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# **A Role For Common Property Institutions In Land Redistribution Programmes In South Africa**

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# A ROLE FOR COMMON PROPERTY INSTITUTIONS IN LAND REDISTRIBUTION PROGRAMMES IN SOUTH AFRICA

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## Ben Cousins

### Introduction

South Africa's new majority-rule government faces an unenviable task - the radical reform of a social structure divided by huge extremes of wealth and poverty, by racial and ethnic animosities, and by deep-rooted administrative fragmentation and incapacity. The guiding framework for national policy is the Reconstruction and Development Programme (RDP), a wide-ranging statement of policy goals which has attracted support from across the political spectrum.

In the RDP, land reform is envisaged as the driving force of rural development in general. The document outlines a goal of redistributing 30 per cent of agricultural land from whites to blacks within five years, as well as the restoration of land which was forcibly appropriated after 1913 (ANC, 1994). Land redistribution policy focuses on assisting groups and individuals to acquire land through the land market, with substantial grants and subsidies from the state, as well as making state land available where appropriate. Pilot projects in all nine provinces are soon to be implemented, and these will provide invaluable lessons for policy. A third component of land reform is a programme to achieve security of tenure for land holders, including tenants, while recognising and supporting new forms of customary and communal tenure and new forms of common ownership. A fourth component will be settlement support for those moving back to their land or onto new land.

Land reform is seen as proceeding in tandem with the restructuring of agriculture, to open opportunities for black producers, and for small scale farmers in particular. Thus a crucial aspect of land reform is the nature of the farming systems which the beneficiaries are likely to adopt (or, more accurately, their livelihood systems which combine agricultural and non-agricultural income). This is one important factor to take into account when designing appropriate policies and programmes.

Livestock production on communal rangeland is likely to be a central feature of these livelihood systems. The reasons are threefold:

1. Around 87 per cent of the land surface of South Africa is not suitable for arable production and is best used for extensive land uses, including livestock production (Scholes, 1994).

2. Investing in small but multiple-function herds of livestock has been an important component of the livelihood strategies of migrant workers from black rural areas of South Africa for most of the century (Cousins, 1994), and is likely to continue to make economic sense for rural households.
3. There is strong support for the retention of communal tenure amongst rural people, and many of the beneficiaries of land reform will gain access to land on the basis of their membership of a community or group rather than as individuals.

Given current concerns about the sustainability of natural resource use, and the long-held opinion by observers that communal rangeland in the former 'homelands' is overstocked and overgrazed (see Tapson 1992), it is also likely that land reform policy will stress institutional controls over communal grazing. Thus issues of common property are highly relevant in the South African context.

The focus of this paper is therefore on the design and development of common property institutions (CPIs) for the management of natural resources, particularly communal grazing land, within land redistribution programmes in South Africa. It first considers the nature of common property regimes, the rationales for supporting them and their vulnerability as institutions. This reveals critical issues related to the design and development of these institutions, which the remainder of the paper discusses.

## Rationales for Common Property

In the *"Tragedy of the Commons"* (Hardin 1968), Hardin argued that the private benefit of grazing an additional animal on a common range exceeds the private cost because the costs of maintaining the rangeland are shifted onto the group as a whole. This provides an incentive to over exploit and thus degrade the resource. The model, however, has been increasingly challenged, particularly as a guide to policymaking. For instance, Hardin failed to distinguish between open access and common property.

*Common property is not "everybody's property". The concept implies that potential resource users who are not members of a group of co-equal owners are excluded. The concept "property" has no meaning at all without this feature of exclusion of all who are not either owners themselves or have some arrangement with owners to use the resource in question (Ciriacy-Wantrup and Bishop 1975).*

Under common property the use rights of individuals can be delimited and regulated so that over exploitation of the resource does not result. Overgrazing is then not the inevitable result of common property institutions, but arises because of *"the inability of interdependent individuals to coordinate and enforce actions in situations of strategic interdependence"* (Runge 1986).

Such common property arrangements are potentially equitable, economically efficient, ecologically appropriate and sustainable. These are good reasons for either:

- recognising and supporting existing common property institutions;
- promoting their re-emergence in a modified form where they have fallen away; or
- facilitating their development in new contexts such as resettlement programmes.

