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COLLECTIVE GOVERNANCE AND USE OF LAND, TERRITORY AND NATURAL RESOURCES

**CAPITALISATION REPORT OF
HEKS/EPER EXPERIENCES**

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Content

1 INTRODUCTION 3

2 REFLECTIONS ON THE GLOBAL CONTEXT OF COLLECTIVE LAND USE 4

3 COMMON LAND USE IN NATIONAL AND INTERNATIONAL LEGAL FRAMEWORKS 7

4 HEKS/EPER EXPERIENCES WITH COLLECTIVE USE OF TERRITORIES IN SELECTED COUNTRIES 11

5 DISCUSSION POINTS ON COLLECTIVE USE IN HEKS/EPER PROGRAMMES 23

REFERENCES AND FURTHER READING 25



1 INTRODUCTION

Land rights empower people and provide a sense of dignity. They enhance food security, are fundamental to achieve the right to food and increase the productivity of small-scale food producers. They provide an incentive for ecosystem stewardship, and they promote inclusive and equitable societies whilst underpinning cultural identity and value systems. They are crucial to strengthen the resilience capacities of rural families inclusively their economic independence.

For HEKS/EPER, land and natural resources governance means people and communities having secured rights to land ownership and/or land use, and that they can control, manage and use the land and its affiliated resources in the long term. HEKS/EPER supports the development of inclusive land governance models and sustainable land-use practices. Therefore, HEKS/EPER and its local partner organisations support rural communities and families to be aware of their rights and how to claim and realise them. They also undertake mediation and networking between various civil society actors, private sector actors and local and national authorities. Lastly, HEKS/EPER and its local partners advise and support smallholder families and local communities in building up and running profitable, agroecological farming operations promoting inclusive markets.

In 2017, HEKS/EPER defined three core demands in order to sharpen HEKS/EPER's specific institutional profile on the topic. One of demands, alongside with the promotion of land rights and the protection of land activists, is the focus on common land use, stated as follows:

ENABLE COMMON LAND USE

HEKS/EPER is convinced that community-organised forms of management lead to sustainable use and conservation of finite resources and public assets such as land, water, forests and biodiversity. HEKS/EPER wants to promote and legally protect this economic and living form of the 'common land'.

Public goods and the sharing of natural resources such as land and water have long had a bad reputation. If everyone has free access to a resource, the prevailing opinion was that overexploitation and destruction are pre-programmed. Scarce goods such as land and water should therefore be protected, preferably through

privatisation. As early as the 18th century, common land was fenced-in almost everywhere in Europe as private properties and exclusive water rights were granted. The same is currently happening in the global South: traditional collective rights of use are being replaced by private property rights.

However, in view of the global destruction and overuse of resources and the unsustainable use of land and water by modern, industrialised agriculture, doubts arise as to whether these theses are correct. Extensive research on public goods and numerous case studies come to a completely different conclusion: the joint management of natural resources does not necessarily lead to overexploitation and destruction. Nobel Prize winner in Economics of 2009, Elinor Ostrom pointed out: *"When it comes to the sustainable management and distribution of finite resources, jointly organised forms of management are more successful than those based on individualistic private-sector initiatives or controlled solely by the state."*

In Switzerland, too, this collective use of land has existed and still exists: the so-called "Allmenden", i.e. areas open to all members of a certain group as pasture, forest and wasteland land, are a central and formative component of Swiss agriculture. On the territory of present-day Switzerland, common land use has survived in many areas to this day, especially in the form of corporations or communities in the Swiss Alpine region.

Unlike in Switzerland, however, these often-traditional collective land rights are not recognised and insufficiently protected by the States in many developing countries. HEKS/EPER also has the experience in many project countries that traditional and local communities have highly adapted and specific forms of management for their shared territories, but that their customary rights to these territories (forests, savannahs, fishing grounds, drylands, wetlands, etc.) are often not recognised in national legislation or not implemented. It is therefore to be feared that many local communities in Asia, Africa and Latin America will lose their territories and access to resources – and thus not only their livelihoods, but also their traditional habitats and cultural identity. HEKS/EPER is therefore committed to ensuring that collective rights of use for land and resources and common forms of land management are better protected, strengthened, legally recognised and implemented.

2 REFLECTIONS ON THE GLOBAL CONTEXT OF COLLECTIVE LAND USE

The most widely used definition of the commons refers to Elinor Ostrom's approach that she broadly defined on the basis of the analysis of a large number of empirical studies of collective use systems around the world and that in sum suggests the following equation:

"The commons = a resource + a community+ a set of rules/obligations"

She emphasised the importance of the social process of defining governance arrangements and that this would be widely done without an overarching public authority or guided by individual interests, but directly between different user groups and for the benefit of many. Other authors following her footsteps have called this process "commoning" and have defined it to be crucial to the well-functioning of collective resource governance.

Even though such kind of collective use patterns, governed through highly sophisticated local arrangements, have existed in many situations over generations and sometimes for centuries, it is only since recent years that they have attracted attention of governments and international agencies as resource governance patterns worth protecting and sustaining. At the same time, local activists and grassroot movements around the world advocated with some success for the respect and legal protection of local people's collective rights to resources in the face of more and more market-driven large-scale investments in the agricultural and environmental sector. Since the beginning of the 21st century, the discussion around the 'commons' has thus been generalized and is back on the agenda. Collective rights over land, resources and territories evoke new hopes of alternative and more sustainable resource use systems, in harmony between nature and human activity. Nor does reality reveal to be as harmonic as that, nor should the new (or old) approach be neglected right away as being anecdotic. It is worth considering the background and setups of more collective use of resources of any kind and taking its social, environmental and economic benefits into account. Nuancing the debate is however of keen importance when engaging into the promotion of collective land use and land rights, as every social context demands for local adaptations

and careful consideration of potentially conflicting aspects.

In the following, a story line in four stages will be presented as it is discussed in the general debate around collective use of land, resources and territories by international agencies, NGOs and governmental bodies in different contexts. The four elements mark cornerstones in the general debate about the thematic.

Element 1: beyond State and market logics

With the failure of most communist economic systems during the 20th century, individual land rights formalization has often been presented by neoliberal policies as the only effective way of land use for domestic and market production. Thus, most land reforms of the past century have promoted a "land to the tiller"-strategy based on individual land tenure. These land reforms had limited success and sometimes failed. They introduced the ambivalent effects of land as a commodity that can be invested in, exposing it to a liberalised market. The social definition of land as a resource which should in the first place enable the local population's existence got increasingly questioned and undermined. Consequently, big business with plantations is back today and

Differentiation of collective tenure and use of resources (Li 2018)

1 Customary commons for indigenous peoples

There are legal instruments to recognize and formalize customary commons. An indigenous group needs to prove its legitimate claim to customary collective rights. However, such collective rights are in practice extremely weak and easily undermined.

2 Commons as conservation and climate change instruments

In global policies, indigeneity and conservation are tightly interlinked. In order to make incentives work to protect and being compensated for environmental and/or forest protection, local communities need to be defined and indigenous territories demarcated.

3 New commons of land reform beneficiaries

Collective ownership can also be the result of a formalization process for landless or evicted farmers at the fringes of plantations, cities, etc. Such commons do not have indigenous roots but are neo-commons. Collective titles and land use concessions are considered to be more sustainable than individual titles in the context of commodification of land.

colonial-style large scale corporate monoculture of industrial crops on concession land is again expanding in the Global South.

In such a context, collective territory tenure systems seem to counter the threat of commodification of land, be it individually or through corporations. Collectively owned and governed territories and resources stay outside the market's temptations. They are collectively owned and cannot be individually sold or appropriated. As such, they are naturally protected against grabbing of any kind, on condition that they are legally formalised. In that sense, collective use systems represent a Third Way of resource governance, beyond the paralyzing effects of State planned economy or the exploiting logic of a maximizing globalized liberalism.

Element 2: sustaining use of resources and biodiversity

Collective use of land and resources is often a multiple and parallel use by different groups, of various resources, or only during specific periods of the year. Such kind of resource use systems are extensive and represent sophisticated shifting patterns in space and time: agricultural activities may take turns with pastoral use in a specific use pattern over the year, or fishing may come in during the rainy and flooding seasons in some areas. Moreover, seasonal extractive gathering, or hunting may take place in parallel with forestry or agroforestry activities, etc.

