and societies, and where humans stand in relation to 'nature'.

Entry point through communities

"Natural resources such as land, fisheries and forests may be used as commons. This means that a group of people (often understood as a 'community') uses and manages these resources collectively. In some cases, the group may also hold collective ownership rights to the common resource" (Beckh et al., 2016, p. 9).

*"It is important to take account of the fact that rights may be held permanently or temporarily; they may be periodically renegotiated in agreement with the group; and they may be flexible, complex and overlap in time and space. In order to secure their rights to land and commons, groups must be able to **exclude third parties** from using the same thing, depending to the state of the resource(s) and existence of rivalries and conflicts" (C. Beckh, Workshop 2, 2016).*

➔ OPPORTUNITIES AND LIMITATIONS

The advantage of using communities as an entry point is that it introduces the concept of 'rights holders', which enables us to differentiate commons from open access situations and examine the institutional aspects of commons. Looking at the way that rights are distributed within a community allows us to build up a picture of its spatial and temporal dynamics, and consider the social, economic and ecological sustainability of commons as the definition and institutionalisation of the community.

23. Which includes the potential resources (material and intangible) found in nature and society.

24. "Social unity and citizens' allegiance to their shared institutions is therefore not based on belief in a rational concept of good, but on agreement about what is fair for legal, free and equal persons that have different and competing concepts of the good" (Rawls, 2009, p. 2).

However, there is a risk that subjective criteria may be used which perpetuate the distinction between people who are included in the community and those who are excluded from it. This distinction raises questions about the process of determining who is included and the motivations of the appropriating group. Using an exclusive logic to determine the community, and thus the common, could undermine human rights and social justice, and this risk increases when ownership (collective, shared, community) is involved. It is not necessary to create ownership in a common, as land ownership is only one of several ways of organising access to the benefits that the common provides. Therefore, it should not appear as the only possible form of organisation.²⁵ Forms of ownership are of little use when inclusive relations are prioritised. They are only necessary when there is competition and exclusion, and even then they do not have to lead to private ownership based on discretionary alienation, which is contrary to the ideology of ‘commons’.

Entry point through governance

“A common can be defined as a set of resources that is collectively managed through a governance structure which distributes rights between commoners and aims to ensure that the resources are exploited in a well-ordered and sustainable manner” (Coriat, 2011).

“Commons are above all a form of social organisation, a way of collectively deciding on rules that facilitate a fairer and more balanced life” (Le Crosnier, 2015).

“As a paradigm, commons consist of an evolving set of operational models of self-organisation, meeting needs and responsible management that combine the economic with the social and the collective with the personal. This paradigm is fundamentally humanist, and has profound political implications because practical efforts to promote commons will soon have to contend with the duopoly of the market and the State” (Bollier, 2015).

➔ OPPORTUNITIES AND LIMITATIONS

The advantage of using governance as an entry point is that it frames commons in more flexible forms of societal management that are open to partnerships.²⁶ It also gives the social organisation a purpose, which is usually embodied in the social project. Using this entry point to characterise commons enables us to look at them in terms of a voluntary or alternative form of social reproduction.

However, ‘governance’ is a rather ambivalent term when applied to commons, having emerged in the early 1990s as part of neoliberal thinking that aimed to *“naturalise government (State) mechanisms in order to encourage market solutions”* – a mindset still prevalent in the IMF and World Bank (Gaël Giraud, interview 2016). Despite this, using the term governance to describe any form of institution (even outside the State) that will have to take care of something enables us to adopt ‘commons’ as a paradigm for sharing rights to a set of resources (in the sense of Bollier, 2015) or for self-organisation (in the sense of Ostrom, Antona *et al.*, 2017).

25. J. Comby (2002) maintains that *“land ownership is only possession of a right to a space in competition with other rights than that of ownership.”* For further analysis, see E. Le Roy (2015).

26. It was also the preferred entry point for the study of ‘land-based commons in urban areas’ conducted by AFD’s research department (Simonneau, 2016). This identified three forms of collective governance and access to land in urban areas: traditional forms, modern forms instituted by the State, and spontaneous, so-called ‘informal’ forms.

Entry point through practices

"It is only the practical activity of people which can make things common, in the same way that it is only this practical activity that can produce a new collective subject, although this kind of subject could have existed before the activity [...]" (Dardot and Laval, 2014).

"Commons subsist and develop because a particular group of people invent a specific system of social practices and knowledge to manage a resource [...] Over time they succeed in ritualising, internalising and enriching the habits and collective values of responsible management" (Bollier, 2015, p. 24-26).

➔ OPPORTUNITIES AND LIMITATIONS

This entry point emphasises the fact that the practice existed before the 'collaborative' mode of social organisation. In some cases, it is the practice that creates the shared resource (especially in the case of 'knowledge' commons – Hess and Ostrom, 2006 – or 'universal commons' – Bollier, 2015). The practices themselves need to be analysed in order to understand the legal pluralism in different action situations and determine how laws and rules are applied, sidestepped or reinterpreted. This analysis, combined with analysis of discourses and representations, identifies the material factors and power relations that lead to some rules being observed and others ignored, to some actors following them and others breaking them. The analysis of individual and social practices highlights the role of external or local knowledge on the one hand; and on the other, the learning and social cohesion inherent in the dissemination and adoption of practices by a group of rights holders. Using practices as an entry point can also shed new light on the other proposed entry points for a land-based commons approach, and places collective action at the heart of commons.

Without fixing on a single definition of what constitutes a common, we can say that they are characterised by the following features:

- > **multi-stakeholder action situations that articulate multiple joint/shared uses of several resources;**
- > **dependence on social organisations, cultural relations, sense of identity and functions that are linked with local people's living conditions;**
- > **being established by actions and existing through actual practices. ●**

PART 3

An analytical framework to initiate the commons approach to land issues

How can a commons-centred analysis of land practices that prioritise shared use of land and resources contribute to reflections on territorial governance? How can this approach help formulate public policies that support sustainable economic and social development and take account of climate change?

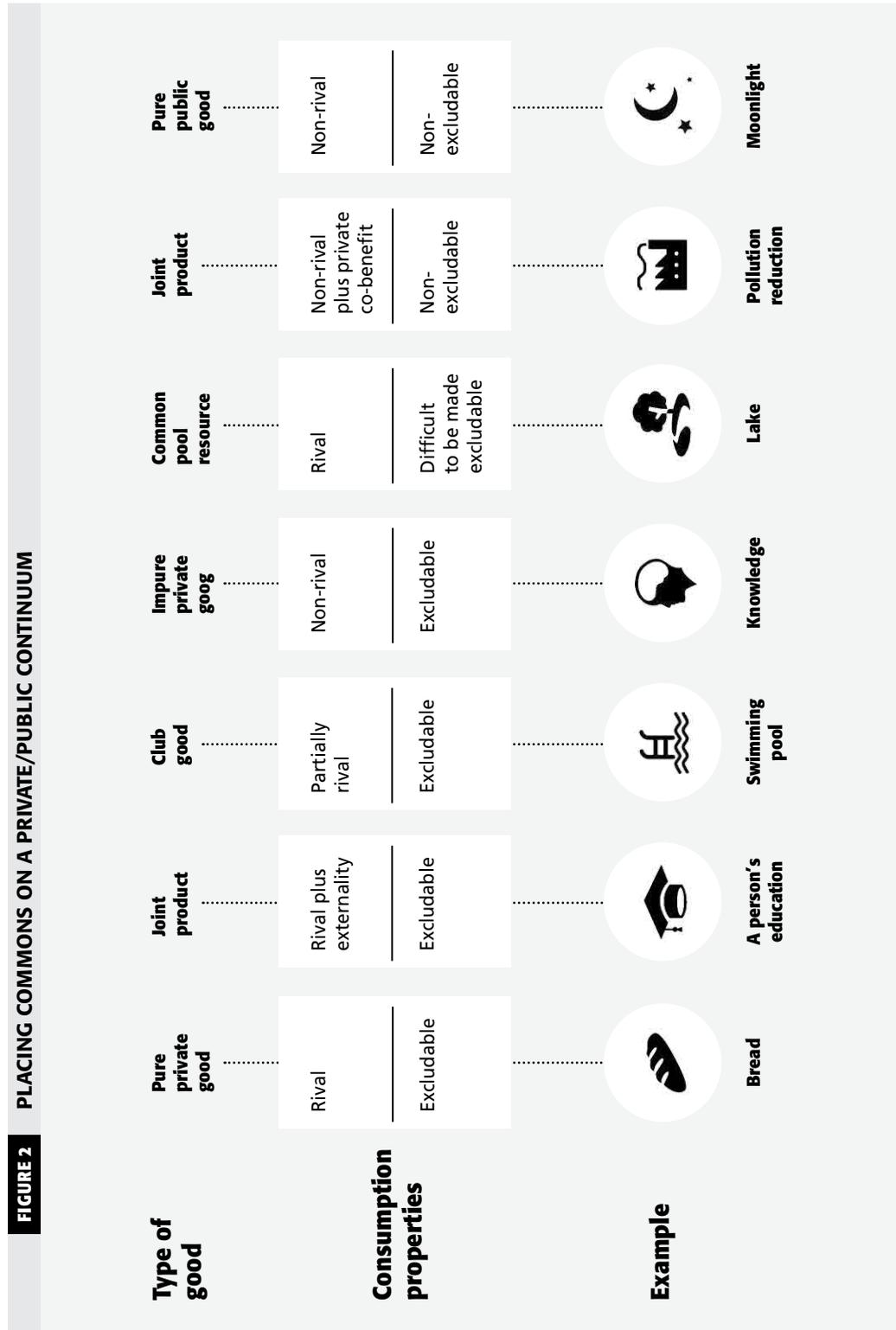
Some of these questions can be answered by using an analytical framework that was specifically designed to take account of commons and improve understanding of land practices and policies, especially in countries in the global South. It helps contextualise the guiding principles for action in this field (see Part 4), and can be used to support arguments for mobilizing the commons approach.

How can shared resources known as common pool resources (CPR) be understood in relation to other collective or private goods? A typology that is often used to answer this question, and which is justified in terms of its practicality, is based on the ‘nature’ of the goods. It uses two criteria that are particularly relevant to commons: (i) whether it is possible for certain actors to be excluded from accessing these goods, and (ii) whether they are jointly consumed.²⁷

This vision of commons, which is based on ‘their nature’, is often challenged by another view that focuses on the social criteria that affect decisions. These social criteria include the founding concept of sharing, and the conditions that enable collectives to make decisions and set the conditions for use of what they have identified as a common resource or common resources. The notion of sharing implies both exclusion and inclusion, but is primarily about bringing actors together in communal societies. Looking at decision-making processes and collective action in land governance enables us to move away from the ‘proprietary’ bias that underpins criteria of exclusion and rivalry, and thus from the factor that has led to the virtual disappearance of commons through enclosures and abuses of land rights. It also enables us to consider new forms of commons and how they have emerged in modern times.

We need to build a commons approach that recognises the interconnected economic and social relations that enable multiple actors to reconcile different uses of one or (usually) more than one resource, by introducing certain self-imposed rules that are regarded as legitimate (at least by the group concerned). Our suggested definition of land-based commons

27. This schematic representation, which has been refined to include varying degrees of exclusion or possible consumption by several users, also enables us to identify transitional situations between the categories shown on the continuum (claims to access or new competition over consumption).



shows that commons can use different 'models of interaction'²⁸ which take account of the different forms of resource sharing that enable the social groups concerned to secure their livelihoods and, where necessary, identify the conditions required for sustainable forms of social organisation to evolve. They show the huge contextual diversity of both the ecologies of the resources concerned and the nested social and ecological systems that develop around interdependent resources and actors.

The analytical framework presented below clarifies the commons approach by highlighting the positions that the LTDC adopts in order to: 1) characterise land-based commons as more than 'common lands'; 2) differentiate the commons approach from the 'community-based natural resource management' systems put in place by development donors since the 1980s; 3) understand commons as 'action situations' by using a framework that can evaluate problems with shared management. All these points will be illustrated with concrete examples based on the experiences of LTDC members.

Looking beyond 'common lands'

Continuing the line of thought that Hess and Ostrom (2006) developed out of Ostrom's seminal work on CPR to describe knowledge commons, Coriat (2011) introduced a distinction between land and knowledge commons based on the tangible or intangible 'nature' of the resource concerned.²⁹ In practice, these two types of common are often linked, and the LTDC would argue that when looked at inductively, knowledge commons such as digital resources that show how space is organised, or the technical and traditional knowledge used to address land issues,³⁰ cannot be separated from land-based commons.