This is not to say that problems of resource mismanagement cannot arise - indeed they can and do - but it is important to recognise that common property is a viable regime with particular advantages in certain situations. The following analysis of the strengths, and also the weaknesses of common property institutions with reference to livestock production, helps to identify critical issues for the design and development of these institutions.

## Livestock Production and Ecological Dynamics in Communal Rangelands

Where extensive livestock production is a central component of livelihood systems there are particular economic and ecological advantages to common property institutions:

- Livestock herds within village economies are often multi-purpose in character and so their economic value is often much higher than that from commercial ranches (Barrett 1992; Behnke 1985). The most recent estimates, for communal herds in Zimbabwe, suggest that gross returns from cattle are around US\$3.5 per hectare; this compares to a gross return of less than \$2.4 per hectare from commercial herds (Barrett 1992). For multi-purpose herds high stocking rates make economic sense, and optimum stocking rates in these systems will be higher than those in single purpose (eg. beef) production systems; furthermore, these high stocking rates may well be ecologically sustainable.
- Environmental variability and resource patchiness, in both space and time, mean that high stocking rates will be facilitated by a property regime which allows flexible access by numerous individually-owned herds to different habitat patches within rangelands. Variability of vegetation occurs at both the macro-scale (eg. contrasts between clay veld savanna and sand veld savanna, or *sweetveld* and *sourveld*), and at the micro-scale (e.g. between riverine areas and toplands). There is seasonal variation in forage availability, and interannual variability in the amount of rainfall occurring in different parts of a landscape. An accumulating array of evidence has shown how pastoralists and agro-pastoralists in Africa make use of this patchiness to sustain high stocking rates (Scoones and Wilson 1989; Oba 1992). Mobility can increase the overall carrying capacity within a region which incorporates a wide range of seasonal carrying capacities in different zones (Behnke and Scoones 1993).
- An emerging paradigm in range ecology suggests that the dynamics of many arid and semi-arid rangelands may in fact be primarily non-equilibrium i.e. driven by episodic events such as droughts or fires (Behnke and Scoones 1993). In these opportunistic circumstances herd movement over long distances is essential for maintaining larger herds. The ability to track environmental variability is facilitated by rules which allow groups of herd owners to have flexible but coordinated access to resources (i.e. some form of common property).

In sum, the argument is that there is a good fit between the ecological and socio-economic conditions of extensive livestock production in Africa and the central features of common property regimes. However, it would be more accurate to say *potentially* a good fit, since there are a number of other enabling conditions which are required, not all of which may exist.

## The Vulnerability of Common Property Regimes

Lawry (1990) offers a “*minimum*” definition of common property, where group membership rules are well defined and non-members are excluded from common resources. Lawry suggests that these arrangements have often been adequate when pressure on resources was not excessive, but that intensified controls and their enforcement become necessary with population growth, technological change, national economic integration and decline in the political legitimacy of local institutions. Such evolution of more intensive common property regimes is problematic.

In Lawry’s analysis the two basic problems are those of *incentives* and *authority*. In relation to incentives, common pool resources are not always of critical importance to local users, and people may respond to their increasing scarcity with attempts to appropriate them individually rather than collectively. Also user groups have become increasingly heterogeneous, leading to differences in use strategies and in the degree of interest in these resources. In relation to the authority problem, the integration of local economies into larger systems, and the consequent decline in the importance of local political institutions, has meant that even the ability of local groups to defend their commons from the encroachment of outsiders (ie. the assertion of “*minimum*” common property rules) has been undermined. Traditional authorities and local elites are no longer in a position to enforce rules, and in any case often did not do so in an intensive manner before national economic integration occurred.

Where common property rules break down or fail to evolve to fit changing conditions, then several outcomes have been observed:

- increased resource degradation as the property regime slips towards open access,
- “*spontaneous enclosure*” or privatisation,
- the capture of the commons by groups of commercial producers who may pursue private accumulation strategies in the name of community development.

None of these are particularly attractive solutions to problems of common property management. Individualisation in Kenyan Maasailand led to many poorer Maasai being forced out of the pastoralist economy altogether, and “... *individual titles have led to land loss and dispossession for much of the community and decreased rangeland productivity through fragmenting holdings and using land for speculation rather than production*” (Galaty 1993).