Such shifting use systems balance exploitation patterns and protect biodiversity. Long-lasting local knowledge about environmental resource protection, traditional crops or medicinal plants are activated and integrated into more recent knowledge about production techniques. Ideally, such locally adopted techniques avoid overexploitation and allow for regeneration of natural resources.

However, local or indigenous communities are not naturally egalitarian and collective use of resources may not be an intrinsically harmonious affair. The existence of conflicts within a local community is more likely to occur than not and power relations generate governance structures of inclusion and exclusion that may keep the most vulnerable from benefiting. Additionally, local and indigenous communities may equally strive for social transformation and integration into the larger society. As such, the idealization of collective governance structures can be a bias to a successful participation in the 21st century society.

Element 3: collective recognition as protection against ousting

Territories that are collectively used by different user groups often lack of clearly identified ownership and rarely have proper legal titles. Thus falsely, authorities and other decision-makers consider such territories as unused, underexploited and open to new investments. People who use such territories since generations but only seasonally and/or extractively are driven out when confronted with more intensive and lucrative land economies. So-called 'unused land' is allocated to large-scale investment actors by governments or used for public infrastructure such as dams or roads, regardless of local communities having cultivated it since generations. The formalization of protection labels of collectively used territories thus secures alternative resource use patterns and protects local communities from being bullied out by more powerful actors in the land business.

In a strategy to promote collective ownership for user groups, the upgrading of the political struggles is of crucial importance to get more impact within a claiming process. The different elements of the Ostromien equation have to be identified for the recognition process: groups have to be defined, territories demarcated, spokes persons appointed, and use pattern, rules and regulations described. This can be recorded for example through a Community Protocol process to document customary arrangements and local traditions. However, traditions and customs can be extremely ambiguous and malleable and are generally subjugated to intense debate and struggles over meanings, domination, 'first-comers' and 'late-comers'.

Element 4: minority rights and social identity

Many national constitutions include clauses for the respect of minority groups and indigenous communities. Special rights and recognition of customary territories are *de jure* granted to non-mainstream population groups. Some national institutional configurations are based on federal or decentralized administrative structures which allow minority groups on the national scale to increase their weight and specific interests on a regional or local scale. Additionally, such territories and the related use patterns may constitute an important part of communities' social identity and sense of belonging. Some indigenous or local groups with premodern (e.g. precolonial) territorial use systems combine spiritual and ritual meaning of land, territory or nature with their collective use and livelihood of the resources. This transcending meaning of land is an important element for social and individual identity.

Advocating for *de facto* recognition of customary land use of collective territory can thus help communities assuring their ancestral connections with places and assuming for their members the role as stabilizing reference points in a world of constant transformation.

Some considerations on “indigeneity” as basis for special rights

“Indigeneity” is a concept with many facets and with different resonance in specific national and regional contexts. It generally defines population groups who are descendants of peoples inhabiting a region before the conquest, colonialization or foundation of nation-states by other peoples. There is a variety of additional criteria in specific contexts with attributed terms (Aborigines in Australia, Native Americans or First Nation in North America, Adivasi in India, Pueblos Indigenes in Latin America, etc.).

However, discourses on “indigeneity” (as well as “autochthony”) are highly politicized, are subject to local and national particularities, produce ambivalent outcomes and thus require careful considerations. They mean social distinction between groups, or inclusion of some and exclusion of others. They can have an effect of protecting minorities or can carry a seed of conflict between groups with distinct claims (Hilgers 2011). In international policies generally referred to as “indigenous peoples and local communities (IPLC)”, IPs and LCs are supposed to become distinguishable through a recognition process. However, this distinction is on the ground not at all evident. It is at least partly constructed and raises the question to whether division or cohesion has to be sought. In other political or historical contexts, an indigeneity status is positive and defines exclusive rights for an otherwise weak minority in a context of globalized mainstream or large-scale actors.

Originally, notions as “indigeneity” are the creation of the Metropole and are the result of colonial encounter (Costa Filho 2015). They thus remain forcefully constructed and imprecise. They can be used for distinction and exclusion, be it political, economic or social, such as (non-) eligibility of potential political candidates (Bayart et al. 2001). In some cases, instrumentalized and/or invented “autochthony” has been the birthplace of devastating conflict, such as in Ivory Coast with the concept of “ivorité” to define those who have rights and those who don’t, or in Ruanda with the genocide between Hutu and Tutsi.

Some authors have considered the point in time of the (re-)emergence of “indigeneity” discourses since the early years 2000s as a particular economic moment (Ceuppens & Geschiere 2005): In an era of increasing globalization, conflicts over property and citizenship, over migration and belonging are intense battles for a share of resources and the recollection of the self in a highly interconnected world. Finally, the question remains of how to proof indigeneity in the 21st century. In societies where written historical sources are often inexistent, the oral history is generally going back about 4 to 5 generations. For the rest, narratives play an important role in drafting a version in favour of one group’s interest (Lentz 2005).

3 COMMON LAND USE: NATIONAL AND INTERNATIONAL LEGAL FRAMEWORKS CONVENTIONS AND INITIATIVES

In many countries of the Global South, indigenous and other minority groups benefit from special legal consideration regarding rights and protection. Various national constitutions guarantee legal recognition of such rights, and international regulations emphasize priority rights to land and territories for traditional and local communities. In practice however, the realization of such rights is extremely weak and easily undermined. A traditional, local or indigenous group imperatively needs to get registered and recognized as such before it can claim specific rights. The criteria catalogue to such a recognition process is tight and sometimes ambiguous. It is widely agreed that the achievement of land-related targets in the Agenda 2030 also depends on recognition of rights and qualitative procedures, namely inclusive, participatory and representative decision-making and accountability at all levels, including the principle of Free, Prior and Informed Consent (FPIC), a right of indigenous peoples within international human rights instruments, and increasingly a principle to be extended to other local communities.

Depending on the country's legal context and degree of evolved governance structures, there are different situations of commons and collective land use (FAO 2016):

- Commons may be publicly or state-owned land, fisheries and forests that are collectively used and managed by local groups (or communities). In many cases, governments statutorily declare common land, water, fisheries and forests as public, because they argue that these are empty or unowned, or that commons provide 'public goods' such as environmental services. However, this neglects the fact that commons are customarily owned by a community or several communities. In this way, communities are deprived of the right to legally defend their customary rights to commons.
- Commons may be owned by indigenous peoples or other communities with customary tenure systems and this may be legally recognized. In this situation, the common

resource may be governed by a community-based or communal tenure system. The term 'communal' is often used to refer to the whole area or territory of a community including both collectively held commons and individually held resources. The commons may be situated within the area or territory owned by the indigenous or customary community, and the different members of this community may hold multiple and overlapping bundles of tenure rights to the common resource.

However, in many cases, governments withhold the authority normally associated with ownership. This makes them unduly empowered to determine how the resources are used or to issue commercial use rights in the form of concessions for logging, mining, industrial agriculture and ranching on the customarily held commons. In other cases, governments retain important management rights, which often leads to over-regulation of use and high barriers and costs to legally use common resources.

- Commons may be newly established where groups (e.g. forest user groups) come together to create rules and norms to use, manage and even own a specific natural resource collectively. Such groups may also build a cooperative or an association to utilize the resource collectively and organize and carry out production as a collective. These commons may also be subject to the scenarios described above under the first two bullet points.

On the **international level**, several regulations that emphasize the protection of collective land rights exist such as:

- *ILO-convention 169*: The International Labour Organization (ILO) enshrines land rights for indigenous peoples since 1989 in its Indigenous and Tribal Peoples Convention, 1989 (No. 169).¹ The ILO 169 affirms that *"Governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the land or territories (...), and in*

¹ Also known as ILO-convention 169, or C169.

particular the collective aspects of this relationship".²

- UN Declaration on the Rights of Indigenous Peoples (UNDRIP): UNDRIP devotes several of its articles to land rights, making this an essential human rights issue for indigenous peoples. The legal recognition of traditional lands and territories "shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned" (Article 26).
- UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP): The adoption of the Declaration end of 2018 was to close gaps regarding the protection of peasants' rights and other people working in rural areas – including pastoralists and fisherfolks – at the international human rights level. Article 17 of the UNDROP states that "peasants and other people living in rural areas have the right to land, individually and/or collectively,... including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures."
- FAO Tenure Guidelines: The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO 2012) were unanimously adopted by the Committee on World Food Security (CFS) in 2012, with subsequent broad international recognition and support. Their strength rests on the unique inclusive and participatory process through which they were developed. They are an instrument of soft law, but they are also strongly rooted in existing international human rights law, laying out the obligations and responsibilities of state and non-state actors to govern tenure of land, fisheries and forests responsibly, including commons. They provide internationally agreed guidance on how to recognize, protect and support legitimate tenure rights, including individual and collective tenure rights, and those employed under customary systems.

