



**African Centre for Technology Studies**

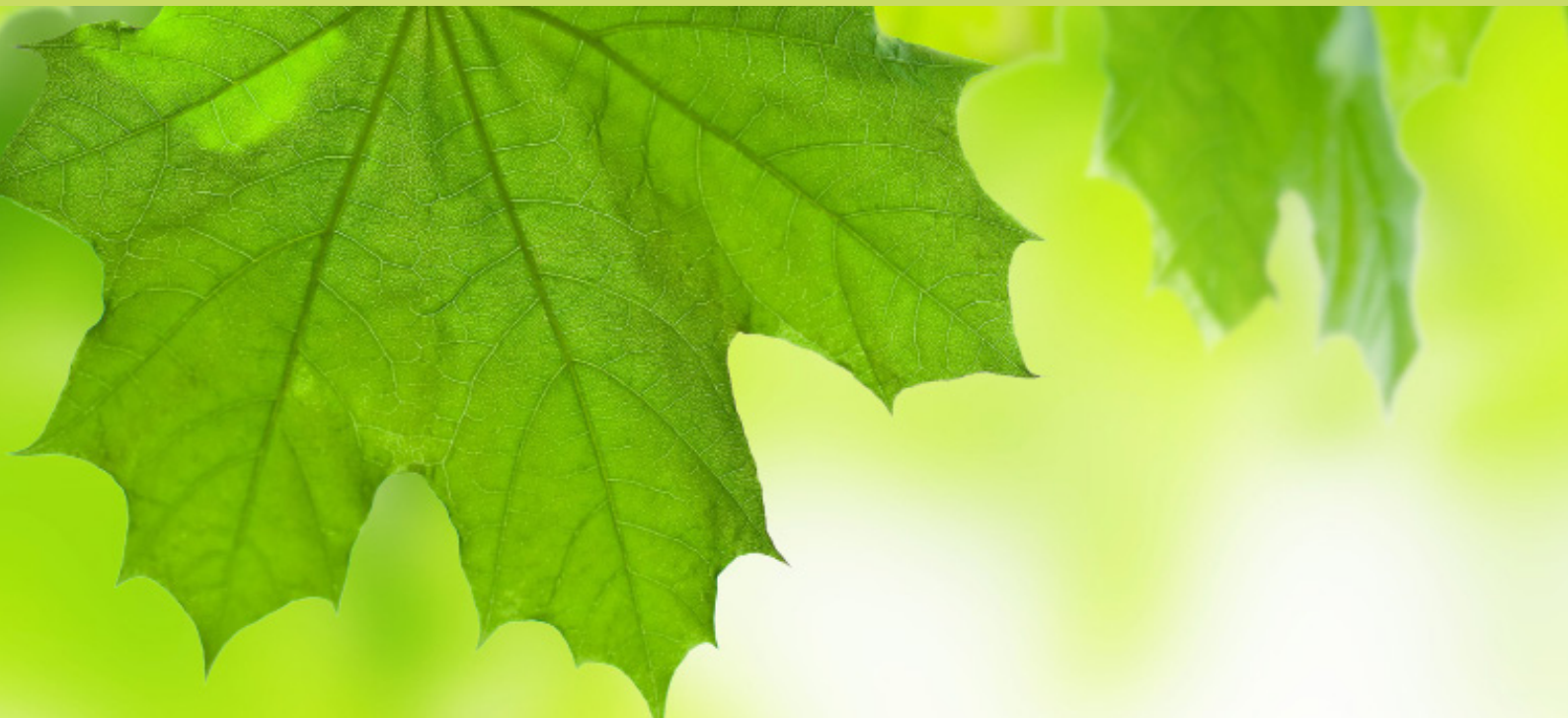
*Harnessing Science, Technology and Innovation for Development*

July 2015

RESPONSIBLE NATURAL RESOURCE ECONOMY PROGRAMME ISSUE PAPER 008/2015

# Establishing Human Rights Safeguards for Foreign Investments in Africa: Redefining Rights to Promote Gender Equality in the Natural Resources Sector