In the light of these experiences what potential is there for achieving a better fit between contemporary conditions of extensive livestock production and modified common property institutional arrangements? What are the critical issues to consider in such an exercise? How can the strengths of common property regimes be supported and consolidated, so that they are less vulnerable to either breakdown or manipulation?

## Critical Issues

Four critical issues must be confronted in any attempt to work with common property regimes: (i) the implications of ecological dynamics for institutional design; (ii) the influence of socio-economic structure; (iii) power structures and appropriate institutional arrangements; and (iv) an enabling policy environment.

## Implications of Ecological Dynamics

As discussed above, three key points have emerged from recent re-thinking of rangeland ecology:

1. high stocking rates on communal rangeland often make economic sense and are usually below (a highly variable) ecological carrying capacity;
2. environmental patchiness is critically important, at both macro- and micro-scales; and
3. there is a distinction between equilibrial and non-equibrial systems.

The implication of the first point is that external interventions to force down stocking rates against the will of livestock owners will be resisted and are both unnecessary and unlikely to succeed. Authority over such matters should be left to local institutions (Box 3).

Recognising the spatial heterogeneity of rangeland resources implies that herd movement as a management strategy should be accepted and facilitated, rather than suppressed, and herders be encouraged to co-ordinate movement and agree on access to key rangeland resources at different times of year and in different years. The possibility of conflict over such access has to be recognised, however, (particularly in drought years - see Oba 1992) and institutional mechanisms must be designed for negotiation, mediation and conflict resolution.

Spatial heterogeneity occurs at local, regional and national scales, and its nature varies with agro-ecological zone. The extent of herd mobility will thus also vary between years and between zones; the implication is that a hierarchy of institutions will be needed to negotiate and co-ordinate access and help resolve conflicts (Swift 1995), and that this probably calls for the involvement of government agencies and state legal authorities. Thus “co-management” models will probably be appropriate, even when the importance of building strong local institutions is affirmed (Lawry 1990).

The distinction between equilibrial and non-equibrial systems has important tenure implications. In the former there is direct feedback between animal numbers and vegetation

states, successional processes can be identified, and conventional notions of carrying capacity are relevant. This means that stocking rate and other “mainstream” range management techniques can be usefully employed (Behnke and Scoones 1993). In these systems exclusive forms of common property are appropriate, with boundaries between user groups clearly defined and enforced; management rules take into account the *internal* heterogeneity of resources important for herd mobility at the local level (Scoones 1989; Cousins 1992).

In non-equilibrium systems the use of patchy environmental resources will be more important as a strategy, and non-exclusive forms of tenure will be more appropriate. These allow co-ordinated access to the heterogeneous patchwork of resources at a larger scale, within a framework of a great deal of temporal variation. One form that this could take is “key resource” or focal point management and tenure, in which clear rights and duties are defined for only those patches which are critical for system functioning, and not for large territories containing resources of low productivity, which are difficult to keep in exclusive use. This notion builds on customary property regimes where the key resource is waterpoints, and has been suggested as the starting point for institution building in pastoralist areas of the West African Sahel by Vedeld (1992).

## Socio-economic Structure and the Definition of User Groups

At a minimum, common property regimes define who is allowed access to resources and who is excluded. Membership criteria must therefore be clarified, including the rights and duties of absentee members of rural communities or other groupings.

The size of the user group is critical, since transaction costs are lower in smaller and more cohesive groups. As Murphree (1993) observes, “... *a communal resource management regime is enhanced if it is small enough (in membership size) for all members to be in occasional face-to-face contact, enforce conformity to rules through peer pressure, and has a long standing collective identity*”. However, where environmental heterogeneity is marked this must be balanced by the need to include access to a variety of resource patches.

If management regimes are to function effectively, agreement on rules and guidelines for resource use is also required. This is more likely where there is cultural homogeneity and shared value systems. Thus in resettlement situations attention should be given to promoting and facilitating the emergence of community identity. A clear focus on resource management can assist this process, since the need to elaborate a collective management regime is itself a “*powerful catalyst for communal institutional development*” (Murphree 1993). Congruence between institutions for resource management and other institutions (e.g. local government) may also assist.