Further initiatives and instruments that highlight the relevance of common land use practices are endorsed by international conventions and protocols, mainly the UN Convention on Biological Diversity and the corresponding Nagoya Protocol.

- Indigenous and community conserved areas (ICCAs)³: ICCAs play a crucial role in securing the rights of indigenous peoples and local communities to their land and natural resources through local governance. There are three defining characteristics of ICCAs: i) there is a close and deep connection between a territory or area and an indigenous people or local community. This relationship is generally embedded in history, social and cultural identity, spirituality and/or people's reliance on the territory for their material and non-material wellbeing ; ii) the community is the major player in decision-making (governance) and implementation regarding the management of the territory, area or species, implying that a community institution has the capacity to develop and enforce regulations; iii) The community management decisions and efforts lead to the conservation of the territory, area or species and associated cultural values.

In the last decades, ICCAs have become known and recognised as essential features for the conservation of nature, sustainable livelihoods, the realisation of collective rights and responsibilities, and the wellbeing of local communities – all of which are under attack by a variety of economic and political forces.

The global coverage of ICCAs has been estimated as being comparable to the one of governments' protected areas, i.e. about 13% of the terrestrial surface of the planet. Globally, 400 to 800 million hectares of forest are owned / administered by local communities.

- Biocultural Community Protocols (BCPs): BCPs are instruments that set out clear terms and conditions to governments and the private, research, and non-profit sectors for engaging with indigenous and local communities and accessing their local resources and knowledge. They are developed through culturally rooted, participatory decision-making processes within the communities and are based on communities' customary norms, values, and laws. They tend to include the following elements:
 - a definition of the community, its leadership and decision-making processes;
 - a description of community-based natural resource management systems, knowledge, innovations, and practices (i.e. in situ conservation and sustainable use) of

² IFAD (2018): [Indigenous peoples' collective rights to lands, territories and natural resources](#). Lessons from IFAD-supported projects

³ www.iccaconsortium.org and <http://www.iccregistry.org>

indigenous flora and fauna, and details of those natural resources;

- ways of life, including the links between culture, spirituality, and customary laws and values;
- rights, responsibilities, and duties of the community according to customary, national, and international law;
- conditions set out by the community for granting access to their lands, resources and knowledge, such as procedures for Free, Prior and Informed Consent (FPIC);
- challenges faced by the community and calls to various stakeholders to engage on specific issues.

They also hold a number of functions, among others they:

- bridge the gap between the customary laws and institutions of communities on one hand, and national or international frameworks for management of natural resources (such as ABS, REDD+, Protected Areas or Forest policies) on the other;
- provide clarity and a measure of legal certainty for users of resources and traditional knowledge (for example bioprospectors, biotrade companies or research institutes), and help to build dialogues and long-term partnerships between users and communities;
- trigger community discussions on their aspirations and enhance awareness about the communities' values, rights and obligations regarding their resources.

On behalf of **national legal frameworks**, we can find all over the world examples of specific rights for minority groups and local communities related to collective land rights.

In **Latin America** national constitutions in several countries, for instance, recognize the rights of maroon communities, specifically their right to land and territories. Other experiences of legal frameworks we can find in the context of communal water management models which are widely recognized by the state.

Example of Brazil: The 1988 National Constitution grants a number of special rights to indigenous peoples and Quilombola communities, particularly rights regarding their traditional territories and related to cultural practices (Articles 231 and 68 of the Constitution). These rights are also in line with those established by the ILO convention 169. Other

traditional peoples and communities (PCTs) that identify themselves through livelihood strategies or territorial belonging (e.g. Geraizeiros, Vazanteiros, Apanhadores de flores, etc.) are, so far, not legally recognized in the national constitution as being legitimate claimers for collective rights. An important step forward to achieve this recognition was the Presidential Decree N° 6040, 2007, which describes in its Article 3.1: *“Traditional Territories are the spaces necessary for the cultural, social and economic reproduction of PCTs, whether they are used permanently or temporarily, in the same way as it is provided for in articles 231 and 68 of the Constitution to indigenous peoples and Quilombola communities”*.

However, in contrast to the clear constitutional mandate to demarcate territories for indigenous peoples and Quilombola communities, Decree 6040 does not commit the Brazilian state to do the same with regards to the traditional territories of PCTs.

Example from Africa, Niger: The Nigeran legal context is quite strong when it comes to the protection of collective rights for pastoral use. Since the early post-independence years (1961), legal texts recognized and demarcated areas for pastoral and areas for agricultural use. Article 3 of the Nigeran pastoral law states the following: *“Mobility is a fundamental right of pastoralists, nomads and transhumants. This right is recognized and guaranteed by the State and local authorities. Mobility is a rational and sustainable use of pastoral resources”*.⁴ However, the *in-facto* implementation and necessary guarantees in a context of high demographic and economic pressure are not always assured.

Examples from Asia, India and Cambodia:

India: The Forest Right Act (FRA) was concluded in 2006 on the National State level. It grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustice caused by former and colonial forest laws. This legal text for the collective and individual use rights on forests is specifically beneficial to the minority group of the Adivasi population and other forest dweller whose livelihoods depend heavily on forests. However, some federal States refused to implement the new law and several years of advocacy and legal processing was needed to get the Federal High Court decided in favour of the implementation (case of the Tamil Nadu State).

Cambodia: “[...] The 2001 Land Law recognized Indigenous Communities and their right to claim a communal land title (CLT) over their customary lands, albeit with some significant exclusions [...]”

⁴ Programme Pays HEKS/EPER Niger, 2018-2021, p. 7. (57 p.).

Article 23 recognizes the management of land according to traditional customs [...]. Article 25 allows for the communal titling of land where indigenous communities carry out traditional agriculture. Communal landowners have 'all of the rights and protections of ownership as are enjoyed by private owners' (Article 26). This includes the right of transfer, if the community so decides. However, land classified as 'state public land' that is included in the title cannot be transferred [...]."⁵



⁵ Mekong Region Land Governance (MRLG) (2017). [The Recognition of Customary Tenure in Cambodia](#). Thematic Study, p. 10 (52 p.)

4 HEKS/EPER EXPERIENCES WITH COLLECTIVE USE OF TERRITORIES IN SELECTED COUNTRIES

In many countries, HEKS/EPER is striving for better securing access to the collective use of land, resources and territories and thus protecting collective land rights. As already stated in the introduction, HEKS/EPER is convinced that community-organised forms of management lead to sustainable use and conservation of finite resources and public assets such as land, water, forests and biodiversity. Thus, HEKS/EPER promotes and legally protects this living form of the 'common land'.

In the following, HEKS/EPER's work related to collective land rights is exemplarily described in selected countries and a link made to the four prevalent cornerstones or narratives of the general debate related to collective land rights as described in chapter two: i) beyond state and market logics, ii) sustaining use of resources and biodiversity, iii) collective recognition as protection against ousting, iv) minority rights and social identity. It is also described how HEKS/EPER uses some of the international frameworks and initiatives summarized in chapter 3 to further develop its programme work related to collective land rights and land governance in selected country programmes.

LATIN AMERICA

Brazil

In the Brazilian context, about 25% of the land is estimated to be collectively used and managed through territorial land use systems. The population groups engaged in such territorial approaches are generally referred to as *Traditional Peoples and Communities* (PCTs) which includes indigenous groups, Afro-Brazilian communities and other groups which base their social identity on livelihoods around collective natural resources and territories use patterns. Indigenous peoples use territory exclusively collectively. 25% of collective land use is a high proportion and stands in opposition with the colonial land rights system that for centuries was based on individual titles alone and that most collective land was not registered as such. Collective use systems are only about to be formally recognized since recent decades.