Some authors have stopped considering commons as a good (physical or information/knowledge), and prefer to regard them as a community 'political project' where the community's objective becomes the source of the common. For Cordonnier (2012, p. 5), commons are "*things that are worth doing together*". "*We talk about aims rather than resources: workers' economic security, health, decent jobs, good quality food, personal autonomy, protecting biodiversity, low-carbon consumption and production, etc. These are 'political goods', which are governing principles before they are goods that can be formulated as 'products'*" (Leyronas, 2015). Therefore, depending on certain conditions at the territorial level, land-based commons can be associated with the delegation of public services (water supply, sanitation, electrification) that are highly dependent on land access or management (protecting water catchments, access to biomass). In certain conditions, they may be associated with the value chains in which different actors (producers, intermediaries and even consumers) come together to get their practices or forms of organisation recognised (origin and quality markings).

28. Or "patterns of commoning". Bollier and Helfrich argue that "*using patterns enables people to communicate common ideas about complex relationships more easily and to seamlessly combine theoretical research with its practical applications*" (2015, p. 15).

29. Common lands include tangible/material resources, "*which can include stocks or flows, and which are therefore likely to be renewable, such as water, forests, rangelands, fisheries... For these commons, the issue is preserving the quantity and/or quality of a resource that may be directly or indirectly degraded (through over-use or through qualitative degradation by related activities or external phenomena). Knowledge commons are characterised as an intangible resource whose use is additive rather competitive, in that it enriches the resource*" (Coriat, 2011 cited by Leyronas, 2015).

30. Dreaming paths in Australia and other cosmological realities could also be more crucial resources than material resources (Le Roy, 2011).

This way of positioning land in a knowledge and information system or as part of a 'political project' takes a functional approach to land relations (see page 40 below), which defines communities in terms of the social relations that regulate access to land and natural resources (see page 43 below), and regards commons as nested, hybrid mechanisms that are embedded in other institutions (see page 44 below).

● **Adopting a functional approach to land relations**

The LTDC believes that land relations are built on recognition of their different functions, regardless of whether these relations are formalised or not. This means that the key concept of the right to use land and land-based resources needs to be examined more closely.

Since land is a medium for production, social relations, biotopes and multiple representations of reality, it follows that there are many different land uses and practices. Land relations are expressed in very diverse ways, depending on their social, economic, cultural, spiritual and ecological functions. This is what Le Bris, Le Roy and Mathieu (1991) are referring to when they talk about the polyfunctionality of land relations.

Land is the special space where human relations with things are played out, and its functions are mainly associated with societies' capacity to reproduce themselves. Land relations are therefore a social construct which, by adopting a given legal form, will favour the recognition of one or more functions of land and land-based resources for the benefit of one or more individuals (Le Roy *et al.*, 2016). Systematically questioning the different functions of land relations not only enables us to consider the legal categories of land, but also to look at the rules that are implemented and their social, economic, cultural or ecological functions: what they permit in terms of use and how these uses are regulated.

"What functions do the rules for land and land-based resources fulfil when they are implemented in a given space?"

Asking this question enables us to identify the categories that institutional approaches usually use to understand land and land-based resources in terms of their 'usefulness' to individuals and societies in the short, medium and long term.

Looking at the functions that 'users' ascribe to land and land-based resources suggests that land relations are not necessarily determined by the status of the land. It seems that land-based commons could be envisaged on private property, collective land and State land. A functional approach to land relations can show that very different types of commons often co-exist alongside other modes of resource management (Toulmin and Quan, 2000). It can also highlight threats or incompatibilities that will lead the communities concerned to update certain rules and use new legal categories that better reflect actors' real land practices and understanding of their land relations. The organisational synergies and institutional overlaps that help manage these different functions can make a system less vulnerable and more resilient (Chanteau and Labrousse, 2014).

For some authors, this approach is a way of 'reclaiming' ownership, of *"breaking free from the weight of dominant ideology and thinking differently about ownership. It opens up ways of inventing and planning its use and function for different purposes, to safeguard and protect values such as resource conservation, equitable wealth distribution, solidarity, and the right to exist"* (Orsi, 2015).

Others (Dardot and Laval, 2014) argue that if land relations are built around the functions that users ascribe to the exercise of a right (or set of rights), user rights must be recognised before ownership rights.

In order to understand and support land-based commons, it seems useful to **use the concept of 'use rights' from a functional perspective, rather than user rights as an institutional attribute** (of ownership). User rights are classically regarded as 'real rights',³¹ an attribute of ownership that confers the right to use something; while use rights pertain to a link between two or more people that involves some kind of obligation. Thus, *"a riverine common is not a river, it is the link between this river and the collective that takes responsibility for it. Therefore, it is not just the river as a physical entity that cannot be appropriated, but the river as the focus of a certain activity and thus this activity itself [...] The concept of commons breaks with the polarity between subject and object, of an object offered to the sovereign dominion of the first taker (as in the res-dominus relationship)"* (Laval and Dardot, 2015, p. 14).

Regarding use rights as the core concept of systems for appropriating land and land-based resources assumes that there is an 'establishing act' or 'establishing praxis' that enables us to recognise the sphere in which the community that is responsible for managing this right acts, and determine how it is organised. *"It is a matter of using collective rules to prevent predatory behaviours from diverting uses from their collectively agreed social purpose. In other words, of regulating the use of a common without taking ownership of it, without giving anyone the power to use it as an owner would"* (Laval, Dardot, 2015, p. 15).

Adopting a functional approach to land relations allows us to analyse the steps that lead to the privatisation of common-pool resources in a new way. It also enables users to contest practices by the State or elites who use their power to convert jointly held resources into market resources through practices such as land grabbing, which are on the increase in several countries.

31. *"The term 'real rights' is used to designate a right that has a direct bearing on something (...). They are transferred with the good and may be sold, transferred through inheritance or mortgaged, unlike personal rights, which remain with the person and relate to a form of obligation between two parties"* (LTDT, 2011, p. 114).

USING THE CONCEPT OF COMMONS TO CONSIDER LAND AS NATIONAL HERITAGE: CIVIL SOCIETY ACTIONS IN SENEGAL

C. Richebourg^I, E. H. Faye^{II}, A. Bâ^{III}

Although land reform has been on the Senegalese government's political agenda at least four times in the last 20 years (in 1996, 2002, 2005 and 2012), the national land law (LDN) has yet to be repealed.

Influenced by the World Bank's land policies and 'poverty reduction' directives, and attracted by the idea of using foreign investments in intensive agriculture to grow the national economy (Plan for an Emerging Senegal, 2013), the Government of Senegal opted for a land reform based on the economic benefits to be obtained from private appropriation of land. [cont.]

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II. Enda Pronat.

III. Université Gaston Berger, Saint-Louis du Sénégal.

In 1996, questions about the possibility of generalised private ownership led the government of Abdou Diouf to initiate multiparty negotiations in which three options for a national land reform were identified: privatisation, maintaining the status quo, and a mixed option (Land Action Plan, 1996), but no final decision was ever made on which option to take. After Abdoulaye Wade's shows of strength in the 2000s led to popular uprisings and turmoil among communities facing large-scale land appropriations, President Macky Sall reinvigorated the reform process by setting up a National Land Reform Commission (CNRF) when he came to power in 2012. The CNRF was eventually chaired by the director of Moustapha Sourang university, a legal expert who called for citizen participation in an 'inclusive and participatory reform' (CNRF, 2015). The response to his call and ensuing debate in civil society eclipsed the government's discourse, arguments and powers of persuasion: for with no clear explanation of the dynamics of the process and little grasp of legal semantics, civil society actors organised multiple citizen consultations and developed a set of 'counter-proposals' based on local practices and jurisdictions. In doing so, they put forward an alternative view of the concept of ownership as lived and understood by local people, who set out their own interpretation of the national land law.

In 1964, the socialist Léopold Sédar Senghor introduced 'national lands' (Article 1), making 'the Nation' the owner of 95% of land in Senegal. These lands were held by the State (Article 2) and managed by local populations grouped into 'rural communities'. In legal terms, the State holds the country's land on behalf of its citizens (*sans animus*, i.e. without motive or intent to interfere with the exercise of a right), and should therefore protect and take care of it on behalf of its owner (the Nation). However, the Nation does not have the legal status that enables it to exercise its rights and responsibilities. By using a subtle interpretation of Western legal concepts, the legislator of 1964 managed to translate the meaning of so-called traditional ownership (which still prevails in beliefs, practices and local systems of appropriation) into substantive law, giving local authorities and individuals a right to access and use land in exchange for a responsibility to preserve and protect land resources for themselves, for the collective group and for future generations. By making the State the holder of the nation's land, the National Land Law made the State the guardian of the Nation's common land heritage.

Land in Senegal is a common, regardless of whether there is scientific, political or legal recognition of the concept. Having listened to local people, civil society intends to defend the nation's land by taking it out of the political context in which and for which it was created and fulfil the true meaning of the National Land Law. This entails promoting a common heritage for all present and future Senegalese citizens over and above the market concept of private ownership, and taking a functional approach to land by recognising the plurality of shared rights at the local level. ■

A functional approach enables us to look beyond the institutional status of land when we think about commons, and revisit the notion of user rights (an attribute of ownership) so that 'use rights' are understood as a social relationship defined by members of a community that seeks to maintain and sustain certain common resources. Alongside this functional approach, we also need an institutional procedure that can identify the tensions, interests, political dimensions and interrelations between different levels of organisation.

Rather than looking at land relations in terms of reconciling competing rights, we can see them as a hierarchy of principles for public action that are tried and tested on the ground.

Land-based commons reveal a register of claims in terms of inter- and intra-generational solidarity, social and environmental justice, spatial equity and the social, economic and environmental responsibility of public and private actors. In this context, we need to examine how commons are institutionalised in order to understand and support them. Stakeholders in commons need to be able to intervene at different levels of organisation (including intermediate levels), through actions that interact with public policies and different jurisdictions.

- **Defining communities on the basis of the social relations that regulate access to land and land-based resources**

The term ‘community’ may seem highly problematic due to its association with a communitarian vision of societies that favour exclusive relationships, and a sense that it takes little account of questions of legitimacy or rules for the internal organisation of institutionalised groups. Similarly, the English term ‘commoners’ relates to a historic resistance to enclosures³² that does not include all the diverse situations on the ground or exploit their potential. It also suggests a social and economic homogeneity that rarely exists in reality.

The LTDC therefore prefers to describe a group of people who provide, use and organise themselves to care for jointly held resources as a **‘group of right holders’, ‘users of shared resources’** or even a **‘collective of right holders to shared resources’**. The committee’s position is that it is preferable to define the community responsible for a common according to the social relations that regulate access to land and land-based resources, rather than by one of its key characteristics. This position is linked with the emergence and institutionalisation of commons.

Can communities be defined through the social relations that develop around land and land-based resources?

To understand what it means to belong to a community, we can use the sociological concept of *sociation* (rationally motivated compromise or coordination of interests) and *communalisation* (subjective feeling of belonging) introduced by Weber in *Economy and Society* (1920). Renan (1882) uses the national form of a sense of ‘belonging’, while Anderson (2006) relates it to the ‘imagined community’. These concepts could also be mobilized to express the imagined community’s sense of belonging and the sense of belonging to an imagined community, and to better understand land-based commons. The community cannot be defined without discussing what constitutes a sense of belonging to a community: realising the objectives of belonging, identity, recognition by others, avoiding conflicts and achieving peace within the community. This can only be done if social relations are organised around land and land-related things.

“Historically, political communities and territories have been co-constructed on the foundation and progressive accommodation of different social groups” (Lavigne Delville, interview 2016). Commons largely depend on social organisations, cultural relations and a sense of identity. They have functions that are closely linked with local living conditions, and exist because of real actions and practices. *“The shared nature of a common is expressed in the types of relations that are implemented by the community that manages the common”* (Giraud, interview 2016).

32. The appropriation by private or State actors of spaces or resources that were previously assigned for collective use (*commons*). Enclosure may be market-driven (confiscating land to realise its market value) or legal (patenting of living things, seeds). By extension, this term is used for information commons.

The social relations that develop around land and land-based resources are not always institutionalised. In many cases, decision-making processes do not seem to be explicit, but are based on de facto institutions that deal with inherited resources which need to be renewed. This means that there are institutions or pre-colonial legitimacies based on authorities and territories that disappeared when the modern State came into being – a historical foundation that often gives strength and legitimacy to rights that are exercised in common. The commons approach can provide insights into emerging social, cultural and political dynamics and, by naming and recognising specific forms of organisation that get overlooked because they are not part of any institution, can encourage and support them.

Analysis of new forms of commons has found that they are constructed by diverse, interlinked communities: administrative communities (villages, local authorities, etc.), social communities (clans, tribes, lineage groups, etc.) and socio-economic communities (women, youth groups, etc.). E. Le Roy maintains that these neo-commons (which are characterised by commodification) will at some point force commons to develop new forms of organisation and especially legal status, and thus new forms of institutionalisation. Conversely, the institutionalisation of traditional (longstanding) commons, where commodification is much less widespread, may be completely secondary or even highly anecdotal.