*Nidhi Tandon*



Series Editors  
Dr. Joël Houdet  
Dr. Cosmas Ochieng

African Centre for Technology Studies (ACTS)  
Responsible Natural Resource Economy Series no. 008/2015

*Series Editors*

**Dr. Joël Houdet**

*African Centre for Technology Studies (ACTS)*

**Dr. Cosmas Ochieng**

*African Centre for Technology Studies (ACTS)*

**Responsible Natural Resource Economy Issue Paper Series**

1. State of Environment Rapid Assessment (SoERA): Development of a Tool for Framing and Managing Urban Environmental and Social Challenges
2. Foreign Investment in Land and Corporate Social Responsibility: An Investigation for Africa
3. Balancing Extractive Activities and Biodiversity Conservation in the Congo Basin: Opportunities for Green Growth
4. A Circular Economy Approach to Agro-biodiversity Conservation in the Souss Massa Region of Morocco: Project Case Study
5. Sustainability Challenges and Opportunities of Generating Biogas from Water Hyacinth in Ndunga Village, Kenya
6. The Promise of Entrepreneurship for the Future Development of Factor-Driven Economies in Africa
7. Orchestrating Environmental Sustainability in Free Trade Agreements
8. Establishing Human Rights Safeguards for Foreign Investments in Africa: Redefining Rights to Promote Gender Equality in the Natural Resources Sector

Establishing Human Rights Safeguards for Foreign  
Investments in Africa: Redefining Rights to Promote Gender  
Equality in the Natural Resources Sector

Nidhi Tandon  
*Networked Intelligence for Development*  
Canada



2015

©All rights reserved. Sections of this material may be reproduced for personal and not-for-profit use without the express written permission of but with acknowledgement to ACTS. To reproduce the material contained herein for profit or commercial use requires express written permission. To obtain permission, contact the Executive Director at: [info@acts-net.org](mailto:info@acts-net.org)

ACTS Special Issue Papers are circulated in order to stimulate or to inform policy debate on critical issues. They have been reviewed by the ACTS' Publication Review Committee. They represent the views of individual authors and do not necessarily reflect the views of ACTS.

Published in Kenya in 2015 by Acts Press,  
P.O. Box 45917, 00100, Nairobi Kenya  
United Nations Avenue, Gigiri Court 49  
Tel: +254 20 712 68 94/95; +254 710 60 72 10  
E-mail: [info@acts-net.org](mailto:info@acts-net.org)  
Website: [www.acts-net.org](http://www.acts-net.org)

### **Cataloguing-in-Publication Data**

Establishing Human Rights Safeguards for Foreign Investments in Africa: Redefining Rights to Promote Gender Equality in the Natural Resources Sector/ Nidhi Tandon—Nairobi, Kenya : Acts Press, 2015

(African Centre for Technology Studies (ACTS)  
Responsible Natural Resource Economy Programme Issue Paper 008/2015)

**ISBN 9966-41-178-X**

# Table of Contents

Abstract	6
1. The broad context	7
1.1 An extractive economy and the enclosure of lands	7
1.2 The need for gender sensitivity	7
2. Evidence from Liberia	8
2.1 Women’s relations with nature	8
2.2 Palm oil concessions in Liberia	9
3. Human rights safeguards and women’s livelihoods	9
3.1 Human rights and land security	9
3.2 The enclosure of lands vs. a public commons framework	10
4. A review of the World Bank’s safeguards	11
4.1 Environmental and social safeguards	11
4.1.1 Natural resource entitlements	11
4.2 What would a human rights safeguard policy comprise of?	12
5. Human rights standards, access to nature and public commons	13
5.1 From patriarchal traditions to gender-sensitive regimes	13
5.2 Closing the asset chasm through ‘open access’ and collaboration for the commons	13
5.3 Drawing from the example of broadband spectrum	14
5.4 Human rights safeguard policy and country-ownership/use of country systems	14
5.5 Operationalizing a human rights safeguard policy in relation to natural resources: some key questions to consider	15
6. Key recommendations and ways forward	15
6.1 Applying community rights to land: with gender sensitivity	15
6.2 Transformative change requires going back to the drawing board	16
7. Conclusion	17
References	18

## Abstract

A growing body of evidence attest to the interdependence between human rights and the effectiveness of developmental outcomes. A concerted rights-based approach is indispensable to equitable and sustainable development. This paper makes the case for integrating human rights with social and environmental safeguards, particularly in natural resource or extractive sector projects in Africa.