Since the 90s, the institutional landscape of land tenure has started to reshape, and a number of

new instruments and strategies have been developed that recognize more collective and sustainable land use mechanisms. This institutional reshaping of land tenure policy has been induced by internal pressure by local groups due to tensions with growing cash crop production and agrobusiness. With the pro-poor government of the Lula regime in the first decade of the new century (2003-2011), many of the promises of former land reforms were realized and further strategic instruments for indigenous and local communities' rights to land materialized. New collective land tenure formulas were developed such as 'Reservas Extrativistas (RESEX)' or 'Reservas desenvolvimento sustentável (RDS) (reserves for sustainable development)'.

HEKS/EPER is supporting traditional, local communities that claim collective land rights and use of territories and resources based on territorial systems while referring to these new, national land tenure and land use formula and international frameworks to promote indigenous and collective use patterns of resources.

RESEX Reservas Extrativistas & RDS Reservas desenvolvimento sustentável: RESEX and RDS are categories provided for territories by the Brazilian System of Nature Conservation Units (SNUC). They contribute to the protection of nature and the maintenance of biological diversity with the purpose to protect the livelihoods and culture of Traditional Peoples and Communities as well as to ensure the sustainable use of natural resources of the territories. They belong to the State domain, which grants the use to the communities. The livelihood of these populations is based on gathering activities, subsistence agriculture and the raising of small animals. The development of value chains to foster local economies is an important component and focuses on non-timber products of their territories.

Example of the flower picker communities of the Serra do Espinhaço

In the Serra do Espinhaço region, a regional network of flower picker communities (CODECEX) started an innovative process to protect their territories and traditional land use and local land governance systems by launching an initiative to elaborate Biocultural Community Protocols (BCP). In cooperation with specialized NGO's, CODECEX developed a first action plan, which summarizes

communal agreements and commitments for the use of the natural resources of their territories. This process gained visibility and support at national and international level by connecting the BCP process to FAO's initiative to implement a pilot experience in Brazil for the recognition as a Globally Important Agricultural Heritage Systems (GIAHS) in the country. The GIAHS label recognizes and protects globally important agricultural heritage systems throughout the world. CODECEX's candidature was launched and submitted to the International GIAHS Secretariat at FAO headquarter in Rome in June 2018 and was officially recognized in March 2020.



The case of the Guarani-Kaiowá

HEKS/EPER supported to bring a concrete case of human rights violations against the Guarani-Kaiowá to the Inter-American Commission on Human Rights (ICCHR) in Washington.

One of the advancements was the official acknowledgement of receipt of a Guarani-Kaiowá Petition by the Commission. This official receipt is important and represents the continuation of persistent and consistent work of previous years. With this new step, momentum is accumulated in the direction of the Commission possibly interpellating the Brazilian state to take action and guarantee Guarani Kaiowá's territorial rights.

Another positive result that can be highlighted is the articulation work in Human Rights, with the participation of several partner organizations of HEKS/EPER. These organizations influenced the Human Rights Council of the UN, which notified the Brazilian State with 246 recommendations in the Universal Periodic Review (UPR).

Support related to other local communities

HEKS/EPER not only supports indigenous and Quilombola communities in claiming their land rights, but also other traditional, local communities that refer to specific livelihood patterns:

- *Geraizeiros*: The land use system of traditional communities in the highlands of the Cerrado savannas in Minas Gerais is based on small

scale family farming in combination with a common use of the natural resources of the Cerrado that includes extensive cattle-raising and gathering activities, particularly native fruits, oil and medicinal plants and firewood.

- *Quilombolas*: Afro-Brazilian communities formed by descendants of escaped slaves, which generally live in very remote areas in different regions of Brazil. Some groups use the large areas of floodplains and dry forests in the Cerrado, doing shifting cassava and maize cultivation and small-scale livestock-raising in combination with gathering activities, hunting and fishing.
- *Vazanteiros*: These riverine communities, occupy huge areas along the river sides and river islands, following the natural cycle of the water. In the rainy season, when the fertile islands become flooded, the families and their livestock migrate to the higher areas of the riverbanks. The production system of these river dwellers is extremely complex and well adapted to the seasonal movement of the river. Besides of the agricultural production and small-scale animal husbandry, they are engaged in gathering activities and fishing.

All these groups define their social identity through ethnic but also resource use criteria, or territories where they live and have developed specific and locally adapted resource use systems. What is common to all of them is the collective use of their territories.

Those groups often do not have legal rights or titles and are not considered in legal texts as potential holders of special rights. Such groups claim specific rights not so much based on indigeneity, but of locally adopted use rights systems.

It is an important contribution from HEKS/EPER to support the struggle of these local groups with collective land rights systems so that they become visible and can make their voices heard.



Link to the general debate

Brazil is a good case in point for the presence of all four narratives on collective land use. 2 (sustaining use of resources and biodiversity), 3 (collective recognition as protection against ousting), 4 (minority rights and social identity), and maybe a bit less 1 (beyond state and market logic).

Colombia

Collective land rights are highly relevant in Colombia. The national context is about to change substantially these last and coming years with the peace agreement of 2016 after a five-decade lasting civil war. The territorial-based approach of the agreement requires recognition and consideration of the economic, cultural and social needs, characteristics and peculiarities of Colombia's territories and communities, thereby guaranteeing socio-environmental sustainability. As hundreds of thousands of Colombians were displaced during the decades of conflict and are about to go back to their original regions, the reorganization of land rights and institutional reforms will be central in the aftermath of the conflict. Thus, the first chapter of the agreement is on "Comprehensive Rural Reform" (Reforma Rural Integral). It aims to instigate structural change in the countryside, closing up the differences that exist between rural and urban areas and creating conditions of well-being and quality of life for the rural population.

During the past decades, coca plantations (raw material for cocaine) have become an important livelihood strategy for many local farmers. The coca value chain is the most well organized and highly structured and lucrative business in the country and the drug business has dominated local economies for years. Thus, the fourth chapter of the agreement refers to the "solution to the illicit drugs problem", which aims at the replacement of coca plantations with other cash crops to foster rural economies.

Civil society groups are well organized in Colombia, be it campesinos groups, afro-descendant groups, or indigenous groups. They have clear ideas what to achieve in the new constellation concerning rights and territories. They participate in the official negotiations with the government on the implementation of the peace agreement through their umbrella network, the "Agrarian Summit" (Cumbre Agraria), Colombia's largest leftist collective of farmers, indigenous people and Afro-Colombian communities.

The peasant movements organized in the Agrarian Summit claim their right to land and agrarian

reform. They advocate for land use models envisioning a territorial land governance approach which recognizes the autonomy of the campesino communities.

- Reservas Campesinas (RC): Territories where displaced people took refuge during the years of war and organized themselves collectively. It is a form of collective land use that evolved out of conflict circumstances but has no ancestral background with regards to the use pattern.

The campesinos of such zones are well organized and have an umbrella organization to defend their rights, the National Association of Campesino Reserve Zones (ANZORC). Until today 7 RC are recognized and formally registered, and 60 more are claiming their recognition. This makes up around 500'000 ha of land, thus very large zones that would be organized collectively if it comes to recognition. ANZORC is also represented in the Agrarian Summit to defend their interests.

Nevertheless, the roots of the RC in a post-conflict context has some ambiguous aspects. In fact, the campesinos gathering into zones of RC often had connections with guerrilleros groups (FARC) and are intertwined with political issues. In the present-day situation, these campesinos are working to get unstigmatized and to 'proof' that they are peasants and not guerrilleros.

In 2017, HEKS/EPER's programme partner ACVC in cooperation with its umbrella organization at national level, ANZORC, realized the 6th National Congress of the Reservas Campesinas (RC). This congress was an important milestone to strengthen the advocacy work of the 'campesino sector' for a better recognition of the RCs as a substantial model of a territorial land governance approach in the context of the first peace agreement on a Comprehensive Rural Reform.

- Agro-Food Territories (Territorios agro-alimentarios, TAA): TAA is a model of land governance, promoted by the CNA (Coordinador Nacional Agrario de Colombia). It is equally an agrarian reform initiative coming from the campesino movement, referring to what indigenous and afro-descendant groups have already achieved. TAA's focus is on the defence of the campesino territories and their natural commons. They are guided by the principles of food sovereignty, cultural identity and the development of specific peasant economies. TAA are collectively organized territories, administered and organized by campesinos groups who practice agriculture, fisheries, forestry,

artisanal mining, etc. Guiding principles are self-recognition (history, culture, nature, space), autonomy regarding priorities, coexistence with other ethnic groups, participation.