As the communities involved in commons are rarely homogenous, the most constructive procedure would seem to be to let local people to define these communities themselves. **If we accept that a community exists because its members recognise the need for a functional approach to land relations in a given space, we can see that its specific methods of organisation shape and are shaped by its heterogeneous members.** The people who make up the community can have different roles, functions and status, and diverse, opposing or even conflicting interests. It is worth noting that this diversity – which may vary according to the nature and maturity of the common – can be a factor of internal vulnerability when pressures exerted by certain members of the community cannot be controlled. Hence the importance, in a context of legal pluralism, of choosing procedures or institutions that can be mobilized to monitor and evaluate commons and resolve conflicts.

Even if we only look at de facto communities organised around land relations, it is likely that certain individuals may belong to several different communities as a result of their identity or through functional links.

● **Considering commons as hybrid mechanisms that are nested in each other and embedded in other institutions**

The legitimacy of right holders' claims to a shared resource is established at different levels of organisation, both in terms of resource use and securing land relations. So does this mean that commons can be regarded as mechanisms that are embedded in each other, and which can co-exist with other types of social or institutional organisation? Commons are always part of a network, not just of communities or commons, but also of individual and collective relationships.

Land-based commons are **hybrid** (Coriat, 2016) in that they can mobilize spaces and resources with different legal statuses as soon as they make some form of contribution to the functionality and aim of the common in question.

These commons are also **embedded** in many different institutions. Any given space will contain a whole range of resources, each with specific rules for their management and appro-

priation. Ostrom used the term **polycentricity** (2009) to describe this multiplicity of coexisting social organisations. In this context, it often seems desirable for clearly identified institutions to help formalise the ways that the space managed by the common is shared, through local conventions or land transactions and by recognising shared forms of ownership, including the establishment of collective or common properties.

We should also remember that land is just one medium in which land-based commons operate. They also organise value chains for products that are sold on markets or through local networks, create local currencies, share databases, etc. Therefore, we can think about chains of nested commons that feed into one other by mobilizing distinct groups of rights holders who care for specific resources. At any given time, certain commons within a chain may seem more robust than others in the face of 'enclosures', collective inertia or denigration by the public authorities. If we consider commons as nested entities, we will probably conclude that interactions between different commons help make them more resilient, and that the disappearance of one common can affect others. Their configuration varies over space and time.

HISTORICAL OVERVIEW OF COMMONS IN COUNTRIES IN THE MAGHREB

O. Bessaoud^I

Before the French colonial authorities imposed their land legislation on the countries they colonised, one of the dominant regimes in North Africa was 'commons' – in the sense of natural resources (farmlands, rangelands and forests) used and managed by local rural communities (*arouch*^{II}), usually according to customary rules. For centuries, land in the steppes was controlled and managed by nomadic or semi-nomadic tribes that moved around vast pastoral spaces. This mode of collective land management helped maintain a balance between limited natural resources and a form of exploitation that was adapted to the setting. Rights to use, appropriate and enjoy these land resources flowed naturally from membership of the tribal community and the holder's position in the social hierarchy. Land use and occupancy was also shaped by relations with the political authorities and different agreements between communities over territorial boundaries and mobile borders.

The colonial land reforms (legal and administrative) disrupted the rules that had previously regulated the functioning and use of tribal lands. The colonisers' classification and/or description of land inspired by French law (state, communal, collective, *arch* and private *melk*) also ignored local traditions (*orf*) and customary rules regarding the appropriation and sharing of common lands. The destruction of educational and religious establishments – the intellectual foundations of these communities – also deprived tribes of their elites, thereby contributing to their disintegration; while administrative decisions to reduce, close or demarcate grazing areas accelerated the breakdown of nomadic systems. The colonial authorities used sedentarisation and the growth of the market economy to control these spaces and further their social and political domination of the populations that occupied them. [cont.]

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II. The Arab word *arouch* (tribes) is the plural of *arch*, which refers to a tribal organisation characterised by community solidarity and social cohesion between members of the tribe.

When North African countries regained their independence, the new national governments revisited colonial policies and set about 'modernising' land systems and 'unifying land tenure status' in the name of nation building. They regarded maintaining tribal or rural community links based on blood ties or religious affiliations as an obstacle to the national project of rebuilding civil society. In a parallel development, these countries also went through a 'silent' technical revolution with the introduction of motorised and mechanised sowing and harvesting, trucks to transport livestock, vans to carry barley and concentrated livestock feed, and tanks to water livestock. In recent decades traditional rural community organisations have also had to cope with major demographic changes (high growth, urbanisation and sedentarisation), as well as the effects of expanding markets and strong direct interventions by national governments.

Another common trend, which has progressed at different speeds in different countries across the Maghreb, is the privatisation of resources in territories where commons exist. Even traditional social organisations are having to deal with individual strategies to appropriate rangelands, which have led to competition over common spaces between herders and former herders who have switched to agriculture. The private appropriation of collective land is supported by legal mechanisms, private investments and public funding, as well as public policies that favour entrepreneurship and large-scale private exploitation, assigning collective lands (*arouch*) to private concessionaries. In the meantime, urbanisation, industrial projects, tourism and rising demand for red meat are intensifying pressure on land and increasing its market value.

However, speculative strategies to take control of or grab collective lands are being vigorously resisted by tribal organisations, or what is left of them. Paradoxically, actions to cede land to the private sector have reactivated community organisations' claims to their resources, feeding into the sense of tribal and cultural identity that national governments are trying to suppress. These social protest movements use modern forms of organisation (associations), and have extended their campaigns to protest about their place in society, the environmental risks of assigning land to private investors, social inequalities and their disruptive effects on social order. These social protest movements are a clear sign that rural communities in the Maghreb still rely on common pool resources for their livelihoods and way of life. ■

The idea of 'networks' of land-based commons raises the question of how different commons fit into these networks, and how they organise the **joint administration** of land and land-based resources. The inclusive logic that brings together and organises holders of rights to shared resources should also be used to develop satisfactory relations with other institutions in the common's institutional landscape.

When clarifying and formalising these relations, it is helpful to identify the stakeholders concerned before considering their 'negotiated rights' (Barrière *et al.*, 2016). It is also important to examine the nature of the relations between commons and the market on the one hand (which economic model to adopt), and between commons and the public administration on the other (what opportunities are there to participate in public decision-making processes, what are the procedures for delegation?).

Going beyond community-based management

Communities manage renewable natural resources in many different ways, especially in countries in the South where community-based natural resource management was introduced in the 1990s by States and donors who saw it as a key instrument for sustainable development. Since then, it has been established in many different institutional forms, and subject to numerous analyses and assessments.³³

However, community-based management has often been imposed 'from above' through sectoral policies that tend to underestimate the local, social, economic and ecological issues in the territories where these natural resources (often a single resource such as forest, water, wildlife or rangelands) are found. As a result, political reforms have led to the creation of notional institutions with limited powers and logics that focus on rent capture by minorities rather than sustainable or equitable governance.

The LTDTTC believes that the commons approach goes beyond community-based management: it aims to reveal and, if necessary, strengthen 'bottom-up' processes that lead to legitimate operational rules based on close social relations (see page 47). This legitimacy is partly based on the notion of 'trust' in the fact that different actors will abide by the rules of the game, and partly on the capacity to control behaviours (Ostrom, 1990). This means that the management of land and land-based resources cannot be solely based on a strictly managerial approach (see page 48), and that the principle of 'subsidiarity' should be brought into play alongside that of 'participation' (see page 50).

● Adopting a bottom-up approach at the territorial level

The articulation between different levels of decision-making and management is vertical in the community management framework and horizontal in the commons approach. In the former, community-based management is envisaged as a process of decentralising/deconcentrating the management of renewable natural resources,³⁴ and in the latter, as a process of reconstructing social cohesion in interlinked territories from the bottom up.

This dichotomy stems from two very different views of the purpose of a territory (Le Roy, 2011, p. 69-70). One sees territory as *"a medium for governance of the group and, in the context of modern society, a framework for exercising the sovereignty"* of the State, local authorities and even owners; the other defines it as *"a stretch of land that is accessed peacefully and thereby transformed into a shared space."* Commons are concerned with a set of resources on territories that are more or less legitimate, clearly defined and overlapping, and a set of interrelated actors.

The commons approach is an opportunity to recognise that looking at how resources are shared can enable societies to reconstruct themselves from the bottom up, since these daily local practices aim to make economically, socially and ecologically sustainable use of land and land-based resources. However, the position that favours land-related practices as

33. See Butoud and Nguinguiri (2016) and Gilmour (2016) on community-based management of forests and Bené (2012) on fisheries.

34. Introducing community-based management into legislation in developing countries is based on the principle that certain types of resources (forests, rangelands, fisheries) are eligible for this type of management. This puts the public administration in a strong position, as many governments in the South proceed on the basis that the State 'owns' the land and thus the resource in question.

an entry point applies to contexts where spatial boundaries may be vague, indeterminate or even mobile.³⁵ The landscape is a 'systemic' unit that links the ecological aspects of life in the region with the animal, human and vegetable populations it supports and the land relations that (according to a functional approach) develop there. In this context, 'landscape-based projects' may reveal or establish land-based commons that realise the shared values and ambitions of the various stakeholders involved in the 'life of a common', and are based on reflection about the actual or desired influence of the people who invest in these commons.

This last point assumes that there is some dialogue between the actors and institutions that define the landscape of the common. This dialogue could take place within regulatory authorities that can connect local, national and even international institutions, and in all the spaces where recognition of the legitimacy and place of commons is discussed.

Taking commons into account when designing a landscape-based project is very different from adopting a jurisdictional or administrative approach to space. Aurélie Chevrillon proposes the concept of 'living landscapes' (interview, 2016) to re-establish an idea of territoriality that aims to define how rural populations will live in their local environment. The 'landscape-based project' then becomes a space that questions how systems to distribute rights to land and land-based resources evolved, especially in settings where natural resources are becoming depleted, inequalities are worsening, or conflicts are appearing.

When considering **shared administration** – a relationship between users with rights on the one hand, and elected and administrative officials on the other – we need to look at the diverse relations, spaces and timeframes³⁶ in which individual, communal, collective and public decision-making processes operate. This requires appropriate tools to help actors examine possible changes in the production of individual, shared and collective rules that respect common values and objectives.

● **Specifying the purpose of commons: to manage, share, care for or ensure stewardship?**

The purpose of a common can help development practitioners lever what is already being done to address very diverse local situations where the room to manoeuvre can vary considerably. The commons approach can support forms of solidarity, build them where they are lacking, and operate in interfaces where asymmetries of information, power and dialogue can be reduced. So that we can participate in territorial governance and public policy formulation in these contexts without doing harm, it seems important to determine which is the best register for understanding or supporting land-based commons.

Choosing which verb we use to specify the purpose of land-based commons enables us to consider how to develop and inform monitoring systems that stakeholders (especially users of shared resources) might envisage to facilitate communication and decision-making. Which indicators will help determine whether the objectives assigned to the common have been achieved? Who should formulate them? What sources of information should be used? Who should findings be shared with? Verbs that could be used to specify the purpose of

35. Which raises the question of how we can develop dynamic representations of space that capture the movements and trajectories which determine actors' relations with resources.

36. "The timeframes for public action deal with the long programmatic timeframes of institutions and public bodies, the cyclical timeframe of political mandates, the non-real time of territorial restructuring, and the disruptive time of economic, social and ecological crises" (Mesini, interview 2016).

a common include to 'manage', 'share', 'care for' or 'ensure stewardship of' one or more previously identified resources.

Community-based natural resource management is often justified by the economic interest that local communities have in conserving and protecting the resources on which they depend. However, these economic benefits and related forms of distribution often fall short of local people's expectations. When used in conjunction with the commons approach, we wonder whether the term '**manage**' doesn't reflect an overly 'directorial' vision with overtones of private business management practices or bureaucratic public oversight – impersonal systems that would be inappropriate for a commons approach.

TAKING ACCOUNT OF ECOLOGICAL, ECONOMIC AND SOCIAL DYNAMICS IN ORDER TO ENSURE THE SUSTAINABILITY OF COMMUNITY FISHERIES IN CAMBODIA

*J.-C. Diepart*¹

Since the early 2000s, fishery resources in the Tonle Sap plain have been managed through (joint) community-based systems that are embedded in a political ecology of large-scale commercial fishing. This concessionary style of fisheries management resurfaced in the 1980s and 1990s, when it became an instrument of political and economic domination by the ruling party. It had a very negative impact on the fishing sector as a whole, and on small-scale family fishing in particular, leading to degraded spawning grounds, illegal fishing, declining stocks, levels of corruption that virtually eliminated tax revenues, and countless violent conflicts involving small-scale fishermen. Nevertheless, the community fisheries policy based on small family operations has not fundamentally challenged this political economy, and management of the fisheries sector remains unfavourable to small-scale fishermen.