# 1. The broad context

## 1.1 An extractive economy and the enclosure of lands

From Mozambique to Liberia, rural communities are witnessing an unparalleled and unprecedented corporate intrusion into their farming, forest, water and land use systems. The ‘enclosure of lands’ prevents local people from walking through, accessing, stewarding or using natural resources that make up their communal public commons. The situation is further compounded by inaccessible and unverified information, by a general disregard for calls for community consultations at all levels, and by a general paralysis in attempts to redress land claims through the legal process. Investment deals for land, forests and natural resources are sealed behind closed doors, the social and environmental costs of which pale in significance relative to the economic return on investment.

Local communities and citizens resisting these deals are accused of being “anti-development” and bulldozed out of the way, often by the very authorities meant to protect them. Civil society agencies that represent them are often poorly resourced, fragmented, and unable to coordinate and set priorities or agree on ways forward, and are ignored by politicians and governments. Corporations meanwhile have the close ear of government, influencing national policies on land use, on seeds and fertiliser inputs, and on energy, food and trade policies. The delineation between corporate interests and national government interests is sometimes murky.

## 1.2 The need for gender sensitivity

The majority of rural women start from a position of comparative disadvantage to their male peers. Discrimination against women is also firmly anchored in the customs, traditions and usages of various ethnic communities in the country. One of the most pronounced aspects of gender imbalance in many countries is in resource allocation and management. Despite the fact that women constitute over seventy percent of the productive land-based labor force in the country, land relations in particular are based on laws, customs and practices that marginalize and disempower women in terms of their rights and capacity to own, manage and transfer land. It stands to reason then, when land pressure escalates, (which it is) women as a group are subjected to exclusionary pressures by their male relatives or community members.

Rural women in these arenas are caught up in extremely challenging situations of feeding and providing for their families today while trying to plan for the future – a future fraught with unknowns and beyond their control. The narratives and experiences from rural women in Tanzania, Malawi, Mozambique, Zambia, Zimbabwe, Ghana and Liberia echo and reverberate a common strain – their struggles are intensifying and their opportunities are limited as their relationships with land, with natural capital<sup>1</sup> and with the public commons are weakened on multiple fronts.

In discussions with rural women in the last five years (2009-2014), it is apparent that they want their roles dignified, valued, recognised and supported. Where women are able to articulate their interests, or when their values and priorities are incorporated into policy making and planning,

---

1. UNEP defines natural capital as “natural assets such as forests, lakes, wetlands and river basins are essential components of natural capital at an ecosystem level”. These underlying ecosystems provide services and values in the diversity and abundance of species and variability and population of genes that can be used for different services and products (UNEP, 2011).

more compelling demands are made for longer term outcomes around basic human rights. These include accessible and affordable services for health and nutrition, safe clean water, quality education, control over their own food security, and overall well-being for the community as a whole. Relative to men, women's immediate interests in these public services are especially high. These are the bedrock factors of sustainable economies and comprise the basic rights due to all humans.