Link to the general debate

Collective land use as described above concern mainly new forms of collective use of territories and are not based on the dominant debate about traditional forms of collective governance. Thus, the most prevailing narratives are alternative economic models (beyond state and market logic and the collective recognition of *reservas campesinas* as protection against ousting, which also shall lead to a more sustainable use of resources and biodiversity (narrative 2).

Guatemala

The land question in Guatemala, and even more the collective land rights debate, is very central to the Guatemala context as the indigenous population represents more than 80% of the total population.

Despite the majority of indigenous population, Guatemala is one of the few countries in Latin America that does not recognize indigenous rights in its constitution. This must be seen in the context of the brutal civil war that ended in the 1970/80 and during which the non-indigenous minority fought with all means against the loss of privileges that the highly centralized Spanish domination had granted them for centuries.

HEKS/EPER phased-out its programme in Guatemala in 2014. During the years when HEKS/EPER was present in Guatemala since the end of the civil war, HEKS/EPER has strongly supported the well organized and established civil society organizations to voice their claims with reference to international conventions. Such claims concerned mainly the protection of land against mining concessions. Today probably 80% (!) of the national territory is under concession contracts mainly under gold mining with Canada as biggest player (in comparison for the rest of Latin America: 30%).

It is particularly important in such cases to intervene before concessions are allocated. The contestation of already allocated contracts in the hindsight, is very difficult. In the aftermath of an allocated concession and when the mine is already exploited, the indigenous population can eventually claim suit for damages. This is another way to oppose to further concession granting by the local population.

From its long-year presence in Guatemala, HEKS/EPER learnt that land rights claims need to be supported and rights secured as early as possible, to take some advance to potential big business actors' arrangements. Intervening afterwards is complicated. Such experiences are important to be taken also to other countries, otherwise valuable chances are lost.

Link to the general debate

The most prominent point of debate in Guatemala is linked to a collective recognition of land as protection against ousting, which is mainly linked to the mining sector in the country. In addition, the discussion around indigenous identity is highly linked to the narrative about minority rights and social identity.

AFRICA

Niger

Collective use of land and natural resources is an integral part of the Nigeran rural economy. Pastoralism is central to land use and is highly adopted to the climatic variability within the country. Mobility of animal herds and pastoral areas have therefore been guaranteed in legal texts as early as 1961, shortly after independence.

In 1993 and with the democratization process, the 'Rural Code' has been established, a set of legal texts on rural land use, formalization of land rights, and conflict resolution mechanisms. Niger's legal framework on land use, including the pastoral land use as a collective way of using territory, is outstanding in the West-African region for its progressive approach.

The collective use of resources and territory in Niger concerns mainly three domains within the HEKS/EPER country programme: (1) pastoralist use of territory and resources for herders, (2) production and marketing of Moringa trees on collective production sites for food security enhancement, and (3) maintenance and/or



reestablishment of the Doum palm tree cover as a species with various social, ecological and economic virtues, but under threat of extinction.

Collective use of pastoral resources and territories

HEKS/EPER's programme supports an enabling environment for a parallel pastoral and agricultural use of the territory which generally causes many conflicts between different user groups. The project ZAMAN TARE POTAL (Zaman Tare = cohabitation in Hausa language, Potal = peace in Fulani language) or ZAMTAPO is aiming to support the secured mobility of herds in the Maradi Region, in the South centre of the country. It includes the supporting of the agreement of all actors regarding the delimitation and definition of access rules for the pastoral zone, the management system to maintain the network of transhumance corridors, rest areas and wells, and future conflict management. Pastures, corridors and water points and resting places are territories and resources with collective access *and right of way*.

HEKS/EPER with its partners is engaging into negotiations to allow the various groups of sedentary peasants and pastoralist communities to guarantee a fair access to scarce land, water and other natural resources. Since the start of the project, cattle corridors of more than 1'500 km in length have been negotiated, secured by legally binding contracts and physically marked, which benefit more than 40'000 people (pastoralists and sedentary farmers) of the region. In addition, about 750 hectares of cattle grazing grounds in three districts have been secured and restored. With all these measures, the living conditions of sedentary farmers and pastoralist communities as well as their peaceful coexistence could be further improved.

A major step was also the signing of a bilateral agreement in July 2017 between the Maradi region in Niger and the state of Katsina in Nigeria on the organisation and management of cross-border transhumance between the two regions. The agreement, which is the culmination of a nearly two-year long search for solution to the spate of regional and trans-border criminal activities by cattle rustlers and other outlaws, aims to foster and strengthen socio-economic activities between the two states and emphasises free movement of people and animals in line with the ECOWAS charter.⁶

But collective land use is not only relevant in Niger when it comes to pastoralism, but also concerning collective use of other natural resources such as community gardens with Moringa and vegetables

plantations, as well as the extensive use of Doum palm trees.

Moringa production and commercialization on collective sites

In the context of recurrent food insecurity at specific moments of the year, HEKS/EPER and partners are promoting the diversification of local food production through the promotion of vegetable gardens and specifically the plantation and commercialization of the Moringa plant. The leaves of the plants are an important and valuable part of daily nutrition and hold for many nutritional virtues. They can be easily commercialized as they are appreciated for weddings and other festive occasions. HEKS/EPER has particularly supported collective Moringa plantation sites, on publicly owned land and with collective rights to water and basic infrastructure but cultivated through women groups or individual labour. The products of these collective sites are to value integrated in the development of a local Moringa value chain but also serves self-consumption. Additionally, Moringa plants are contributing to environmental protection as they have a windbreaking function and are creating convenient microclimatic conditions for other vegetables planted in parallel. The wooden rests of the Moringa plant can equally be used as firewood and as such reduces other potential firewood trees from being cut.

Doum palm tree reforestation

In the Goulbi N'Kaba valley ("Valley of the Doum palm tree", in Hausa), the Doum palm tree is an endemic plant strongly appreciated by the population for its many virtues, nutritional, economic, as construction materials, and also for its ecological potential of environmental protection. However, its occurrence is diminishing for several reasons. HEKS/EPER and its partner organizations are supporting the reforestation of Doum palm trees and the safeguarding of its



⁶ HEKS/EPER (2018). Access to Land Annual Report 2017. Report on Swiss Church Aid's activities, impact and perspectives related to access to land. April 2018.

vegetation capital. The reinforcement of the Doum palm tree prevalence in the Goulbi N’Kaba valley is seen to strongly contribute to the agricultural and pastoral production potential of that valley as it is seen as an economic resilience factor.

The activities around the reforestation and commercialization of the products deriving from the palm tree are organized collectively. In groups of three to four villages, the governance of the palm trees growing on the municipality’s land is collectively organized. The villagers organize plantations of seedlings, the protection against animals, etc. If the trees are part of a State protected forest (foret classé), they are the National State property. In this case, the national authorities allow for rational exploitation of the resource in coordination with the forestry agents (Eaux & Forêt). Benefits are shared between the village community (70%) and the forestry agents (30%).

Link to the general debate

An important narrative in HEKS/EPER’s Niger country programme is a sustainable use of resources in a semi-arid environment (narrative 2 ‘sustaining use of resources and biodiversity’). In addition, the recognition of the pastoral way of living is linked to narrative 3 ‘collective recognition as protection against ousting but also to narrative 4 ‘minority rights and social identity.

Senegal

For some years, HEKS/EPER together with its partner organisations is advocating for clarification on the management and property rights status and the protection against investors and monocultures on local farmers land and pastoral areas and works towards the recognition of individual but also collective land rights of local communities within an ongoing land reform process. Several domains of work can be distinguished:

Land pressure and urbanization

Land pressure and competition around access to land is a big issue especially in proximity of urban areas. Conflicting land interests are intervening with local populations’ concerns about daily production systems. HEKS/EPER and its partner organisations are supporting the collectively organized struggle of local producers, be it farmers or herdsman, to formalize their land in the face of increasingly large business actors. But also public infrastructures (the new international airport, special economic zones for real estate promotion or industries, a container port, or an express train line, etc.) are increasingly competing over



community land with local population. Local populations only have a chance to make their voices heard if they organize themselves collectively.