The State and major development agencies were directly involved in the introduction of community fisheries, which were intended to mitigate processes of social and economic exclusion caused by the commodification of commons. The State's dominant role in the new joint management system and the way that members' rights and responsibilities were defined have made it very hard for users to appropriate the system.

In this difficult context, the main challenge for sustainable community-based management of fisheries resources is determining how to take account of local ecological, economic and social dynamics in a framework for action that is anchored in local practices. There are three main issues that need to be addressed in this respect. Firstly, recognising the multifunctionality of resources in the Tonle Sap plain, where groups of users actively shape a mosaic of settings to facilitate access to a wide range of resources – rice, fisheries, timber products and pastures. Community fisheries take little account of the different types of knowledge and modes of appropriating resources in these territories, because they mainly focus on fishing and operate in spaces whose geographic boundaries make little socio-ecological sense to local populations of users.

Secondly, current legislation does not recognise community fisheries' right to pursue commercial (fishing) activities that would enable them to collectively finance surveillance patrols and other initiatives to support their livelihoods. Because their financial capacity is limited, community fisheries remain highly dependent on external [cont.]

1. UMR 5319 Passages (France) and Gembloux Agro-bio tech, Université de Liège, Belgium.

aid and have very limited power to negotiate in discussions about joint management. If they are to have the capacity for sustainable action, these communities need legal recognition, and commercial community fisheries need to be promoted in existing short economic circuits and other markets.

Finally, the legal and institutional framework for community fisheries needs to be reviewed to establish a more realistic distribution of roles between holders of rights to shared resources and the public authorities. At the moment, the fisheries administration is mainly responsible for resolving conflicts over violations of community fishery rules, and communities have very little room to manoeuvre despite the existence of arbitration mechanisms at the local level. ■

Intuitively, it would seem that sharing resources, power, information, etc. is central to commons, and that using the term '**share**' would enable us to examine what this means in terms of values and practices. This verb focuses our attention on 'living together' as the organisational basis of the community that cares for a common, and the foundation for establishing relationships with third parties. However, there is a danger that 'sharing' will be understood as establishing distinct and appropriate portions of resources, and distract attention from the sustainability of the common.

This pitfall can be avoided by using the verb '**care for**', which implies some kind of responsibility – in this case, shared 'responsibility' for an objective that aims to maintain the ecosystem's recognised production capacities for the benefit of rights holders to shared resources. This purpose is necessarily based on solidarity between community members and third parties' respect for the community's capacity to take action. The verb 'care for' also allows us to consider how users help maintain the provision of goods and services ensured by the different functions ascribed to the land and land-based resources.

While 'caring for' also implies a deliberate intention based on prior choice, '**ensuring stewardship**' is part of a register where third parties (including future generations) delegate the administration of something to a community of users. This means that users of the shared resource or resources, such as foundations or trusts, agree to take responsibility for safeguarding something that is of value to someone else. The last two terms ('care for' and 'ensure stewardship') are increasingly cited as appropriate for commons situations, as they acknowledge both long-term responsibility and recognised authority (Lane, 1998 ; 2013).

● **The principle of 'subsidiarity' as a complement to 'participation'**

Many commons predate the advent of centralised governments and lack the power to integrate resources into a State-controlled national economy. Resources are still managed by communities in several countries where State is too weak to do so, but globalisation is increasing pressure on resources and the economic interests that they represent all around the world.

Is it possible for communities to maintain these commons and protect themselves against such pressures, and for the State to support (rather than destroy) the local institutions that are responsible for their management?

The *principle of participation* has been widely disseminated through sustainable development initiatives that promote community-based management of renewable resources. But in reality (and for many reasons), ‘participation’ in decisions about the management of (strategic) natural resources is often little more than empty processes to validate decisions that have already been made. With commons, there is no disjunction between the power to make decisions and formulate rules and the use of commons in accordance with these rules.

To understand and support commons we need participatory processes that “include local communities and associations that protect the environment, etc., in order to decide in a collective and democratic manner what the new social function of this good should be” (Lucarelli, 2014, p. 30). However, participation is time-consuming because it takes a while for the ‘managers’ of a common to establish their legitimacy and credibility. In addition to this, many actors would rather delegate their powers and get someone else to represent them, preferring not to participate if it means they can avoid having to negotiate. This also explains the different types of participation seen in contexts where power relations are unequal and thus vectors of inequality.

As a result, the participatory deconcentrated management envisaged under the auspices of the technical services or conservation NGOs tasked with managing protected areas usually consists of local actors being asked to implement predetermined rules that were established outside the community which has been made responsible for managing the renewable resources. It is their adoption, rather than their formulation, which is (more or less) participatory. This type of management should be distinguished from decentralised management in the Anglo-Saxon sense of the term, where what is transferred is the power to define the rules. This is a very different matter, in principle at least.

Just as States and regional authorities (especially the European Union) developed the principle of subsidiarity in order to establish certain policies, a functional approach to land relations enables us to ask which is the best level of organisation to control an activity that is causing a problem we want to address. The answer is not always the local level. It depends on the nature of the problem to be addressed and the maturity of the social organisations concerned. And even if nation-states are still theoretically the most solid institutions, it could be possible for other levels of organisation to participate in the emergence of inclusive, resilient societies that contribute to sustainable development. Therefore, we can decide whether it is appropriate to apply the principle of subsidiarity on a case by case basis, according to the action situation and stakeholders involved.

One view, which may be more flexible and ‘empowering’ for the parties concerned, is that commons with sufficiently mature social organisations can provide a space for both participation and subsidiarity. Functional commons often lead to claims of self-management and autonomy, and G. Arena (2016) associates horizontal subsidiarity with autonomous initiatives to fulfil general interest obligations.

Therefore, participation and subsidiarity are complementary principles that can enhance our understanding and support for land-based commons, and contribute to innovative governance mechanisms that break with the paradigm for public-private partnerships that has been used for the last 20 years. They help develop compromise and synergies between different modes of management, and innovative interactions from delegation to the hybridisation of rules.

Applying the principle of subsidiarity as a complement to participation would enable us to explore how States could delegate authority to ‘sub-sovereign’ and ‘non-sovereign’ levels. This would initially entail focusing on the formulation of national legislation and

policies; then considering the multiplicity of administrative jurisdictions involved in territorial management that are recognised by the State and initiating satisfactory dialogue with them – bringing us back to the issue of how commons relate to the State and decentralisation processes.

Understanding commons as ‘action situations’

The LTDC believes that land-based commons can only be understood and supported as ‘action situations’.³⁷ In the first instance, these action situations are identified through the issues raised by land-related development assistance (Part 1), especially when:

- > societal adaptation to climate change implies new, adaptive modes of managing natural resources and the ecosphere (as in the context of implementing REDD+);
- > there are conflicts of interest between local populations and international investors, and discussions about the formulation of rules that include and exclude certain actors from the benefits derived from resources (such as when the State makes land available to private investors);
- > public policy formulation and implementation take insufficiently explicit account of vulnerable populations, raising questions about the nature and purpose of public action (support for land reforms initiated in many countries in the South, sometimes lasting many years without significant results...);
- > territories are regarded as abandoned or environmentally vulnerable, and it becomes necessary to re-socialise security and development issues (as in grazing areas in countries in the Maghreb).

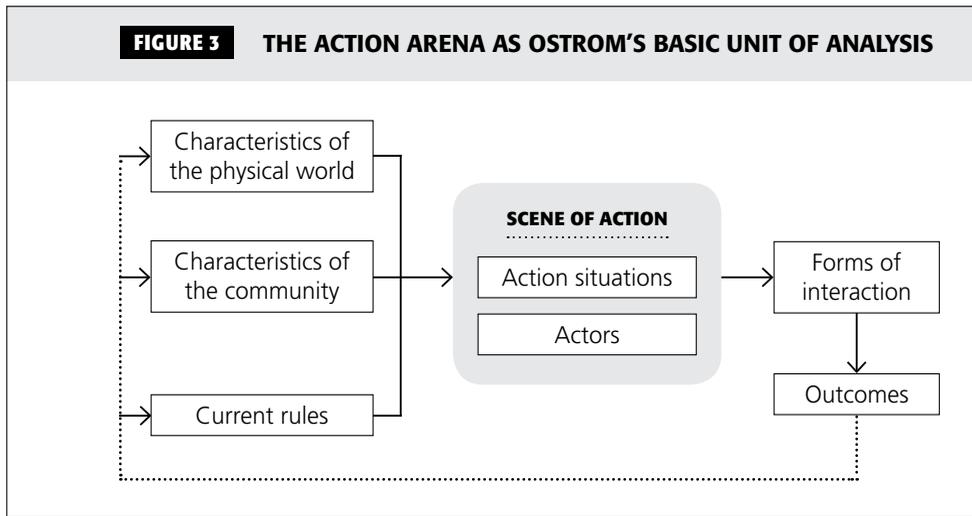
These action situations also represent ‘social practices in action’, a ‘praxis’ identified on the ground. Particular attention is given to ‘commoning’ on the one hand (see page 52), and on the other to collaborative networks and defending fundamental rights (see page 54).

● **What is ‘commoning’?**

In order to understand and apply the definition of land-based commons (Part 2), we need to understand what is meant by ‘commoning’ – the term used for collective action built through discourse, representations and actual practices. On another level, ‘commoning’ also refers to an iterative process of trial and error that contributes to individual and collective learning, and where collective action constitutes a ‘showcase’ for implementation

In 1998, E. Ostrom defined **the arena or scene of action** as a unit of analysis that can be used to address the specific issues the community is tackling, and to conceptualise commons through action situations. The context in which these arenas function is defined according to the biophysical characteristics of the resources, the community and the rules concerned. Ostrom’s primary aim was understanding the outcomes and effects of social interactions around a given action situation. Extending the procedure to more complex and embedded commons enabled her team to identify a set of variables of interest – relating to governance,

37. This is the particular context in which actors’ realities and issues and the norms likely to be used can be understood, and thus the possible embedded and nested options for shared administration.



the resource system, units of resources and actors – and test their effects on the maintenance, success or failure of the commons in question (Ostrom, 2009).³⁸ See Figure 3.

How are action situations configured? Which issues need to be considered? What kinds of problem are groups of people prepared to tackle through collective action and negotiation, at the risk of triggering open conflict?

The LTDC is mainly concerned with configurations of action situations at the territorial level (see page 47). In this context, ‘commoning’ is an expression of the inclusive logic of commons. It is first mobilized within a group whose members hold different rights to shared resources, in order to achieve social cohesion both within the group and in the relations that this ‘community’ of users has with actors outside the group. The rules therefore flow from engagement with actors at different levels of organisation and different registers emanating from diverse actors or sectors.

Depending on the issues involved, action situations may also be configured around interactions between land-based commons and the State or market. Land-based commons therefore need to be considered at different levels, not just at the territorial level.

Although some authors envisage commons developing outside the State (Laval and Dardot, 2014), most do not believe that the Westphalian State will disappear and think it should be involved in promoting commons or even in the hybridisation of governance rules – which would mean that its roles would have to be redefined. In this respect, the LTDC’s main focus is understanding how to envisage the transition between formal administrative institutions and ‘social or anthropological’ institutions.

When considering the issues raised by interactions between commons and the market, we also need to think about new relationships between commons and the private sector, both in terms of the organisation of value chains (introducing marks of origin and quality, etc.) and at the territorial level. The resulting hybrid institutions could mobilize legal forms that verge on the informal or even the illegal.

38. The Sesmad-CPR (Cox 2014) framework is currently being used to involve actors in defining these variables and testing the variables and the analytical framework (<https://sesmad.dartmouth.edu/pages/intro>).

These issues need to be addressed – not only to protect commons, which are vulnerable to predatory behaviours by certain public and private actors, but also to maintain or strengthen their resilience. But it is not a matter of systematically reifying the community and the collective action, as certain action situations lead to exclusions that are incompatible with respect for human rights and social justice, and because it is not always possible to see how alternative modes of appropriating land and land-based resources can be recognised. If commons are to be identified and supported, they must be considered in their institutional environment. In some cases it may also be necessary to make alliances in order to change power relations and facilitate recognition of the legal pluralism within different action arenas.