An extensive body of literature exists on the link between gender and risk perceptions, suggesting that women are typically more sensitive to risk than men. My field research findings also suggest that women are more likely to weigh up immediate needs against long term environmental issues than men and to make decisions that favour long term security. Land is their communal safety net and provides a place of cultural and social belonging with symbolic and spiritual values. Water, forests and lands are not just economic or marketable assets, in that sense they are essentially priceless elements to draw on for the continued care of their communities. The long term implications of losing land and dignity are well documented in the face of large scale land investments on the continent and the particular impacts for rural women are by and large acknowledged by the international community (Kachingwe, 2012; OXFAM, 2013)

## 2. Evidence from Liberia

### 2.1 Women's relations with nature

The Government of Liberia has enacted a range of policies and laws for the community management of natural resources and has signed on to related international agreements. Rural women play significant roles in managing natural resources for their food, fuel, shelter and water needs. They have central and multiple relationships with the public commons and natural resources that are core to their day-to-day livelihoods. They might not recognize the value of this management function themselves, and they might not be drawing the links between their farming practices and natural capital stewardship. Yet on a day-to-day basis, they fulfil a wide range of activities that are directly linked to natural resource management. In describing their relationships with natural resources, women invariably talk about their productive and reproductive activities and responsibilities and are less likely to refer to their extractive (aggregates and mining) activities; the latter being more opportunistic in nature - driven by market demand and the need to supplement income.

Like many African countries, the traditional management of forest landscapes in Liberia is made up of a complex hierarchy of gender relationships, knowledge and customs. An adult male 'bush manager' is appointed by the elders to manage access to forest resources covering a number of villages, to prevent the over-exploitation of forest resources. Women are not part of this group of elders, the suggested reason being that women are 'afraid' to make decisions and because they are excluded by the male secret society. Most sacred groves of the male secret societies<sup>2</sup> are associated with forests, with strong oversight by its members. Taboos and sanctions prohibit the exploitation of forest resources for commercial gain. When it comes to land access, both men and women have equal rights to private ownership of the flood plains for sugar cane production, although capital availability limits women's investment relative to men (IUCN 2009). With the demise of these

---

2. The 'poro' for men has declined in significance in large part because the political situation in the past made it illegal for such associations. However there may be a role for other sacred institutions including the 'sande' for women, and in Garpu Town, a sacred institution called 'nigi' is organized around a river in the forest – it is forbidden to fish or hunt in the vicinity of the grove. (IUCN, 2009 p. 39) The 'sande' societies for instance retain knowledge of plant species for medicinal purposes and valuable traditional folklore.



local and hierarchical structures – through changing political spaces and the influence of Christian and Islamic teachings; this kind of localized forest conservation service is on the decline (IUCN 2009).

## 2.2 Palm oil concessions in Liberia

Despite its small size, Liberia has one of the highest land concession rates on the continent. The concentration of plantation and mining interests is extremely high, one report puts the total land allocated to “rubber, oil palm and forestry concessions at approximately 25% of the country” (Knight *et al*, 2013). In Asia, public scrutiny is forcing big companies to comply with national laws and regulations that protect human rights. Under pressure in Indonesia and Malaysia for their part in widespread deforestation, leading palm-oil companies<sup>3</sup> have closed down their plantation interests there and are turning their attention towards Liberia and other African states.

In Liberia alone, international palm oil companies have access to over 622 thousand hectares and an average market capitalization of USD 8.2 billion<sup>4</sup>. (Liberia National Investment Commission 2006-2010). Studies warn that agro-investments (Balachandran *et al*, 2012) in Liberia have not met the expectations of all communities; and that some communities have in fact lost access to land resources and their food security in the process. These developments could become a steep price to pay for the promised benefits of revenue and employment, as the portion of land accessed and managed by rural Liberians decreases. If community engagement around land use decisions is not integrated systemically into government policy, the resulting societal tensions could be trigger points for local grievances, conflict and violence.

## 3. Human rights safeguards and women’s livelihoods

### 3.1 Human rights and land security

The hard-won gains that the majority of the world’s poor women have made in the last few decades in securing their societal and legal rights are under siege by the intensification and deepening of a market-centred framework and mentality. In the face of global competition and the power of finance capital, it is reasonable to argue that poor women find it more and more challenging to hold on to their natural capital assets: land, water, seed and knowledge. In losing these assets they lose their dignity, their self-reliance and the core of their empowerment. Consequently, their communities suffer and the futures of their children are put in jeopardy.