Reform of the Pastoral Code

Within the framework of a national land reform, that got new dynamics since 2012, HEKS/EPER and its partner organisations are committed to its design and elaboration for the benefit of smallholders as well as pastoralists. As example, throughout 2017, the conduction of different multi-stakeholder fora, meetings and various radio broadcast allowed the sensitisation and participation of the rural population in the debate on the ongoing land reform and the formulation of concrete proposals, which were largely taken into account in the land policy document submitted to the Head of State. In addition, a document analysing and proposing legal improvements on the draft pastoral code, taking into account the concerns of pastoral populations was handed over to the Minister of Livestock and Animal Production. However, since 2018, the reform process is on hold by the government. Nevertheless, HEKS/EPER together with its partner organisations continue to lobby and advocate that the land rights of local communities are further strengthened

Securing pastoral territories (Dolly Ranch)

With regard to the pastoral land, 87’500 ha of land with a pastoral vocation (ranch of Dolly, area of pastoral retreat in the Ferlo zone), threatened in the past by decommissioning for agricultural needs, are in the process of getting secured to preserve its pastoral vocation. However, advocacy work still needs to be upheld as an official decision by the public authorities attesting to the ranch’s pastoral vocation is still missing.

Women groups reforesting degraded zones

In some areas, the natural vegetation and bush cover is degraded due to overuse, climate change or environmental degradation. HEKS/EPER and its partners are supporting local women groups (*groupement de femmes*) to engage in the reforestation and monitoring of forested areas. The

women groups have to register as a formalized *groupement de femme* and as such get a legal status. In collaboration with them, 17 protected areas (*aires protégées*) between 1 and 8ha (with a total of 57ha) have been defined that serve as reforestation areas where specific rules of limited resource use are applied. Such protected areas are formally registered, either vis-à-vis the municipality (if the site is part of the municipality's territory), or on the next higher administrative level (the Region) (in case the site is part of a *zone classée*). The women groups are organized collectively, as village organization, promoted by the Central State since the 1970s as a means for public action. They have a legal status and with it access to bank credits, if needed. Currently, their investment in labour and time has not yet started producing much revenue generating effects. The plan is to promote in a near future honey production, fishery in ponds, or small-scale vegetable production within the protected areas. In the meantime, the groups are supported with micro-credits for small commercial businesses (soap production, production of chloride bleach, dye colours, etc.).

Link to the general debate

As in the context of Niger, the three prevailing narratives in Senegal are narrative 2 'sustaining use of resources and biodiversity', narrative 3 'collective recognition as protection against ousting' and narrative 4 'minority rights and social identity'.

Zimbabwe

Communal land in Zimbabwe is mainly managed by a customary governance system. Individual land titles are rare and only established for commercial use of agricultural land. The local political level, be it administrative or customary, is highly politicized and deeply divided between the political party in power and the opposition. These concerns also struggle over access to land and property. Normally, traditional leaders are responsible for communal land allocation, but their power is re-diminished through parallels with the district council's authority.⁷

There are basically three areas where collective use of resources is conflicting and where HEKS/EPER and its partner organizations have been engaged into support, advocacy and advice.

Displaced and dispossessed peasants

The government has allocated large land portions to international investors who produce cereals or maize. Most of these private investors are in the fuel and petrol business elsewhere but have also engaged in the agricultural business with private-public partnerships (PPP) in Zimbabwe. This land is legally state property, so the public authority can legally handle it. Customary land use is generally not formalized. It is administered by local traditional leaders, but with no formal recognition by the State authority. Customary land is community land, but individually cultivated, but there is also collective use for grazing, collection of firewood or vegetable growing. These areas are inhabited and cultivated collectively by local populations which are often displaced and dispossessed with no appropriate compensation and now live scattered in the area, with other family or community members.

No compensations: The local population in the area has cultivated the land for over 40 years and they have invested labour and financial resources to turn the land fertile. In addition, in some areas the deaths of the community were buried on the land. If the land is allocated to agro-businesses, the graves need to be displaced. Legally, for such displacement, compensation through the State is foreseen, but as such land has not been officially registered as community land, the authorities refuse to pay. HEKS/EPER's partner organization CLS is providing legal advice and assistance to local populations. As example, they provided legal representation in court for the 26 villagers who were arrested for advocating against land grabbing. Eventually the villagers were acquitted but their land was not returned.

Land use conflicts around Matobo National Park

Matobo National Park is a tourist attraction with high wildlife ration (rhino, leopard, and black eagle), over a hilly granite boulder area. The hills cover about 3'100 km² of which 424 km² is a dedicated national park, the remaining being largely communal land and a small proportion of commercial farmland. This area is situated south of Bulawayo, in Southern Zimbabwe and is part of a UNESCO World Heritage Site.

The Natural Park was established in 1926 and there are long-lasting use rights conflicts around the park, governed by the Zimbabwe Parks and Wildlife Management Authority. Many rituals and other religious activities are performed in the hills. Before the colonial era, it was the headquarters of the spiritualist oracle, the Mlimo. With the establishment of the park during the colonial

⁷ Centre for Conflict Management and Transformation (2014). Roles and Responsibilities in Rural Local Governance in Zimbabwe: Parallels, overlaps and conflict, p. 18.

regime, the local population was forcefully removed, but has today access to some parts of the park. Villagers are living in the communal lands around the park, they are allowed to use some parts of the park as grazing areas.

The Park's restrictive policy generates a number of conflicts around the collective use of resources by the local population. Among others conflicts are:

- *Sanctioning of herdsmen when cattle enter the park.* Grazing cows from local pastoralists may get on the park's territory. They are held back by rangers of the park and depending how many days they have been grazing there, the owner must pay for their liberation (5 US Dollars/day per cow). This may get very quickly expensive when a herd of cow is withheld for several days. Vice-versa: Baboons from the park are sometimes escaping from the park and are destroying vegetable gardens and fields of the villagers. But for this in turn, there is no compensation foreseen.
- *Collection of grass for house roofing:* Villagers have access to some parts of the park for the collection of specific grass for the roofing of houses. But the grass is not for free. Out of 10 bundles of grass, 4 have to be left to the park who sells them to hotels and lodges for their house roofing. The villagers find this is too much, they only want to leave behind 1 bundle out of 10.
- *Access to mythical caves in the mountainous areas:* In local belief, the spirits need to be addressed for the rain to fall. Some of the caves that served as places for such rituals are no longer accessible for the local population. In local understanding, missing rain is due to missing sacrifices.
- *Access to revenue from the Park.* Due to the centralized governance system, all the revenue from the park goes to the central government, leaving little to no direct benefit for the local populations.
- *Little employment for locals.* The Matobo National Park is one of the biggest employers in the area, but it usually prioritizes people from areas outside the district for employment.

HEKS/EPER and its partner organizations are engaging into legal advice, advocacy and support of claiming processes and conflict management activities.

HEKS/EPER partner Habakkuk Trust instigated a policy dialogue where the local leadership together with elected leadership engaged with the Matobo National Park to discuss community grievances on employment and local benefit to resources generated by the park. Afterwards, the park

authorities have responded positively and started involving communities in decision making concerning park related activities. Recently, the park got funding for fencing and they invited local communities to a meeting to discuss the boundaries. In the past, this would not have been possible. Communities laid claim to their land within the park and demanded to not fence it. To avoid conflicts, the National Park resolved that it will not fence the area in dispute.

Additional dialogues led to further engagement with the park to reserve grazing land for communities' livestock and for family graves already within the park, long term measures that include law reform that gives communities a say in issues such as land acquisition and an analysis of the loss of livelihood as a result of the boundary dispute with the National Parks Authority.

Meanwhile the communities reported that villagers are now allowed to retain 80% of the roofing grass harvested from within the National Park.

Communities have also lobbied for accountability and transparency in the operations of the Khumalo Trust Fund. The Khumalo Trust Fund committee comprises of the park staff, safari operators, traditional and elected leadership and administers proceeds from the Park. Two donation pots have been put in place to receive donations from tourists. There are three keys to these pots, one is with the park authorities, one with the safari operators and the other with the traditional leaders in order to guarantee equal representation, accountability and transparency when opening these pots. Money collected from these pots is used towards the development of the wards, based on ward development plans that articulate how funds will be used for community benefit.