It is important to have a clear understanding of socio-economic structure and its effect on resource use. A heterogeneity of interests within user groups can present difficulties (Box 3). Potential conflicts between uses of a resource (e.g. between cropping and grazing of wetland areas) and between different categories of users (e.g. commercial versus



subsistence producers) can be defused through negotiating rules which embody compromise solutions. However, this requires that the complexity of various uses and categories of users must be recognised and expressed within the institutional process.

The ‘capture’ of common property regimes by powerful elites is a potential problem (Lane and Moorehead 1995). External authorities or agencies, or those at higher levels in an institutional hierarchy, can act to lend support to the interests of the less powerful and wealthy only if the increasingly differentiated structure of rural economies is recognised and understood. Institutional arrangements, to be effective and to have long term stability, must allow all groupings to have an effective voice in decision making and rule enforcement.

## Power Structures and Institutional Arrangements

In the South African context, effective common property institutions often no longer exist, and cannot be relied upon to emerge spontaneously. In this section I consider the critical issues for developing effective management structures in such a context.

### *Co-management: The Role of the State*

The first possibility is for co-management of common pool resources between the state and local-level user groups (Lawry, 1990). Direct state management of natural resources has rarely worked well, particularly in Africa (Lawry, 1990). However, the state has a definite role to play in creating the conditions for effective local management, through “... *clarifying group territorial rights, adjudicating boundary disputes, and providing technical assistance to local groups attempting to intensify management*” (Lawry 1990). State policies can also help improve the economic incentives for collective action eg. through offering preferential marketing rights to groups managing common pool resources. More importantly, government can assist in enforcing resource management rules which have broad local support but cannot be made effective because community authority is not in itself strong enough.

Swift (1995) offers a contrasting emphasis on the need to “*roll back the frontiers of the state*” in pastoral regions in Africa, suggesting that an important principle to follow in institutional development is that of subsidiarity, i.e. “... *administrative tasks should be carried out as near to the level of actual users of resources... as is compatible with efficiency and accountability*”. This offers potential gains in efficiency, savings in administrative costs, and the possibility of “... *a more flexible institutional response to the management needs of a dynamic ecosystem*”. This perspective is an important reminder that co-management arrangements should aim at defining an enabling, facilitative and back-up role for the state rather than one which replaces or undermines local institutional capacity (Box 1).

### **Box 1. The Role of the State in Natural Resource Management**

Swift (1995) suggests the following roles for government:

- investing in the building of institutional capacity at a local level, through research, evaluation and training;
- providing a legal framework for resource tenure, acting as an arbiter of last resort in the event of conflict, and guaranteeing equality of advocacy in disputes;
- guaranteeing minimum democratic processes in local administration;
- providing the appropriate macro-economic framework, including equitable policies on subsidies, transfers and prices, and investing in infrastructure;
- providing major public-interest services (eg. control of animal diseases, education);
- providing technical inputs and support;
- guaranteeing minimum civil and food security, including safety nets against disasters such as drought.

#### *Institutional Innovation*

Recognising the limitations of customary institutions should not lead to their being jettisoned. Rather, experience suggests that those elements that are appropriate in contemporary circumstances should be retained, strengthened and given legal recognition (Box 2). Thus a second possibility is to create new institutional arrangements which combine elements of the traditional or customary set with newer, more formal arrangements initiated by the state. Notwithstanding the impacts of colonialism and economic integration, the former often persist in one form or another and remain meaningful to rural communities, e.g. kinship networks sharing access to draught animals (Muchena 1989).

Customary institutions for regulating resource use are often kinship-based, are also territorial in nature, and may be combined with formal institutions set up by the state (e.g. grazing scheme committees) in hybrid or “mixed” institutions (Swift 1995; Cousins 1989).

However, customary institutions are not without problems. They may have lost some of their local authority and legitimacy. In Southern Africa the subordination of customary authorities such as chiefs and headmen to repressive state apparatuses has undermined the legitimacy of these institutions (Spiegel and Boonzaier 1988). An emergent democratic order makes the election of accountable representatives rather than the inheritance of “traditional” authority more acceptable to many in the general populace as well to the new, democratic state. Also, they are not always representative - though even so they have often continued to retain a degree of popular support and status in post-colonial Africa.