Asset-poor women are discriminated against when it comes to access to, ownership of and/or control over land and natural capital. This disadvantages them economically, compromises their rights to food, security and dignity, while also constricting their political ‘clout’ or ability to participate in social or political decision-making. Evidence shows that compared to landless women, women who are secure in their ties with land are also more secure in their relationships with each other and are more politically aware, more active in public forums and more engaged in contributing to collective action and voice.

---

3. The global palm oil industry has recently witnessed unprecedented growth, with a cumulative annual growth rate (CAGR) of 8 percent, although West Africa’s CAGR is at 1.5 percent. The competitive landscape is dominated by Southeast Asian producers who have better production efficiency (higher productivity at comparable costs of production, hence able to capture larger shares of the world market) and ideal climatic conditions (Ofosu-Budu & Sarpong, 2013)

Since independence, political commitment to equitable land distribution in many African countries has come in the form of political land reform measures. Land reform schemes, however, have rarely worked to women's benefit except when women have taken control of the process. In fact these schemes tend to undermine a complex public commons system of land use whereby women retain certain rights in customary, common law and local practice, if not in legislation. Land reform almost always assigns formal individuated land titles to male heads of households, regardless of women's economic contribution to the household, their customary rights, or the increasing number of female-headed households (Bullock, 1993). Statutory regulation of title has also served to weaken communal land rights of women and tenants and to downplay the status women as land users. For these reasons land reform needs to be approached cautiously, prudently and contextually if women's access to natural capital and the public commons are to be secured and protected.

### 3.2 The enclosure of lands vs. a public commons framework

Instead, what has happened is that local leaders have felt mounting pressures to protect the clan system, and men and groups of men organized through their lineage, have sought to renegotiate and redefine the formal and informal relationships that in the past supported women's access to land. The eroding bases of customary ownership make women's access to land significantly more precarious.

“As nation after nation has moved to enclose the land commons, traditional pastureland and subsistence agricultural practices have given way to the raising of commercial livestock and cash crops for export markets. The commodification of lands and resources and the rush for profits has destabilized traditional rural communities and overtaxed the carrying capacity of the soil” (Rifkin, 1991). Under the conventional human rights framework, the right to protect one's privacy became the right to exclude and has been applied to the rights to property.

Taking women out of the protection of public commons customary systems and placing the legal control of land in the hands of illiterate women farmers may also be counterproductive. In the context of globally competitive land markets, they might not recognise the market value placed on the land, or may succumb to pressures to sign away their land under promises of compensation, housing or employment. In the present contexts of investor interests in natural capital, individualized land rights on their own are not sufficient to protect rural women's interests. The land and natural resource policy and legal context needs to empower women to take a stand on their rights to secure tenure and access to the public commons.

Under a public commons framework where everyone and no-one owns and stewards natural resources, it might be important to frame HR in ways that protect the right to participate in the commons. This allows communities to exclude or monitor those who are only coming in to extract resources while protecting and including all those who have a vested interest in the long-term stewardship and sustained use of these resources.

The legal systems that African governments have inherited need to be reviewed and a renewed claim needs to be made to ensure that natural capital and public commons are protected on behalf of the communities that live in them. In this period of market instability and high youth unemployment, where the fundamentals of conventional economics are under serious scrutiny, there is scope for prioritizing new ethics<sup>5</sup>, values and principles around the concepts of care for the commons and the welfare of future generations whose lives are inextricably linked with these commons.

---

5. Aldo Leopold (A Sand County Almanac) defined an ethic as a set of rules invented to meet circumstances so far in the future, that the average person cannot foresee the final outcomes. That is why any ethic worthy of the name has to encompass the distant future.

## 4. A review of the World Bank's safeguards

### 4.1 Environmental and social safeguards

Although many World Bank loans and investment activities have de-facto human rights dimensions, the Bank does not have either a human rights policy or stand-alone human rights safeguards. The closest correlate the Bank has to a human rights policy is its social and environmental safeguard policies which were reviewed in early 2015 (Vogt, 2015). Today the World Bank has six traditional safeguards focused on environmental risks and two on risks to vulnerable people (World Bank's Operational Policies (O.P.) 4.01, 4.04, 4.09, 4.10, 4.11, 4.12, 4.36, 4.37) as well as two safeguard policies that concern cooperation between neighboring states. (World Bank's Operational Policies 7.50, 7.60).