Finally, the park has started prioritizing and hiring locals for short contracts, although the numbers are still small. Locals have been trained and hired as part time rangers.

Commercialization of caterpillar from mopani-tree

There is a caterpillar in Zimbabwe, living on the local mopani-tree. Its prevalence is connected to the rainy season and its occurrence is from November / December to March. There are mopani-trees all over in Southern Africa, but in Zimbabwe, the so-called *Amacimbi* worm is predominantly found in Matabeleland, southern provinces of Zimbabwe which makes it a rare resource. *Amacimbi* worms can be eaten and are appreciated as a local specialty with high protein content. They are also exported to Mozambique, Europe, and China where they are processed to high protein containing food.

There is local knowledge needed how, when and where it can be found on the mopani tree. In

addition, the trees need to be cut in a specific way. It should only be collected during a certain season and during a specific life span to avoid extinction and interruption of its reproduction cycle. It can be sold for good money: 20 litres of caterpillar can be sold at the local market at 100 US Dollars.

But there is no policy regulating the commercialization of the caterpillar and more and more commercial harvesting of the caterpillar is happening uncontrolled and without the necessary knowledge how to provide for its sustainable reproduction. In 2016 it was almost extinct and was only present on private farms due to reckless harvesting through commercial collectors.

HEKS/EPER and partners are advocating for the need of a regulation policy on district level to be established to protect the caterpillar and the mopani trees. There is need for a license to harvest and a restriction about certain quantities per person or company. There is also a price pressure due to commercial harvesting. HEKS/EPER and partners are engaged with local harvesters to get a fair price for the caterpillar.

The community in Matobo seconded a delegation comprising the CLS paralegals and members of the Habakkuk Trust Action Teams to approach the Matobo Rural District Council to seek to adopt of an all-encompassing by-law that addresses the management of natural resources in the district – including the regulation of the harvesting of the Mopani Worm. The Council welcomed the proposal and encouraged the local communities to draft a position paper and share with their ward councillor for further consideration as a motion during Council Meetings.

The Matobo Rural District Council further requested support from CLS and HBK to develop a Natural Resources Management Policy. A draft Natural Resources Management Policy has been crafted and presented for consideration by the Matobo Rural District Council and is waiting for adoption.

Link to the general debate

Potential and existing conflicts with large-scale industrial agriculture in HEKS/EPER's project region is linked to narrative 3 about 'collective recognition as protection against ousting'. In addition, there is a strong linkage to narrative 4 'minority rights and social identity' and also narrative 2 'sustaining use of resources -such as the mopani worms – and biodiversity'.

ASIA

India

The HEKS/EPER India programme has been supporting local communities (especially the Dalit and Adivasi population, but also other economically disadvantaged groups) to get secured access to land through the establishment of so-called Land Forums which conduct lobbying and advocacy towards the local and national authorities for land rights. While the individual land rights guarantee food security of the family, the community lands give them territorial rights over the lands and forests and a wider scope for livelihood and community resources.

Especially, the Adivasi families have a specific connection to collective territories. They are considered as the indigenous peoples of India and collective land are very important for the community for different reasons. Not only it assures food security and income generation, but also dignity and social inclusion. To own land is the basis for social recognition, identity and social belonging. Adivasi people also have a transcending connection to land as collective territory and more generally nature is considered as extended habitation. They collect non-timber forest products and sell them, especially during the lean season. They access community resources such as lakes, ponds, rivers which serve as water resource. They also serve as grazing lands and also to collect herbal medicines. In addition, the community lands serve the community as worship place, burial grounds and village markets. For the Adivasi, community lands are the treasure of the past, present and future, as their heritage, culture and environment are shaped by the community lands and play an important role for self-governance of the Adivasi.

Tamil Nadu People's Forum for Land Rights (TPFLR) is one of the three land forums initiated with the support of HEKS/EPER India. In 2007, the Government of India had introduced the Scheduled Tribes and Other traditional Forest Dwellers ACT. Based on this Act, TPFLR has been creating awareness among Adivasi communities and has been supporting them to claim their land rights. Although the Act was implemented in other states of India and land titles were distributed to the Adivasi, the Government of Tamil Nadu did not take efforts to issue land titles based on this Act to Adivasi communities. Due to continued lobbying and struggle by TPFLR, in February 2016, the Supreme Court issued an order directing the Government of Tamil Nadu to issue land titles to the Adivasi with immediate effect. Based on this Court order, efforts were taken to revamp the forum in 2016 and led into the issue of legally binding land titles for 132 ha of land to 268 Adivasi



families on the 17th of June 2017. This was a major achievement of TPFLR and has rejuvenated the dying hopes of the Adivasis in Tamil Nadu.

In general, the three established land fora achieved that within the period of three years (2016-2018), 21'386 people got legal access to 103'458 hectares of land, whereas about 92'000 hectares have been community lands and the remaining individual land.

Link to the general debate

The main narrative present in HEKS/EPER's India programme is narrative 4 'minority rights and social identity. The other narratives are present but to a lesser extent.

Cambodia

Cambodia is among the number one East-Asian countries where land concessions for large-scale business is expanding very strongly mainly for rubber, sugarcane, and other plantations. Economic Land Concessions (ELC) often stand in competition with local populations agricultural or other livelihood strategies. Local populations are thus increasingly touched by eviction and dispossession and displaced to less productive fringes without adequate compensation.

HEKS/EPER is currently shifting its programme from the central-western part of the country to the eastern zone. This geographical shift brings the thematic of collective land rights more to the centre of attention because indigenous populations live mainly in these eastern regions. In the Cambodian constitution, special rights on traditional territories are guaranteed for indigenous peoples. In practice, the issue of indigenous population is problematic, and few legal cases are underway. The distinction of indigenous groups, distinct from the mainstream society of the Khmer and other traditional population groups is not always clear on the ground and struggles over meanings and belonging are frequent.

Except for indigenous groups, collective land rights are not much discussed for other minority groups in the Cambodian context. Few organizations are working on the issue of collective land use. HEKS/EPER intends to enlarge the collective land use approach on other population groups and to promote collective tenure also beyond indigenous communities. Most often it is the most vulnerable population that is engaging into gathering wild fruits, firewood or other resources for basic livelihood. Promoting collective use rights is therefore also a strategy against poverty.

Recognition process: Some indigenous communities are engaged into recognition processes, but many are not although they have the right to do it. The process is long and complicated and can be discouraging. It follows three main stages with various steps in each stage: (1) Obtaining formal self-identification recognition as a "traditional culture" by the Ministry of Rural Development (MRD); (2) apply for recognition as a "legal entity" with the Ministry of Interior (MoI); (3) submit a collective land registration request to the Ministry of Land Management, Urban Planning and Construction (MLMUPC), to register their land and to be granted a community land title. There are generally three groups of processes underway: those groups who did not yet submit a claim at all, those who submitted, but got stuck in the process (a process takes sometimes several years), and those (few) who got their title, but who struggle to have it respected by outside actors.

Existing examples of collective use of resources:

- Community Forests: Collective forestry exists since the 1990s when they were promoted as a post-conflict measure to promote local development. However, over time the functionality of such communal forest governance has diminished, informal practices of governance have been introduced and common rules and obligations were not defined at all. The inclusive governance of forest products is not always respected and there is generally weak enforcement of governance arrangements in favour of the community. In some cases, illegal logging is taking place, also from outside loggers crossing the border from Vietnam (rural-rural migration). Also, some individuals might be involved in conflicting interests as they are at the same time members of the local user group and working for international agro-business actors. Participation into community forests governance systems is also possible for non-indigenous people. Some problems were also created through the demarcation process where borders of user groups were geo-coded, but some people contested the veracity of the

demarcation line. However, some community forests are well working against all odds and sometimes the well-functioning forests are those that are not even registered as such.

- Irrigation canals: An example of collective use of water are irrigation canals. HEKS/EPER helped financing the rehabilitation of several old irrigation canals established during the Khmer Rouge regime in the 1970s. The canals were silted up and had to be re-dug by machines and re-established. Canal management committees were established and appointed to be responsible for the management and maintenance of the canals through collective financial contributions of the members of the Water User Groups. However, the functioning was rather short-lived due to other irrigation agro-business on the same river upwards.