One solution is to retain customary authorities on elected bodies but in an ex officio position, as in the Land Boards in Botswana. However, experience with such arrangements, both in the post-colonial era and during the colonial era suggest they are effective only to the extent that the “mixed” institution has legitimacy and exercises real power over resource management.

### **Box 2. The Strengths of Customary Institutions**

Customary institutions and rules may prove particularly appropriate for:

- definitions of group or “community” membership;
- mechanisms for conflict resolution at the local level (although more formal mechanisms may be needed at higher levels), and definitions of sanctions for resource management rule infringements, again at a local level;
- rules for resource management based on local knowledge of ecological dynamics.

### *Resource Management Rules*

A third set of issues revolve around the different kinds of rules which make a common property regime operational, most importantly at the local level. Operational rules govern the way that a common pool resource is used. Apart from membership rules, these involve the definition of jurisdictional boundaries, and the partitioning of resource use ie. limiting where, when and to what degree resources can be exploited by group members, as in a grazing rotation or declaration of “reserve” grazing areas. These kinds of rules must take adequate account of technical and ecological realities. They should also be clear-cut and unambiguous, so that all members can know and agree upon them. Additionally the fewer rules there are, the more likely it is that they will be followed and that infringements will be interpreted as such.

## **Enabling Policies and Support Services**

What kind of policy environment and support services are conducive to the establishment and effective functioning of common property regimes? Perhaps the most important aspects of such environments are:

- an appropriate legal framework, giving legal identity to common property arrangements which evolve at the local level but without imposing rigid and restrictive structures;
- support services which assist communities and groups to design their own appropriate institutional arrangements, using a facilitative and processual approach;

- appropriate rule enforcement procedures at higher levels in the institutional hierarchy to back those which prove ineffective at lower levels;
- democratic processes which guarantee the rights of the less wealthy and powerful (including women and youth) to an effective say in decision making;
- institutional mechanisms for conflict resolution within and between user groups, through negotiation, mediation or arbitration;
- training in skills such as literacy and record keeping which are needed for efficient local administration and organisation.

## A South African Example

Box 3 provides an example of the process used and conflicts revealed during the transfer of land from white farmers to black communities in Natal.

The case study in Box 3 points to the necessity of understanding the roots of struggles in differentiated livelihood systems in which common pool resources are a vital component. The troublesome issue of defining membership of the user group is likely to be common in all cases where trusts or other formal land ownership bodies are formed. The implication here is that all the potential axes of conflict over common property need to be borne in mind by policymakers and support or implementation agencies from the outset, and planned for in a systematic manner. This could mean using a discourse or community identity to help secure rights to land, while simultaneously promoting internal debates and negotiations between potentially opposed interest groups within ‘communities’.

The protracted process of negotiations, investigations and group decision-making demonstrates that attempts to develop viable common property regimes must be recognised as being time-consuming, messy and contested in character. ‘Quick-fix’ or blueprint solutions are unlikely to resolve conflicts effectively and will probably favour the interest groups which currently hold power and wealth. There is an important role for outsiders as facilitators of local decision-making processes, but this is not an easy task in differentiated rural communities. Outsiders also have their own agendas which influence their interventions, and which need to be openly acknowledged.

### **Box 3. Land Redistribution in Natal**

In Natal, two black communities - Cornfields and Tembalihle - acquired land from neighbouring white farmers under a 1993 land redistribution Act. In both communities the population is highly dependent on urban migrant remittances and state pensions, and on livestock to a lesser extent. Nevertheless, community members regard themselves as stock farmers, and are adamant that they would not reduce their herds as access to grazing is one of their most urgent needs.

The guidelines accompanying the Act require groups acquiring land to set up a legal body or community government structure to assume responsibility for payment of the balance of the purchase price (the government covers the majority of the costs), and also control livestock numbers, manage grazing land and control other resource uses by the group (such as the use of clay, firewood etc.). The Act also imposed restrictions on stocking rates.