While they provide human rights protection in a limited set of circumstances, they remain ad-hoc rather than comprehensive policies. More specifically, the World Bank's environmental and social standard 5: Land Acquisition, Restrictions on Land Use and Involuntary Settlement (ESS5) suggests ways to recompense those people who 'do not have the right to refuse land acquisition' and as a result face physical or economic displacement, loss of income and assets and in extreme cases, forced eviction. Under the current social safeguards, borrowers from the World Bank will only be "required to provide project-affected people with legal and other protections if they have to leave their homes or lands. Due process must be observed and the use of *excessive force* must be avoided". (The Guardian 9 March 2015)

If a human rights framework and approach were to be applied to this standard, it would arguably enable communities and local people to retain their right to refuse land acquisition if they lose access to natural resources. The use of 'excessive force' becomes a mute issue then if in fact people have a right to prevent their exclusion from natural resource access. Under a human rights standard the World Bank would be required to reinforce community consultation processes by mandating recorded evidence of consultation recommendations and taking these into consideration in its investment deliberations. In a recent report, the World Bank admitted that "it had no idea how many people may have been forced off their land or lost their jobs due to its projects. The Bank also did not know whether these people were compensated fairly, on time or at all." (The Guardian 9 March 2015)

#### *4.1.1 Natural resource entitlements*

The OECD DAC, the World Bank and international NGOs are renewing their focus on access to natural resources as a core component of poor rural people's entitlements as citizens. "NRM and agriculture knowledge, technology and public services are of key importance to support NR-based livelihoods, particularly in the face of environmental, climatic and market changes that require new solutions and adaptation"(OECD, 2012, p. 2). These new solutions, behavioural changes and adaptive practices will need a human rights framework in order to be effective in protecting poor people's entitlements.

### 4.2 What would a human rights safeguard policy comprise of?

A stand-alone human rights safeguard policy would have to contain a clear statement that the Bank will *not* support or finance projects that contribute or are likely to contribute, either directly or

indirectly, to human rights abuses, which applies across all human rights and equally to all Bank projects, and it would have to be consistent with international standards and norms pertaining to human rights. From this basis it would then be integrated with the cross-cutting nature of the environmental and social safeguards.

A stand-alone human rights safeguard policy would enable the World Bank to approach and pursue human rights violations in its projects and programs in both a targeted and in a systemic way. It would allow the Bank to identify on the basis of a human rights impact assessment how its lending may impact human rights *ex ante* and determine how to constructively and proactively avoid or mitigate human rights risks.

It would also provide a reference point that enables civil society to hold the Bank accountable to agreed-upon World Bank norms. It would furthermore make it easier to show links between the Bank's projects and programs and human rights outcomes, build understanding and capacity regarding human rights, and raise awareness of the degree to which the Bank impacts human rights. Failure to proceed along these lines on the other hand would mean that the Bank risks falling further behind its regional multilateral counterparts and would spend unnecessary funds and time on arbitration, legal costs, and worse, civil conflicts. By making human rights a key consideration in what kinds of investments are made and how, the Bank can effectively champion the interests of people in their own political and economic self-determination, as well as their rights to environmental and social development.

In the past, representatives of indigenous peoples have criticized accountability at the World Bank to be “much more an exercise of paternalistic ‘good will’ than of adherence to any sense of being bound by a system of constraints grounded in law” (Camilo, 2003). Establishing its own human rights policy would also bring the bank in line with the regional development banks and respond effectively to calls from human rights bodies who have urged the institution to do more to uphold human rights.<sup>6</sup>

The African Development Bank has revised its own safeguard policies stating, albeit only in its preamble, that the Bank is committed to respecting and promoting human rights. The United Nations Development Group has committed to a human rights-based approach to development under which all development programs, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

---

6. The UN special rapporteur on the right to education suggested that an “[A]n effective method of challenging disregard of human rights in macroeconomic policies [would be] a requirement that a human rights impact assessment be carried out before such policies are developed and implemented”; see <http://refworld.org/docid/45c30b2eo.html>, para. 170.