● **Envisaging a change of scale through collaborative networks and by defending fundamental rights**

The interactions between one community of right holders to land-based commons and other communities of users can also be used to make commons more resilient. As commons often develop in ‘collaborative’ or ‘cooperative’ action situations, it is important to consider the potential partnerships that may develop between social networks, coalitions, platforms or associations that defend the fundamental rights that land-based commons aim to protect. *“Land provides a framework for the application of social, cultural and political rights, a powerful bulwark against poverty, destitution and the exclusion of individuals, families, tribes and communities”* (Mesini, interview 2016). Although efforts to tackle climate change can only succeed if there is appropriate and coordinated territorial management at the local level (hence the difficulty in implementing actions), it is not practicable to resolve the problems associated with climate change at the local level alone. This is something that must be done at the global level, which could in turn have implications at the local level (Merlet, interview 2016).

This means that we also need to consider certain **values**³⁹ that underpin the definition of fundamental rights. These rights are formalised in the *soft law* produced by international organisations and the general principles of environmental law, and are being incorporated into the constitutions of a growing number of countries.⁴⁰ Although constitutional law often includes features that enable the State to recognise commons, attempts to use them to support land-based commons are often thwarted by the State’s presumed ownership of land and reluctance to review its sovereignty over resources that are regarded as ‘strategic’. Many actors, including stakeholders in commons, base their claims on (more or less binding) regulatory texts produced by international institutions. In this respect, the concept of heritage is interesting as it encompasses the transfer of goods to future generations and can be used to defend a set of shared values at different organisational levels (from the individual to the human).

Partnerships organised in social networks, coalitions, platforms and associations help advance these reflections and could provide opportunities to maintain, strengthen or engender commons. They are potentially appropriate spaces where actions undertaken in the context of commons identified at the territorial level can be extended to other levels of organisation.

39. Although the term ‘values’ is itself quite fluid and polysemous. Dewey (2011), the attributed author of the book *La formation des valeurs*, talks about valuations or what counts in people’s lives – meaning that this would not so much be the ‘values’ that actors share, as references to what counts for them: solidarity, sharing, peace, respect, etc.

40. *“Recurrent themes include protecting biodiversity, crops (conserving and passing on agricultural practices and indigenous, peasant and rural practices that are threatened by growing urbanisation), livelihoods (control over raw materials, food sovereignty and people’s right to feed themselves), or even territorial sovereignty, in relation to indigenous minorities all round the world that are fighting for recognition of their ‘immemorial rights’ to their ancestral lands”* (Mesini, interview 2016).

EXAMPLES OF COLLABORATIVE INTERNATIONAL NETWORKS THAT PROMOTE COMMONS

C. Toulmin^I, M. Mellac^{II}

The last 10 years have seen an increase in the number of collaborative networks that promote commons and /or contribute to land-related commoning at the national and international level. Many use the Internet as a tool for communication and to activate their networks. But the Internet is more than a simple tool – some regard it as a common itself, one whose capacity to disseminate information and organise society facilitates the emergence of other, new commons. Some networks are constructed from the outset around websites that can generate information and/or organisational commons. The list below, which is not exhaustive and focuses solely on international networks, aims to clarify the very diverse objectives of some of these networks (including whether ‘to common’ or not) and their relationship with the Internet. NB: networks are described according to what their website presents as their main objective, with their geographic reach shown in brackets.

Groups of associations concerned with land and access to resources. Their main objective is often lobbying, and their sites are initially created as a communication tool. Some then take on other functions, such as sharing information or structuring networks.

- > **International Land Coalition** (www.landcoalition.org) Coalition of 206 organisations in 65 countries, whose main objective is to promote good land governance. [Global]
- > **Access to Land** (www.accesstoland.eu) European network of grassroots organisations that work on access to land. One of its four lines of action is managing land as ‘commons’. [Europe]
- > **Land Rights Now** (www.landrightsnow.org) Group of nearly 600 associations of all sizes, centred around a global call to action on indigenous and community land rights. [Global]
- > **World forum on access to land 2016** (www.landaccessforum.org) Group organised around a call for debate on access to land. Its main objective is to organise this debate. [Global]
- > **World social forum** (for 2016: <https://fsm2016.org/>) Largest and longest-standing gathering of civil society organisations that meets twice a year “to find solutions to the problems of our time, by building concrete alternatives to the neoliberal economic model.” It defines itself as “an open space” or “gathering place for social movements,” and is often seen as a rival space to the World Economic Forum [Global]

Groups that promote commons (including land-based commons) They are not very different from those listed above, apart from the fact that they are built around commons and include the idea of ‘commoning’ from the outset, especially through their emphasis on the idea of creating a space for collaboration through their website rather than focusing on structuring the group.

- > **European Commons Assembly** (<http://europeancommonsassembly.eu/>) A non-hierarchical community of activists, researchers, students, citizens, etc., which [cont.]

I. IIED.

II. Université de Bordeaux Montaigne.

calls itself a 'commons movement'. Its objective is to use the Internet and meetings to provide a favourable space for initiatives to support commons. [Europe]

- > **Commons Strategies Group** (<http://commonsstrategies.org>) Describes itself as "an activist and research-driven collaboration to foster the growth of the commons and commoning projects around the world." [Global]
- > **Commons Network** (<http://commonsnetwork.eu>). A citizens' initiative mainly composed of researchers, which describes itself as a think tank whose objective is to promote commons at the social and institutional levels. The political engagement of this initiative differentiates it from other research sites. [Global]

Web platforms to share information on land and commons. As their name suggests, these platforms use the Internet's potential for 'commoning' around information, usually in conjunction with other forms of action.

- > **Land matrix** (www.landmatrix.org). Web platform that maps land grabbing. Global observatory and open tool for gathering and visualising information on land grabbing. [Global]
- > **Land portal** (<https://landportal.info>). Website that shares land-related information, innovations and contacts. It also includes a blog and supports closer links between organisations. [Global]
- > **Remix The Commons** (www.remixthecommons.org) A Wiki (collaborative website) for sharing and co-creating multimedia documents about commons. [Global]
- > **The Commons Transition Platform** (<http://commonstransition.org/>) A digital platform for information on practical experiences and policy proposals for transition to a more humane and environmentally grounded society. The main site has links to a Wiki, and the project (platform + mobile international team) itself constitutes a common. [Global]
- > **Hub Rural** (www.hubrural.org) An online platform (common tool) to support rural development, food security, land management and public policy formulation. Unlike other sites, this is not a database but a platform for resources (forum, documentary resources, bulletins) that mainly provides fairly classic support on public policies. [West and East Africa]

Scientific groups around commons

- > **The International Association for the Study of the Commons** (www.iasc-commons.org/) Set up as a community of researchers and professionals inspired by the work of the Ostroms. Members meet every two years to discuss their experiences and research findings. The site mainly contains researchers' own information. The last meeting was held in the Netherlands in July 2017. [Global]
- > **Collective Action and Property Rights** (www.Capri.cgiar.org) This is a CGIAR programme led by IFPRI, whose objective is to strengthen research on commons management and collective action by organising workshops and conferences. Its website mainly contains information about its own activities. [Global] ■

This networking allows actors to take account of the fact that while a certain number of resources can be managed at the local level, others, such as the climate, can only be managed at the global level. ●

PART 4

Six guiding principles for the application of a commons approach to land matters

The *White Paper on Land Governance and Security of Tenure in Developing Countries* (LTDTTC, 2008) recommends that cooperation interventions in countries in the global South should be defined in accordance with current policies, ongoing reforms and the maturity of the debate on land, and should reflect the intervention context and priorities.

Interventions could mainly involve:

- > support for action-research or development projects in the field;
- > *ex post* analyses of intervention outcomes;
- > political commitment from governments in the South to initiate public debates and/or revise or enrich their national legal frameworks;
- > lobbying with other donors to ensure that the importance of commons is recognised in the implementation of SDGs;
- > setting up global or regional commissions on commons;
- > improving access to information, building actors' capacity to administer common pool resources and decide which approaches to promote;
- > ...

Because these concrete actions will have intended and unintended impacts on land-based commons, the LTDTTC has developed six guiding principles to help frame cooperation interventions. These principles extend and complement French Cooperation policy and national and international work on commons, and are consistent with the LTDTTC's previous work on land issues.

They are intended to provide a frame of reference for French Cooperation actions on access to and shared use of land and land-based resources, and help develop institutional 'anthropo-socio-political intelligence'. This framework can facilitate political support for AFD partners that receive financial assistance (project support, sectoral programmes, budgetary support), and use the 'black mirror' (Alliot, 2003) to question the ability of our own development models to address local, national and international issues.

Principle 1: Recognise the prevalence of commons, and where necessary ensure that is recognised

Before embarking on a planned intervention, and without making any assumptions about the importance and prevalence of land-based commons, it is important for all concerned to discuss the fact that in terms of sustainable development objectives, land and land-based resources are not, or are no longer simply appropriable goods. They are also a means of production, and embody social values and/or a sense of identity that can contribute to the establishment of commons.

More specifically, this means that:

- > introducing commons into the metanarrative(s) used to justify interventions is a necessary pre-condition for credible renewed reflection on land matters;
- > it is essential to take account of the plurality of resources, flows, actors, logics, practices and spatial and temporal scales that may be involved in planned interventions. This represents a pluralist normative 'revolution' that will lead to major legal, economic and political changes;
- > even in localised and/or sectoral interventions, the issues are still 'eco-systemic' (ecological, social and economic) and should be understood and evaluated at the level of the society (community, commune, country, sub-region, etc.) and ecosystem concerned;
- > the potential benefits and prospects offered by commons should be presented and discussed with all the actors concerned.

RECOGNISING THE PREVALENCE OF COMMONS IN THE MANAGEMENT OF PASTORAL ECOSYSTEMS IN MOROCCO, TUNISIA AND FRANCE

B. Bonnet^I, O. Barrière^{II}

The collective management of pastoral spaces in Morocco, Tunisia and France raises many issues, particularly at times of political change (revolution followed by decentralisation in Tunisia, the common agricultural policy in France, national programmes in Morocco) and increasing uncertainty about the effects of climate change.

The new contexts for managing pastoral resources in Mediterranean countries are shaped by a reappraisal of centralised management and failings in the privatisation of resources in dry and unpredictable settings, and considered in relation to decentralisation policies.

Since 2015 there have been various discussions between herder organisations and the institutions responsible for the management of common rangelands (collective lands in the Atlas Mountains of Morocco and southern Tunisia, State rangelands in northern and central Tunisia, and mountain pastures in Isère where land and resources have been collectively managed since the pastoral law of 1972).

I. Iram.

II. IRD.

These discussions led to an initiative that draws on stakeholders' experiences, understanding of the dynamics of ecosystems and existing management practices, and experimental regulatory measures.^{III} It aims to ensure that new national frameworks for policy guidelines (the 2015 Pastoral Code in Morocco, national strategy for joint management of rangelands and forests in Tunisia) better reflect the real dynamics of pastoral ecosystems and local management practices, by focusing on rights that are negotiated through socio-ecological pacts that are more legitimate and appropriate to these realities.

This initiative intends to foster and support organisational, legal, technical and economic innovations, and improve Moroccan, Tunisian and French public policies on the management of pastoral resources and rural territories that are vulnerable to the effects of climate change. Other aims include encouraging synergies and exchanges between countries and territories where the collective management of natural resources in the context of pastoral activities has certain common characteristics: mobilization of natural/semi-natural resources, mobile herds and pastoral actors, integrating pastoral activities into territories managed by many different actors...

The initiative developed out of work undertaken in 2014 to build on discussions about improving public policies to develop vulnerable rural territories, and problems with pastoral climate adaptation in Mediterranean countries.^{IV} Over the course of 2015 the initiative focused on designing a natural resource management programme in vulnerable rural territories in Tunisia, and exchanges between leaders of this initiative in Tunisia, Morocco and France.

Creating more opportunities for exchange and building shared views among professional and public actors provides a favourable framework for innovation in different registers: sustainable management of collective rangelands, improving public policies on the management of pastoral lands, and regulating access to common resources in these pastoral territories.

An important aspect of these processes is establishing connections and links between state legal orders and endogenous rights systems. This is done through meetings, dialogue, discussion and negotiation, to establish relationships between the local, national and international levels and build a vision and innovative proposals for different forms of regulation. These linkages cannot be imposed by decree, but are jointly constructed by all the different parties that act and intervene on land. They negotiate new rights, which are formalised through pacts or land charters based not on codes or 'customary rights', but on genuinely collaborative processes that involve local and regional elected officials, professional representatives, residents, central government and traditional authorities. The objective is to connect the local to the national through legal innovations that transcend legal orthodoxies and thus extend well beyond the sphere of the law.

[cont.]

III. *Land, pastoral regulations and climate change: perspectives to improve public policies and innovation in Tunisia, Morocco and France. International project to discuss ways of mobilizing and exploiting pastoral resources in contexts of climate and agro-pastoral change*, ORMVAO-Ouarzazate, DGF-Tunisia, FAI-(38), IRD, Iram.