This could hold as an example of the “neo-commons” that lack of a local and grounded use pattern arrangements. The commoning process which created use patterns through social negotiation over time was not locally anchored. It is also important to keep in mind that the Khmer Rouge regime intended to install agro-communism and forced the population to subjugate. This resulted into eviction and resettlement and the population has kept a bad memory of forced collective labour. Collective work is until today a sensitive thing with negative connotation for the local population.

For HEKS Cambodia it is crucial to promote tenure rights of traditional communities including collective rights for indigenous people and those depending on fishery and forest use. It has therefore formulated two goals regarding access to resources in the current country programme explicitly on the needs of the traditional communities: 1) Customary tenure of land for both, indigenous as well as traditional people is respected, protected and fulfilled; 2) Indigenous communities and traditional Khmer communities are better able to secure their land by making its productive use more visible.

Latter is to be achieved by enabling communities to use their land more intensively, which could otherwise be interpreted as “idle” because of its extensive use. This allows the communities to

increase their power and to protect their land. The higher visibility of productive use of the land contributes towards food security and provides higher financial as well as human resources for the communities to cover the costs of their advocacy work. The added value of the approach is the potential to closely link value chain and other livelihood improvement projects with interventions on access to land and conflict transformation.

In addition, HEKS/EPER’s Community Empowerment and Peacebuilding project strives for increased secure access to land, water and other natural resources by the local population. For example, the project facilitated solving a water conflict between upstream and downstream users which also involved a large private company that used the water to supply their sugarcane plantation. The project has brought affected communities and local authorities to discuss peaceful solutions and invite company representatives to dialogue with communities for an agreement to stop conflict. In this respect, community people in the affected communes are able to obtain reliable access to water for their daily consumption, cultivation and raising cattle. The present phase 2 of this project aims to empower communities by strengthening their capacity to claim their rights on land and other natural resources as well, where the communities are in trouble because of small-scale land grabbing and other illegal activities occurring inside their registered community protected area (CPA). The project works to maintain the space for communities to exercise their rights through dialogues/public forums and facilitates the communities to engage with other networks at sub-national and national level to raise their issues for resolution. Through dialogue, the communities will be able to register the forests in their area as CPA with the Ministry of Environment.

Link to the general debate

A strong narrative in HEKS/EPER’s Cambodia country programme is narrative 3 ‘collective recognition as protection against ousting’ and also narrative 1 ‘beyond state and market logics’ meaning establishing new ways of addressing land rights in a county with large economic land concession surfaces.



5 DISCUSSION POINTS ON COLLECTIVE USE IN HEKS/EPER PROGRAMMES AND PERSPECTIVES

The last chapter of this capitalization report opens up on some reflection, entry points for further discussions and critical points to be aware of, to help formulate a common understanding on collective land rights and land use in future programmes and to trigger discussions with peer organisations and other stakeholders. The open questions, reflections can be gathered around three distinctive domains:

Definition and nuances of collective use

- *Definition of what is a 'common'*: Shall a rather narrow 'Ostromien' definition or a larger definition of "everything that is not privately appropriated" be used and adopted?
- *Finding or Postulate*: A distinction shall be made between the 'commons' as an empirical finding (*existing* collective governance) and as a postulate (*promoting* collective governance). Because with a finding, that the commoning process has already taken place, as a postulate that the commoning process is to be made, would be rather difficult.
- *What type of commons?* A clear distinction between different types has to be reflected on: customary commons, commons as instruments for conservation policies or commons as result of formalizing processes. Dependent on the typology different approaches for the protection of commons are prevailing.
- *Where?* What environments are appropriate for collective use? Only on the fringes, in marginal, in fragile, in arid environments, in forests, or also in places where intensive agriculture is a serious alternative? How to balance between intensive and extensive use of land, territory, resources?
- *Consider the commons as a multi and parallel use type of governance*: Attributing ownership to some might exclude others. Is there always a 'community' that can be defined as 'owner'? An *open access* governance system? Defining groups and demarcating territories can be a threat to such systems.
- *Recording customary rules and obligations in community protocols*: Fixing something that is by definition malleable, adoptable, negotiable?

Some authors have termed this "The invention of tradition".

Awareness of political implications of discourses on collective use

- *To handle with care the discourses and politics around indigeneity*: To define the terminology and focus groups at the centre, their core characteristics, rather than ambiguous stories about ancestry is important when addressing collective land rights.
- *Indigeneity as a "backward-oriented" term*: What if people strive for social transformation and integration into the larger society? An indigeneity status commits people to stay apart from the mainstream. Whose voices? Whose choices?
- *Careful with essentialist connections between indigeneity and environmental protection*: The equation: protecting indigeneity = protecting environment might not be as straight forward as thought.
- *Consider that the Commons do not stand alone in the land rights debate*: the debate is combined and has to be thought with very diverse actors, objectives, technologies, forms of knowledge – forest conservation, environmental protection, mitigation of climate change and adaptation to climate change, recognition of ethnic territories, enhancement of land markets, increases on GNP, and in parallel with plantations, private public partnerships (PPP), capitalist corporations – the interlinkages with all these elements and debates need to be considered.

Pragmatic considerations on the output of collective use

- *Challenge of the economic viability*: Are the 'commons' suitable as poverty alleviation strategy? With extensive and seasonable use patterns? The Commons as a production system is pretty modest in economic output, or maybe also not?

Summary & Perspectives

Land and natural resources governance entails, in the view of HEKS/EPER, that people have secured rights to land ownership and/or land use, and that they can control, manage and use the land and affiliated resources in the long term. Convinced that access to land is not only about land mobilisation and land titling, HEKS/EPER supports the development of inclusive land governance models and sustainable land use practices.

There is a clear understanding that these models shall focus on a territorial working approach, which emphasizes the role of ecosystems and their potential to contribute to the food and livelihood security of local communities as well as their resilience towards the impacts of climate change. Instead of hierarchical and vertical forms of land governance, HEKS/EPER's territorial approach proposes a set of governance processes with more horizontal coordination, concertation and negotiation where all actors share authority.

A territorial / ecosystem-based approach

HEKS/EPER acknowledges the importance of territories and the role of ecosystems in providing and sustaining key services such as the provision of food, freshwater, biodiversity, their function for climate and flood regulation and water purification, but also their spiritual, cultural and recreational service, and their important role for climate change mitigation and adaptation. A territory and territorial development can be understood as the capacity of the actors located in a territory to exercise over its changes and its future. Secured access to territories and restoring and sustaining ecosystem services ensures human well-being in the sense of secured access to land, water and other resources, sufficient nutritious food, social cohesion, peaceful co-existence between different user groups and locally adapted economic development opportunities.

Focus on the Commons and strong local communities and customary institutions

A territorial approach implies that local people and communities are placed in the centre for decision-

making on the governance and use of land and resources within these territories and ecosystems. In particular, the notion of the commons can contribute to thinking on territorial development challenges, by focusing on the multiple and complex rules and regulations implemented by the actors managing resources. This highlights the importance of recognizing the scope of local institutions especially customary institutions established for managing the commons such as land, water, biodiversity combined with their extensive traditional knowledge, their values, identity and thus their recognition as custodians of ecosystems. Strong institutions and communities can take informed decisions to deal with external influences.

Link to national / international legal frameworks

It is important that the territorial / ecosystem view of land tenure / land governance is explicitly linked to overarching legal frameworks to systematically use the legal power either on national and/or on international level. Important frameworks on international level to establish legal recognition of a sustainable use and management of land and resources are inter alia the Convention on Biological Diversity (CBD) and its Nagoya Protocol, The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, The ILO Convention 169, and the FAO Tenure Guidelines.

Behind this background secured land and resources rights within a territorial / ecosystem-based perspective

- i. rebalance power in the sense that people and communities feel connected to functioning structures of power and can see that it is possible to get things done;
- ii. build better and more resilient connections between local institutions and ecological resources;
- iii. emphasise identity, heritage, spiritual connection and values traditional knowledge;
- iv. re-establish a rural-urban nexus through territorial and locally adapted economic opportunities and market linkages.

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WEBSITE HEKS/EPER ACCESS TO LAND: [HTTPS://EN.HEKS.CH/NODE/255/FOCUS-AREA-ACCESS-LAND](https://en.heks.ch/node/255/focus-area-access-land)



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