## 5. Human rights standards, access to nature and public commons

### 5.1 From patriarchal traditions to gender-sensitive regimes

Now more than ever, poor women and men must claim their rights of access to natural capital within the framework and cultural context of common property, community rights and community responsibilities and solidarity.

The questions then arise, how can the appropriate aspects of traditional value systems that policed community use of natural resources be adapted to a gender-sensitive application of rules and procedures that empowers both men and women in these communities? How can the empowerment of women within the collective framework secure their rights to natural resources? How can rural communities that sustained a non-formal rural economy be supported as they enter unmediated agreements in the formal economy that expose them to the risks of global markets?

In the face of growing privatization of land holdings, governments and land rights organizations need to urgently consider alternative models of ownership that secure land and natural resources under a ‘common license’ held in trust for future generations. At the same time, civil society organizations and women’s interest groups need to stop asking for *special considerations for women within the existing economic framework* and start engaging both women and men, and especially disempowered women, in developing entirely new terms of what progress and prosperity mean and look like to them. Traditional value systems that were once in retreat need to be reconsidered and reclaimed.

### 5.2 Closing the asset chasm through ‘open access’ and collaboration for the commons

One solution offered by Elinor Ostrom proves that economic activity can be effectively regulated by *collective social activity*. Applying the term Common Pool Regimes (CPR) to categorise such forms of property, Dr. Ostrom documented the collective community ownership of resources by rural communities that foster the evolution and adaptation of sustainable resource systems (or regimes). Along with clear rights and functioning policies for public goods and the commons, fostering collective rights to common property helps to secure the future provision of ecosystem services. Ostrom challenged mainstream thinking that common property is poorly managed unless regulated by government or privatised and proved that individuals can successfully form collectives that protect the resource at hand. This way of thinking sits at the heart of the way pastoralists and rural women might measure the value of natural capital – where the very idea of private ownership of part or all of an ecosystem runs counter to communal access to the biosphere.

A well-established body of research demonstrates how for example ‘common property’ or ‘joint management’ systems are often highly effective at managing resources, with lower transactions costs, and less likelihood of exclusion of the poor and marginalized (see for example work collated by the International Association for the Study of Common Property;<sup>7</sup> the CGIAR system-wide programme of common property and collective action; and the Land Tenure Center.) Such systems do not operate in isolation of the socio-cultural context, and different property regimes can interact and overlap in an area. A Policy Brief from the South Africa-based Programme for Land and

---

7. <http://www.iasc-commons.org/>

Agrarian Studies (PLAAS) argues for “supporting existing social practices that have widespread legitimacy”. The Brief highlights the importance of understanding the “social embeddedness” of property relations; the layered and relative nature of rights, and the flexible character of boundaries. Gaining access to key livelihood assets - whether land or housing - occurs through a range of institutional routes, and formal title is just one, and in many settings very limited, part of a more complex picture. Protecting women’s land security through policy and institutional frameworks for the management of complex, multiple tenure arrangements is key.

### 5.3 Drawing from the example of broadband spectrum

In the age of networked intelligence, new models for governing, sharing and participating in public commons, including for instance, the regulation of broadband spectrum have been successfully negotiated. Nations have sovereignty over their broadband spectrum, and they typically reserve big patches of it for national security considerations, their public service obligations (e.g. to give national television access to the air waves), and private sector interests (auctioning off slices of the spectrum for multiple uses; radio, Internet, etc.). Regulators determine what slices are kept for public use (public commons), and what part of the spectrum can be/should be sold off. This suggests that there are windows of opportunity for innovation and new thinking of community rights in relation to the public commons that is natural capital.