IV. Pellissier J.-P., Frayssignes J., Ahmed Z. (eds) (2015), *Les territoires ruraux en Méditerranée, quelles politiques publiques pour accompagner les dynamiques de développement?* Summary of seminar held in Montpellier on 9-11 December 2014, IAM-AFD with support from Iram, CIHEAM, Montpellier (France), 'Mediterranean options' Series A: Mediterranean seminars No 112, 218 p.

To achieve this objective, the initiative aims to implement four major sets of structured activities at the local territorial level, the national/regional level and the international level:

- > actors identify and characterise the dynamics of territories and pastoral resources in relation to climate change and other factors of change;
- > jointly design and test innovative ways of regulating and managing pastoral resources in a sustainable manner;
- > use actors' knowledge and experiences to inform policy dialogue at the regional and national levels;
- > conduct and share analyses and experiences between pastoral territories and countries. ■

» **POINTS FOR DISCUSSION:** *Widespread international reflections on the recognition and defence of 'fundamental rights' include discussions about rehabilitating nature as a subject of law. While these reflections contribute to the formulation of a new type of social project, they do not seem sufficiently practicable to guide the French Cooperation's planned actions on State, local authority and community territories. Efforts to build this type of policy are not about envisaging short-term concrete results or even designing new legal rules, but about establishing trust and long-term relationships with partner decision-makers.*

Principle 2: Improve understanding of the environments in which commons targeted by international cooperation interventions operate

- > Use analysis of action situations to identify the different levels of spatial and temporal organisation and the resources, flows, logics and social practices considered by the commons approach.
- > Consider the nested/embedded and polycentric way that these commons function and interact.
- > Help refine and enrich the vocabulary used by actors who work on land-based commons, and promote initiatives to develop and disseminate locally appropriate lexicons.

PLACING COMMONS IN THEIR HISTORICAL AND POLITICAL ENVIRONMENT: MANAGEMENT OF POOLS IN GWENDEGUE, BURKINA FASO

P. Lavigne Delville¹

There are different types of fishing in the floodplains of *winyié* country in Burkina Faso, with different sets of rules for individuals who fish with hooks throughout the rainy season, those that dam watercourses and use traps in the rainy season, and collective low-water fishing in natural pools (Jacob, 2003). Fish is an important source of protein, and the rules for fishing aim to:

- > ensure that fish can reproduce by protecting them at key points of their reproductive cycle;
- > take account of the economic interests of different communities in settlements across the plain, with fisheries at the micro-regional level organised according to customary systems;
- > ensure that the produce from fishing is distributed between domestic units.

Fishing is managed by land chiefs from different villages. Each chief controls a section of the plains and the natural pools on this land, imposing various bans in order to control fishing. *"For example, the Winye regard going into the water without having made a sacrifice to the guardian spirits that live there, taking fish from a permanent river by damming it, or ignoring temporary restrictions on access as serious transgressions that will result in various misfortunes: terrible fishing accidents (snake or crocodile attacks, drowning, etc.), drastically reduced fish stocks or localised drought"* (p. 7).

Different types of fishing are distinguished from each other according to whether they require prior human investment, rituals or so forth. Individuals are allowed to fish in the rainy season, but this is purely for personal consumption and they are not permitted to sell their catch. It is forbidden to catch aquatic animals (turtles, crocodiles, manatee, hippos), and pools are out of bounds when the water stops flowing.

Dams and artificial pools on the plain require a substantial amount of labour. They are owned by small family units, which *"receive a fee when the infrastructure is loaned out or 'foreign' fishermen are invited in. They may possibly pledge the infrastructure, and are entitled to sell the fish."* Fishing infrastructures can only be installed by members of founding lineage groups, who must first perform certain rituals. *"Local institutions only grant the right to build structures, and thus start privatising common space, to operators who have previously shown evidence of exceptional initiative, which is defined differently from village to village"* (p. 9). In certain villages, the status of common space on the floodplain is maintained, *"as this space is managed by specialists (water chiefs) who grant simple temporary loans of individual fishing sites"* (idem).

Collective low-water fishing is organised by land chiefs, who distribute fishing rights between neighbouring communities that were linked by mutual aid agreements (war and hunting) in the 19th century. *"These rights imply a degree of reciprocity, although each community is free to add to the list of villages that can share its fisheries resources, depending on the extent of these resources"* (p. 8). The condition of the resource is monitored by representatives of the land chief, who inspect the water points and report back to the chief. The fishing date is announced, and residents of the villages concerned spread out around the pool with the permitted fishing gear (traps for women and individual two-handed nets for men). At the signal, everyone [cont.]

1. IRD/UMR Gred.

enters the water and starts fishing. Selling what is caught is strictly forbidden, and any surplus must be redistributed between the fishermen. The rules aim to ensure that all rights holders have an equal chance of catching fish, and that alliance networks are maintained.

Fishing is organised differently in each village according to its particular history. Nanou, for example, is a multi-lineage village with *“five families of water chiefs, each under the authority of one of the two lines of land chiefs that are jointly responsible for customary management of the whole territory. This situation is exceptional in Gwendégué, as natural resources are usually solely managed by land chiefs in the absence of any specialist actors. These water chiefs jointly manage an extremely large fishing ground that includes parts of the floodplain and use of a substantial stretch of permanent river”* (p. 18), and therefore operate at both the local and the regional level.

The right to build a dam can be obtained from the water chief, for a fee. Fishing is managed according to individual rights (fishing with hooks), family rights negotiated with the customary authorities for dams and artificial pools that require an investment of labour, or collective (village or group) rights for low-water fishing. Only fish caught in dams and artificial pools may be sold.

If they are unaware of it, development projects can disrupt this multi-layered way of organising fishing. As part of an NGO initiative in 1996-1997, villagers in Virou mobilized a workforce and some of the funds needed to increase the capacity of one of their sacred pools by constructing a dam downstream from the pool. *“Because of this investment, villagers from Virou wanted to alter the rules of access to the pool and change its status from a common good to a private one that could only be used to meet their needs”* (p. 21). This caused conflict with other villages that had previously shared low-water fishing rights to the pool. Recognising the pool as a regional common and sharing the investment between allied villages would have avoided this conflict and strengthened the pool’s status as a regional common good. ■

» **POINTS FOR DISCUSSION:** *Proper understanding of the intervention context can be affected by a lack of critical information and entail expensive and time-consuming preliminary studies and research. In such contexts it is important to consider the precautionary principle: should one do nothing or ‘act for the best’?*

Principle 3: Support and strengthen key commons

The issues raised by the commons approach to land practices (Part 1) may mean that French cooperation interventions have to focus on certain action situations. Knowing that land-based commons in these situations are usually nested in each other, a pragmatic approach would be to identify specific commons that are likely to have significant knock-on effects on the resilience of other, interlinked commons. Therefore, this third guiding principle aims to:

- > use a given type of situation and appropriate entry points to identify key commons that French cooperation interventions should take into consideration;
- > situate these key commons in their ecological, political, economic and territorial environment, paying particular attention to their relationships with customary and

social organisations, markets and private institutions, and with public sectoral and decentralisation policies;

- > encourage the communities, administrations and third parties concerned to recognise the existence of these key commons and their issues.

HUNTING COMMONS: CITIZENSHIP BY DEFAULT FOR PYGMY COMMUNITIES IN CAMEROON

L. Boutinot¹

Although the Pygmy peoples of Central Africa are some of the last groups to live entirely off hunting and gathering, Cameroon's growing economic problems, urban unemployment and rural poverty mean that every community living in and around its forests relies on wildlife and plant resources to some extent. Value chains for the produce from hunting and gathering are booming, creating another contradiction for sustainable development.

The fact that forests are State-owned gives governments the power to redistribute land to private actors and international organisations through logging concessions. They can also convert forests into protected areas, which reduces traditional subsistence hunting grounds.

The participatory models of natural resource management promoted to support local development encourage villages to maintain, monitor and use forest spaces sustainably. In Cameroon, these participatory mechanisms include peasant forest committees (PFC), which were created to mobilize communities in and around forests in the fight against poaching. Forest concessionaries also participate in these monitoring activities in order to meet FSC certification standards, and in southeast Cameroon they organise, train and pay PFCs in their forest management units to look out for possible poachers. Bantu villagers and Pygmy Baka hunter-gatherers are asked to check on and report poaching activities, but it is not easy for them to watch out for poachers in spaces that they use for their own subsistence hunting. In this setting, where everyone knows one another, they could easily damage social relations by reporting family members, associates or neighbours. The PFCs also seem to act as spaces for solidarity and advocacy. 'Forest peasants' are using the chain of communication with logging companies to claim indulgences, extra game and access to forests; and Baka Pygmies that belong to PFCs attend meetings and training sessions organised by the logging companies' social units. However, their inclusion in anti-poaching committees has more to do with certification standards that oblige concessionaries to respect 'indigenous peoples' rights than the Baka's detailed knowledge of forest spaces and wildlife. In any case, it is not certain that the Baka Pygmies define themselves as 'indigenous people'. It is also hard for the authorities in many Central African countries to recognise Pygmy groups as 'indigenous peoples' without the risk of causing potential conflicts based on claims of anteriority.¹¹

Nevertheless, the ratification of the International Labour Organization Convention 169 regarding indigenous and tribal peoples, first by the Central African Republic (2010) and then the Congo (2011), shows that pressure from international [cont.]

I. Cirad, Forests and societies research unit.

II. Bayart J.-F and Geschiere P. (eds) (2001), "J'étais là avant", *Problématiques politiques de l'autochtonie, Critique Internationale*, n° 10, Dossier Variations, p. 126-129.

organisations is creating new openings for States to take action to protect vulnerable and marginalised peoples while safeguarding themselves against the more contentious aspects of anteriority.

This means that citizenship is a paradoxical issue for Pygmy peoples. On the one hand, they are vulnerable and marginalised social groups that benefit from specific public policies and aid programmes run by certified logging companies and international organisations. On the other hand, they are victims of restricted forest use and limited access to the lands they need to subsist, as are Bantu villagers. Baka Pygmies are full citizens in terms of being expected to participate in local efforts to combat poaching, while retaining the specific status of indigenous people as defined by international norms.

If villagers' use of forest lands constitutes a common, it is one that is established through hunting practices that are supposed to cover most food needs, but which are often regarded as illegal activities (poaching) punishable by imprisonment and fines. Because of this, social relations between Baka Pygmies and the Bantu are interdependent and visible to these communities: they are rooted in the same resilient citizenship through common practices and a shared sense of injustice over the arbitrary nature of hunting bans and restrictions on their rights to access forest lands.

In this Cameroonian context, hunting commons are key commons that provide a basis for forest populations to rebuild their citizenship by renegotiating access to land and resource use according to current local practices. ■

» **POINTS FOR DISCUSSION:** *There have been proposals to adopt a pragmatic approach that prioritises support for commons whose disappearance would directly threaten the survival or subsistence of certain social groups that the development community wishes to support. In these conditions, it is important to determine how to intervene in power relations so that things don't continue to deteriorate, with communities becoming less and less structured and less able to manage what absolutely must be managed. At the moment, AFD does not promote projects based on this type of initiative: there are sectoral projects, territorial projects, and sectoral projects that are implemented in territories. This is an opportunity for AFD to pursue its innovative approach of starting with land analysis before establishing any kind of development or new infrastructure.*

Principle 4: Ensure that behavioural changes proposed by external interventions are socially acceptable

The aim of this principle is to develop and clarify the strategic approach that the French Cooperation uses to ensure that interventions which are by definition exogenous to the societies concerned are as 'endogenous' as possible. This is done by:

- > using the commons approach to identify objectives and types of intervention that can support and enrich existing local practices and logics, rather than creating new objectives or ways of operating out of nothing;
- > prioritising the involvement of local, national and even international actors in the construction and application of the intervention framework;

- > asking whether it is relevant to institutionalise the commons concerned, and guarding against the 'legalist' tendency to impose standards where there are only habits;
- > being aware and raising awareness of the diverse representations, interests, strategies and power relations of the actors concerned;
- > clarifying the dynamics of inclusion and exclusion within and between the commons concerned by French Cooperation interventions;
- > ensuring engagement and recognition at different political levels, from the local to the international, and ensuring that the intervention framework is respected, especially by economic actors.

ESTABLISHING A PROCEDURE TO SECURE COMMONS IN A CONTEXT OF LEGAL PLURALISM IN COMOROS

M. Saïd, E. Le Roy¹

This procedure was tested in the village of Hamavuna^{II}, on 2 ha of untitled land that was assumed to be private, located in a watershed upstream from Mohéli marine park. All the herders in the village had used this land for grazing for many years, but in **2008** the government decided to convert it into an intensive development site (IDS) as part of the National programme for sustainable human development (PNDHD), financed by the International Fund for Agricultural Development (IFAD). The objectives of IDS are to improve access to land for vulnerable groups (women and youth), train IDS users on sustainable new land management techniques, help mitigate marine erosion and contribute to poverty reduction.