In 1993 Participatory Rural Appraisal (PRA) was carried out with the two communities by staff from an NGO (the Association for Rural Advancement) and others. This included discussions on the questions of form of ownership and on criteria for membership, as well as developing a community profile and investigating local resource and land uses (Midnet 1994). There was general agreement that the land should be held communally, and that all current residents should become "owners". A further PRA session investigated local opinions of precise definitions of membership, on the rights and obligations of members (with a particular focus on common pool resources), and on the restrictions imposed by the Act.

All these proved to be controversial issues and it was difficult for residents to reach agreement. This was partly because of the diversity of potential members - both present and absentee landowners, tenants on existing land, labour tenants on farms to be purchased, unmarried women etc. Eventually a decision was made to form a landowning trust in each community. After heated debate, both women and tenants were included as potential Trustees. Questions of grazing rights and the regulation of stock numbers by an elected committee, but subject to recommendations made by state officials were particularly difficult, and decisions on these have been deferred. In Tembalihle there is an on-going dispute between households which have paid their full contribution to the purchase of the land and those which have not. This conflict may be the underlying reason for damage to fencing which demarcates grazing areas.

Source: Cousins, 1995.

# A Checklist for Institutional Design

Based on these discussions, the following checklist of factors should be taken into account in the design of common property regimes in land redistribution programmes.

<b>User group issues:</b>	<p>(a) Have rules for user group membership (entry and exit) been clearly defined?</p> <p>(b) Is the size of the user group appropriate in relation to the resource base?</p> <p>(c) Do institutional arrangements and/or organisational structures provide a voice for the less powerful within the group?</p> <p>(d) Do institutional arrangements promote the emergence of a “community identity”?</p>
<b>Resource management rules:</b>	<p>(e) Do rules clearly establish the conditions for collective decision making over resources (e.g. The right of the group to establish limits on individual use)?</p> <p>(f) Have jurisdictional boundaries been clearly defined? In non-equilibrial ecosystems, have boundary issues been sufficiently clarified?</p> <p>(g) Are operational rules easy to understand, unambiguous, and easily enforceable?</p> <p>(h) Have the number of rules been kept to a minimum?</p> <p>(i) Do rules make provision for the monitoring and punishment of infringements?</p> <p>(j) Do rules take into account potential conflicts between different uses of the resources, and between different categories or groups of users?</p> <p>(k) Do rules establish the organisational form for decision making (eg. Elected committees)?</p> <p>(l) Does the user group have the right to modify and adapt the operational rules?</p>
<b>Authority and enforcement:</b>	<p>(m) Has authority been allocated to the appropriate level(s)?</p> <p>(n) Have relationships between the user group and government agencies, legal and customary authorities been clearly defined?</p> <p>(o) Do institutional arrangements have a recognised legal identity?</p> <p>(p) have mechanisms been designed for negotiation, mediation and conflict resolution, within and between user groups?</p>
<b>Resources:</b>	<p>(q) Do partitioning rules take adequate account of ecological and technical realities (e.g. Key resources; the feasibility of fencing)?</p> <p>(r) Is there sufficient flexibility over boundaries in non-equilibrial systems?</p> <p>(s) Do rules take into account the spatial and temporal variability of resources?</p>

## Conclusion

This article has argued that questions of common property management are likely to be important within land reform programmes in South Africa, and in relation to communal rangeland in particular. Given the fundamental transformations in economy and society which have affected customary tenure systems in the region over the past 150 years, critical issues arise related to the incentives for rural groups to engage in collective action, and appropriate structures of authority. The evidence presented here also suggests that conflicts over the various dimensions of common property are likely to surface in land redistribution programmes. However, these can largely be addressed by approaching common property problems with an adequate understanding of the central issues involved, and by making institutional development a prime concern of development agencies. This also reinforces the need for an approach to land and agrarian reform which lends active support to local level processes of decision-making and institution-building. As found in the case of Cornfields-Tembalihle, participatory approaches can be emancipatory if they open up a space within which previously disempowered groups can articulate their views.

Some affiliates of the National Land Committee, a non-governmental body, have begun to take up the practical challenge (Midnet, 1994), and soon those government departments responsible for land reform and rural development will be engaged in similar processes. Conceptual frameworks such as the one outlined in this paper can assist the development of more finely tuned and locally appropriate analytical tools.

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