A need for security born out of a shift in a longstanding common

This procedure was tested in the village of Hamavunall, on 2 ha of untitled land that was assumed to be private, located in a watershed upstream from Mohéli marine park. All the herders in the village had used this land for grazing for many years, but in **2008** the government decided to convert it into an intensive development site (IDS) as part of the National programme for sustainable human development (PNDHD), financed by the International Fund for Agricultural Development (IFAD). The objectives of IDS are to improve access to land for vulnerable groups (women and youth), train IDS users on sustainable new land management techniques, help mitigate marine erosion and contribute to poverty reduction.

Land practices changed when the IDS was created in Hamavuna. The original joint management procedure (open access grazing for all village herders) was replaced with another management system (neo-commons) that led to the emergence of parcels cultivated by a group of about 20 individual producers. This change led to: 1) the appearance of enclosures (hedges) on what was originally used as common land; 2) land users invested a lot of effort in anti-erosion measures proposed by the PNDHD; 3) sedentarisation of livestock and the introduction of integrated crop and livestock production on this land. Securing this 'neo-common' (rapidly evolving land-based common) came to be regarded as a crucial issue by all the different actors concerned [cont.]

I. Mahamoudou Saïd is a teacher-researcher at Comoros University, and Etienne Le Roy is professor emeritus at l'Université Paris 1.

II. The entire founding population of this village came from the neighbouring island of Anjouan.

(the 'landowner', herders, newly installed women and youth, deconcentrated services in the ministry responsible for Agriculture and the Environment, etc.). The main focus of their shared concern was the sustainability of this new form of common.

Adapting the approach to the complexity of the situation

The PNDHD called in a multi-disciplinary team composed of a land tenure expert, a legal anthropologist, an agronomist, a lawyer and a topographer to address this need to secure the common. **Since 2010**, the team has used an experimental procedure that emphasises the value of trial and error and takes account of the legal and institutional plurality of the neo-common. It engaged actors with differing levels of involvement in a process of negotiated agreements that would enable each of them to enjoy their rights. After two years of 'explicit' and 'implicit' negotiations (the former in meetings, the latter through informal and spontaneous practices), they were able to define shared common objectives (a kind of 'heritage-objectives' [Saïd, 2000] or 'heritage-goals' [Frier, 2003] or even Common-Pool Goals [CPG], to paraphrase E. Ostrom). The approach deliberately used key elements of the theories of 'land management practices' (Le Roy et al., 2016) and 'land stewardship' (Weber, 1998).

Over the course of 2012, the team also focused on designing a legal setup that could take account of the internormativity needed to formalise the procedure. This consisted of a set of instruments and notarised contractual documents that aimed to transcend any legal contradictions, recognise land 'ownership' rights, define the conditions for joint management of the land concerned and thus determine each party's 'right to act' (Rochegude, 2010). The proposed legal package consists of the following documents:

- > **a notarial deed that publicly recognises 'informal ownership' rights.** To do this, the approach took account of the inextricable link between land and ownership, and involved key land actors in the procedure that led to the production of the deed (procedural justice in the sense of Schlosberg cited by Breton, 2012);
- > **a framework agreement** whose clauses reflect the goodwill and expectations of all stakeholders;
- > **an agreement between the 'owner' and the group of IDS users to make cultivable parcels temporarily available** (for 15 years from 11 December 2012, the date the agreement was signed);
- > **differentiated solidarity contracts** (for variable and renewable durations) between producers, the group of IDS users and the 'landowner'.

Ensuring that security is sustainable and extending it to other parts of the island

The chief executive of Mohéli island set up an intersectoral land commission (Decree of 10 December 2012) composed of representatives from the deconcentrated administrative/technical/legal services (including the service responsible for land affairs), the governorate of the island, the Island Council, the commune concerned, religious authorities, civil society (including the group of elders and the women's peace institution) and the administration of Mohéli marine park. This experiment in Hamavuna started in 2010 and was still under way in 2017, despite the end of the PNDHD in 2014 and subsequent withdrawal of technical support. ■

- » **POINTS FOR DISCUSSION:** *Do we know of many successful cases of endogenisation? Development projects are often a breeding ground for club and rent-seeking logics. Do we really have the capacity to promote commons where the people concerned do not necessarily think there is a problem that could be resolved through shared use and/or*

governance? Would they be prepared to bear the costs of collective action? One view would imply that management models (even for commons) are not designed from the outside, and especially not in a bureaucratic way, which raises questions about their feasibility in current project cycles.

Principle 5: Proposed support should be based on joint management and subsidiarity

It is important to support decision-making processes that are closest to the actors concerned, by:

- > prioritising jointly designed landscape-based projects (see page 47) that operate at and articulate different territorial levels and commons in the spaces concerned;
- > ensuring that there is collective commitment to a common whose explicit purposes flow from all the different stakeholders, by: 1) jointly defining the issues, 2) applying the principle of participation or subsidiarity when deciding what action to take, 3) establishing negotiated rules and mechanisms to realise, maintain/strengthen and monitor these rules;
- > promoting modes of appropriation, organisation and management that are appropriate to the pursuit of environmental, social and economic sustainability;
- > ensuring that governance mechanisms for commons are embedded in local and national society.

INCORPORATING COMMUNITY-MANAGED FORESTS INTO LANDSCAPE-BASED PROJECTS: A LOCAL DEVELOPMENT ISSUE IN MADAGASCAR

A. Vogel^I, M. Linot^{II}, S. Aubert^{III}

Records show that there were 1,248 transfers of management from the State to local populations (representing 4 % of the territory) in the eight years after Madagascar passed a law on renewable natural resource management in 1996 (Lohanivo A. C., 2017). These new forms of governance were usually introduced in the context of development or conservation projects, and have been widely criticised for being ineffective in tackling deforestation, unrepresentative of local communities, and lacking dynamism.

The objectives of the Fihavotana II project^{IV} were to: 1) contribute to food security and poverty reduction by developing more resilient production systems, and 2) protect plant and animal resources in and around the North Mananara biosphere. [cont.]

I. GRET.

II. GRET.

III. Cirad.

IV. Conservation and development in the Mananara Biosphere Reserve, GRET, WCS, Cirad, Fofifa, financed by AFD.

In this context, efforts were made to mobilize the local communities that had assumed responsibility for natural resource management and strengthen their capacity to fulfil their new role.

It emerged that these communities were particularly concerned about the lack of support from the administration (especially the forestry services) in setting sanctions for offences reported by the forest local surveillance patrols, and the lack of transparency among local actors who were responsible for transferring the forest management functions. These two main concerns were identified through a participatory global assessment that highlighted the effects of successive political and economic crises on the development of illegal logging activities in the region (felling rosewood), crises that were aggravated by the fragility of the State and the area's isolated location. Analysis of the process that the regional forestry administration and Madagascar National Parks (MNP) used to establish and formalise contracts transferring management to local communities identified various shortcomings that not only prevented local populations from appropriating standard rules (mainly bans), but also seriously disrupted their practices (multiple farming activities and agro-forestry initiatives in a setting where few if any official land titles or certificates existed).

Through various workshops and increased support on the ground, GRET initiated dialogue between local populations, the communities responsible for transferring management, the central and deconcentrated forestry administration, the territorial administration (neighbourhoods and communes) and the MNP to identify paths of action that could promote sustainable development in the zone around the national park and the biosphere reserve. The first task was to clarify various aspects of the intervention areas and practices, and everyone's roles and responsibilities in developing new coalitions (between lineage group chiefs and members of the local community, between those responsible for transferring management and neighbourhood chiefs, between the forestry administration and the legal administration, between the project, communes and the MNP, etc.).

Once this was done, a new procedure for monitoring and sanctioning offences was developed. This procedure (re)instituted different modes of conflict resolution to be followed before resorting to legal procedures (whose outcomes are often opaque). New forest management rules are still being defined at the neighbourhood level, to determine different stakeholders' rights and responsibilities in managing the spaces for which they are legally or legitimately responsible. These initiatives help different actors articulate their often divergent views about the future of their respective interlinked territories,^V rebuild social links, and reintegrate local forest governance mechanisms into their institutional and territorial context. There is still a long way to go in establishing formalised agreements, but the dynamic initiated by GRET has opened up numerous opportunities for all the actors concerned, who are finally working together on the process. ■

V. The very different dynamics and instruments used to manage these territories – based on spontaneous individual actions, customary management of fertile lands, developing communal land use plans, land use plans for the biosphere reserve, or even a regional forest development plan – can only be coordinated if all stakeholders actively contribute to the process.

Principle 6: Implement reflexive monitoring and evaluation

In this era of the Internet and globalisation – and because societies are perpetually changing and interacting – we need to promote information and communication tools that facilitate adaptive management of land and land-based resources. This means that we must enable all stakeholders to engage in continuous learning about the governance of commons. In this context, ‘reflexive’ monitoring and evaluation can be an effective procedure for informing rights holders to shared resources and communicating with institutions that are nested or embedded in the common that leads the governance process.

The French Cooperation could do this through three types of action:

- > before any intervention, work with resources users on an analytical framework to determine how the commons affect ecological, social and economic issues, and share the analysis with all relevant actors at the local, national and international levels;
- > monitor the intervention’s impact on these effects, regularly share this analysis with all relevant actors at the local and national levels and, if possible, permanently involve them in monitoring processes;
- > regularly develop the results of this monitoring through joint knowledge production, positioning and methodological advice for the intervention and, at a more global level, for the French Cooperation, its partners and collaborative networks involving the commons in question.

OPPORTUNITIES AND LIMITATIONS OF SUPPORT FOR COMMONS: THE ROLE OF THE LAND OBSERVATORY IN MADAGASCAR

R. Andrianirina Ratsialonana¹, P. Burnod^{II}

The Land Observatory (LO) in Madagascar deals with the national land reform and land matters, and therefore covers various land-based commons. Its main functions are to feed into, share and maintain information and knowledge systems (information commons) and collective and reflexive actions (commons as a political project).

Unlike many civil society-based observatories, the LO is attached to the Ministry responsible for land.^{III} This gives it privileged access to data and opportunities to bring together actors in the land sector – representatives from civil society (especially SIF^{IV}), the administration, decentralised authorities, donors, etc. – and draw them into the debate.

The Land Observatory is a small team whose membership has grown from two to seven experts since its creation in 2007. It regularly produces quantitative data and qualitative studies that are used to: [cont.]

I. Madagascar Land Observatory.

II. Cirad/UMR Tetis and Madagascar Land Observatory.

III. Currently the Ministry in the Presidency that is responsible for presidential projects, territorial development and amenities.

IV. Solidarité des Intervenants sur le Foncier: www.sif-mada.mg.

- 1. Propose analytical frameworks for themes involving conflicts of interest, where it is important to remember the diversity of rights holders, uses, rules and practices in the territories concerned.** In 2009 the Observatory started monitoring the extent and socio-economic and political effects of land access by foreign and national investors (exclusion from resources, access to jobs, etc.; competition to control land access, conflicts and arrangements between communities and institutions, etc.). It also studies land access by herders and family farmers. The findings of these studies feed into current legislative debates on agricultural investment zones and links them with commons-related issues (pastoral lands, the need for participation by and recognition of diverse rights holders, etc.).
- 2. Regularly monitor the reform, raise awareness about public action and debate its effects.** The Observatory is funded by donors, and chooses which themes it will develop. It can respond to requests to produce specific data, but needs to ensure that its funding enables it to monitor all the relevant territories and not just those covered by the donor's project. For example, the Observatory monitors the number of local land offices (LLO) that have been set up and the number of certificates requested nationwide. It also analyses the profiles of certificate holders (poor/less poor, men/women, migrant/indigenous, etc.), why they want certificates, why other means of securing tenure are used, the role of LLOs and whether they are included in local land governance or not, etc. Having followed the land reform for 10 years, the Observatory has accumulated enough knowledge about the process and actors concerned to be able to propose themes that need to be debated and/or revisited and possible avenues for further reflection.
- 3. Disclose and share analytical findings and data.** The Observatory develops and publishes its studies in many different forms: primarily on its website (*www.observatoire-foncier.mg*), but also through newspaper articles, posters, thematic notes, scientific articles and TV documentaries and reports. Although State structures do not always disclose and share their findings, the Observatory has always had good relations with the State and will publish all the leases that the State has granted private operators (agricultural, tourist, etc.). It is also pushing to produce a detailed study on the effects of modernising the land services. So that it can publish freely and avoid self-censorship, the Observatory tries to include a wide range of actors in the research and expertise that it leads and builds (administration, private sector, elected officials, land professionals, farmer organisations, researchers, civil society, farmers, herders), and follow critical but constructive procedures.
- 4. Initiate discussions about its findings and avenues for further reflection.** The Observatory systematically presents its study findings at national, regional and international workshops. It also advises ministerial decision makers and facilitates land policy debates. During the many workshops that they organised while producing the 2015-2030 land policy document, the Observatory and the Land Reform Coordination Unit highlighted the limitations of the 2005 reform – particularly in its legal framework – to ensure that the next policy takes account of land access (the 2005 policy only dealt with securing tenure) and the governance and security of commons (recognising collectively managed lands, taking account of extensive grazing, broader recognition of existing modes of securing commons, creating new competences to manage State land at the local level, etc.). These themes were widely debated and included in the policy to encourage social and institutional innovations. However, with tensions running high, and despite repeated debates and compromises, the conservatives eventually prevailed and imposed their own land policy document on the President.

The Observatory is determined to keep the debate going despite these strong party divisions and obvious asymmetries of power, to ensure that land remains a common in action that is open to proposals from all rights holders and mindful of the diversity of practices. To do this, it needs to maintain different networks at the national and international level, share its experiences, receive contributions from other structures, continue its field research and share its findings as widely as possible. This observatory highlights the importance of international cooperation agencies being able to rely on an international network of observatories on land issues. ■

» ***POINTS FOR DISCUSSION: Knowledge production by the State and other entities is burgeoning in certain regions. It is important that this process links into the definition and dynamics of land-based commons so that they function more effectively at every level, in close conjunction with the actors concerned. Relevant and sustainable information systems are absolutely crucial, especially when data are produced in the context of loan- or grant-funded projects.***

Certain members of the LTDTTC regard these six principles as complementary, while recognising that practical and project-related constraints may lead to some principles being prioritised over others.

Other members of this technical committee think that the reflection process revealed two possible ways in which commons could be integrated into French Cooperation actions:

- > considering commons as an additional field of concern for the French Cooperation, which will entail adding new principles to its intervention framework;
- > considering commons as an alternative to the other approaches employed by the French Cooperation (environmental approach, land approach, etc.), which provides a different way of capturing social, economic and environmental issues by focusing on scales of understanding that correspond with social sustainability issues.

The first option leads to the adoption of principles 3 to 5; the second to the introduction of principles 1, 2 and 6 as the objectives of an ongoing process that are adapted to the specific purpose of the land-based common in question.

The question now is whether international cooperation is ready to embark on such an exercise? ●

Conclusion

Commons are attracting unprecedented interest among societies in the global North, with researchers, activists, civil society organisations and even economic actors in America and Europe seizing on the concept to re-examine scientific thinking, political doctrine and social practices around the world. Depending on the objectives of the exercise, their analyses are based on hypotheses, ideologies and paradigms that may not always seem complementary, but which are part of widespread criticism of a development model rooted in modernity and globalised trade. The historical, conceptual and practical dimensions of these reflections point to the possibility of a different way of proceeding and thinking, with alternative responses to the ecological, social and political changes the world faces today.

The commons approach is not only highly relevant, but also adds value to the way that land matters are addressed. In attaching particular importance to land practices, it complements previous work by the LTDTTC and clarifies the contexts in which international cooperation agencies intervene to address development challenges (Part 1). A flexible definition of land-based commons helps us understand and/or support these commons (Part 2), and we have developed an analytical framework to enable development practitioners to read socio-ecosystems, feed into reflections on territorial governance and help formalise public policies (Part 3). To help disseminate the commons approach, we also identified six guiding principles that can provide a framework for interventions in the field of development assistance (Part 4).

Adopting this approach does not imply unconditional and/or exclusive support for commons. They are not a panacea, nor are they risk-free. A number of constraints need to be taken into consideration when using this approach, particularly the largely local nature of commons, the problems that are often associated with collective action, and the potentially divisive nature of an approach that involves radical changes in paradigms. In addition to this, the nature and structure of international cooperation institutions may be inherently unreceptive to the questions raised by this commons approach.

Nevertheless, the current context provides numerous opportunities for international cooperation agencies to invest in commons. Awareness of commoning is increasing among the younger generation and a growing fringe of civil society actors, recent advances proposed by major international conventions are favourable to commons, and we urgently need to find solutions to issues that 20th century development models have failed to resolve. Finally, the French Cooperation is well placed to adopt and implement the commons approach, as its increasing focus on governance enables it to engage with a multiplicity of actors in France and at the international level. ●

AFTERWORD

Land is one of the cornerstones of development because of the resources that it provides and the numerous ways it is used. It has multiple implications that extend beyond economic concerns into the social, political, environmental and institutional issues facing our societies. Land issues are the point of application for the principles of governance, and are also eminently political, sometimes touching on the deepest sense of individual and social identity. In defining legal modes of land occupancy and use and shaping the systems that distribute, regulate and transfer land, land policies reflect and embody societal choices.

Today, these choices are being tested by the many challenges facing our human race. Demographic growth in countries in the global South is forcing societies to rethink their spatial organisation and envisage new approaches to sustainable development. This growth goes hand in hand with increasing urbanisation whose impacts are most keenly felt in peri-urban areas, where habitual forms of land use are being disrupted. In a parallel development, land concentration and large-scale land appropriations by foreign and domestic investors raise questions about the balance between security of tenure for historical rights holders and private economic uses of land. And on top of all this, the consequences of climate change are testing our capacity to quickly put in place sustainable systems for managing land and natural resources.

One of the first responses to these challenges should be to establish responsible models of land governance and envisage new policy approaches to sustainable development.

Experience shows that there is still a huge gap between the legality and legitimacy of land rights in countries in the global South. It can be very difficult to secure the tenure of historical rights holders when land governance is the result of overlapping bundles of rights, longstanding local customary legitimacies, public land laws that enshrine a State monopoly on land, and means of access to titled land ownership that exclude the vast majority of land users.

Many countries have tried to articulate these different rights in recent decades. French actors have often supported them and encouraged them to recognise existing and established land rights, whatever their nature and origin, but this has not always led to the introduction of responsible land governance that could sustainably reduce land inequalities and ensure universal access to this vital resource.

One response to the major economic, social, land and climate issues that we all face today could be collective management of one or more resources by a community (established or otherwise) that shares access to land and protects land-based resources. This kind of administration, which is often characterised as 'commoning', can provide an alternative system where multiple land uses and natural resources are managed by and for the users of these resources.

Hence this very timely reflection on the opportunities and challenges of a land-based commons approach, led by the Land Tenure and Development Technical Committee under the auspices of the MEAE and AFD. Over the last 20 years the knowledge generated by the LTDTC has fed into reflections on land in France and in other countries, and has informed the French Cooperation position on several issues. The quality of this reflection opens up numerous opportunities for future work, and its conclusions enrich the LTDTC's previous output, especially on the formalisation of land rights (2015) and agricultural investments that affect land and property rights (2014).

This paper presents the outcomes of scientific and practical reflection on these alternative forms of land-based organisation. Aimed at decision makers and practitioners, it will provide French Cooperation actors with a summary of complex land situations that are based on collective action, and an appropriate lexicon to describe, characterise and understand them. The report also constitutes a valuable starting point for discussions with our international partners, enriches existing work on this subject and, above all, highlights the diversity of existing land management systems

Finally, we should not forget that the social relationships that permeate land tenure, land use and land management reveal our similarities as well as our differences. Every society sees land through the prism of its own experiences and characteristics. Therefore, it follows that securing tenure rights requires differentiated responses that are appropriate to the particular situation and setting concerned. ●

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ENGLISH-FRENCH LEXICON OF KEY TERMS

English terms used this text	Corresponding French terms	Where found in this document
Access to livelihoods	Accès aux moyens de subsistance	See Part 1
Action space / Action situation	Situation d'action	Footnote n° 16 p. 29
A short economic circuit	Circuit économique court	See p. 50
Care for	Prendre soin	See p. 48-50
Collective action	Action collective	Footnote n° 16 p. 29
Commoning	Faire commun	See p. 52-54
Community-based natural resource management	Gestion communautaire des ressources naturelles	See p. 33-34
Embedded	Enchâssé	See p. 44-46
Form of property	Mode d'appropriation	Footnote n° 21 p. 32
Heritage	Patrimoine	
Insiders	Personnes incluses dans une communauté d'ayants droit	
Knowledge commons	Communs de la connaissance	See p. 39
Land-based commons	Communs tissés autour de la terre et des ressources qu'elle porte	See Part 3
Land governance	Gouvernance foncière	Introduction to Part 3
Land grabbing	Accaparement des terres	
Landscape-based project	Projet de territoire	See p. 47-48
Large-scale land acquisition	Appropriation des terres à grande échelle	See p. 25-26
Local farmer's rights	Droit paysan	See p. 56

English terms used this text	Corresponding French terms	Where found in this document
Long-standing commons	Primo-commun	
Nested	Emboîté	See p. 44-46
New forms of commons	Néo-commun	Footnote n° 20 p. 32
Open access	Accès libre	Footnote n° 18 p. 31
Outsiders	Personnes exclues d'une communauté d'ayants droit	
Patterns of commoning	Modèle d'interaction mobilisé par les communs en situation	Footnote n° 28 p. 39
Principle of participation	Principe de participation	See p. 51
Principle of subsidiarity	Principe de subsidiarité	See p. 50-52
Private ownership	Propriété privée	
Private ownership regime	Régime de propriété privée	
Right-holders over a shared resource	Ayants droit aux ressources partagées	See p. 51-55
Rights relating to things (as opposed to rights between people)	Droit réel	Footnote n° 31 p. 41
Shared values	Valeurs partagées	
To manage	Gérer	See p. 47-51
To share	Partager	See p. 47-50
To steward, provide stewardship	Assurer l'intendance	See p. 48-50
Use right	Droit à l'usage	
User right	Droit d'usage	See Part 1
Valuations / Values	Valeurs	
Way of doing things that excludes	Logique d'exclusion	
Way of doing things that is inclusive	Logique inclusive	



The opportunities and challenges presented by a land-based commons approach

Societies are currently having to adapt to multiple global issues in a context of political, economic and ecological crises. The 'land-based commons' approach places collective action at the heart of efforts to evaluate and resolve complex problems, by addressing these issues through the analysis of local contexts and the structure of different international frameworks. The aim is to facilitate the emergence of institutional arrangements that involve the different groups and communities of interest working to tackle issues at the local level, and contribute to policies that can address these questions effectively.

This work on land-based commons is part of much broader transdisciplinary reflection by the French Cooperation 'Land Tenure and Development' Technical Committee (LTDTC), which has contributed to thinking about ongoing changes in land and development over the last 20 years. The outcomes of its latest round of

reflection, which was facilitated and formalised by Cirad's Green research unit with support from the International Institute for Environment and Development (IIED), are presented in this publication.

Part 1 identifies action situations where it would be useful to consider the opportunities and challenges offered by a land-based commons approach. Part 2 then proposes various entry points that could be used to mobilize scientific, cultural and social knowledge and highlight the different solidarity regimes that support and mobilize commons. Part 3 discusses the analytical framework for this procedure, which questions some of the underlying assumptions that shaped previous initiatives to address land issues. Finally, Part 4 sets out six guiding principles that were developed to facilitate implementation of the land-based commons approach and contribute to genuinely sustainable development. ●

The 'Land Tenure and Development' Technical Committee is an informal think tank composed of experts, researchers, practitioners and senior members of the French Cooperation. It was set up in 1996 to provide strategic support to the French Cooperation and supervise land tenure initiatives through a network of French and international actors. Its outputs include the French Cooperation White Paper on land policies (2009), an analysis of large-scale land appropriations (2010), a guide to due diligence of agribusiness projects that affect land and property rights (2014), a document that builds on past and present policies to formalise land rights (2015), and numerous other works and tools aimed at improving our understanding and ability to address land issues in the global South. Full French and English versions of all these publications can be found on the Land Tenure and Development website (www.foncier-developpement.fr), which was set up to provide access to good quality information on the sector.

The Green research unit in the French Agricultural Research Centre for International Development (Cirad) studies the management of renewable resources and the environment. It looks at the viability of ecosystems and the livelihoods they support through the dynamics of change that affect these interlinked systems, in order to support public and collective action in contexts with multiple regulatory systems.

The International Institute for Environment and Development (IIED) is a policy and action research organisation that promotes sustainable development. The institute, which is based in London, links local priorities to global challenges, working with the most vulnerable populations in Africa, Asia, Latin America, the Middle East and the Pacific to strengthen their voice in decision-making arenas that affect them.