### 5.4 Human rights safeguard policy and country-ownership/use of Country Systems

Over the past decade developed and developing nations alike have agreed on a universal set of principles and actions to guide development efforts. These are outlined in the Paris Declaration on Aid Effectiveness (2005), the Accra Agenda for Action (2008) and the Busan Partnership for Effective Development Cooperation (2011). These documents highlight the core principles of ‘ownership’ and ‘mutual accountability’<sup>8</sup>. These principles need to be reviewed and built upon in the crafting of human rights policy and human rights safeguards.

In the human rights safeguard context, a government can legislate new laws, but many governments are not yet able to adequately protect their people from human rights harms and violations associated with international investments. Complex historical, political, and economic factors and, in many cases, the legacy of colonialism, land use systems and trade regulations and stipulations influence the ability of governments to function effectively and equally on behalf of all its citizens. This makes the rapid introduction of country systems not possible for some time to come and the continuation of a reinforcing ‘dual track’ approach unavoidable. Applying the principle of country ownership and building country systems can enhance safeguard effectiveness in the long run. It furthermore enables countries to work within their own familiar policy and institutional structure, which may enhance their ability and commitment to successfully complete safeguard responsibilities (Vogt 2015).

---

8. The remaining three principles are alignment, harmonization and results.

## 5.5 Operationalizing a human rights safeguard policy in relation to natural resources: some key questions to consider

The top-down approaches to defining measurement frameworks need to be complemented by parallel bottom-up approaches; the latter, where they exist at all, have been severely and consistently weakened. Indicators need to be developed at the very local level in close and collaborative consultation with communities and politically marginalized groups within those communities.

Those who are affected must have a say in the decisions that affect their lives. Consultation would ensure that affected individuals and organizations are able to meaningfully participate in crafting development choices and agendas, reforming policy, strategy documents, identifying, preparing, and carrying out projects, and in human rights impact assessments

A stand-alone human rights safeguards policy should also absorb the existing social aspects' safeguards including involuntary resettlement, indigenous peoples, physical cultural resources, gender, labor, persons with disabilities, children, the elderly, as well as principles of non-discrimination, participation and transparency. It should capture minimum standards based on internationally accepted norms as embodied in international agreements, customary international law, and legal systems across the world, and it should be applied to all types of Bank supported activities including Development Policy Lending/DPL, Program for Results (P4R), financial intermediary lending, technical assistance, and other advisory services to ensure universal application and prevent leakage.

## 6. Key recommendations and ways forward

### 6.1 Applying community rights to land: with gender sensitivity

In a land situation where ownership is relatively less important than access, how can the rights of access be secured? Perhaps the time has come to reapply the rights of communities to the land, not just in terms of tenure but also in terms of how the land is treated for generations to come. Within this framework, new approaches to applying terms that respect the rights of women equally with men are needed. This might appeal to all rural constituencies; the dispossessed, the disenfranchised, rural women and those who are standing up for their land rights.

A recent paper by the (Asia) *Working Group on the Rights of Peasants and People living in Rural Areas* (2015) makes a number of important recommendations on The Right to Land and territories (Natural Resources). A few are relevant to the African context including:

- Rural women's right to land is a human rights issue as her life and livelihood are connected to it. Access to land is not only an issue of land rights but it is recognition of traditional livelihoods, women's work, women's contribution and women's role in development.
- The existing gender differentials in access, ownership and control of land, water and forests require that women's equal legal rights to inheritance are legislated and protected. States should take affirmative action in all public distribution lease of land, water bodies, forest produce to protect and promote women's livelihoods and reach the goals of substantive equality. States may also purchase land from the market and distribute it to landless rural women.

- States should undertake equitable distribution of land and water use to support livelihoods of women peasants and prevent dispossession of resources from peasants to corporations.
- Women's group at community level should be provided with collective rights for previously unused or fallow lands.

## 6.2 Transformative change requires going back to the drawing board

Women's relationships with natural resources require transformative change to current practices and policies that discriminate against or undervalue women and their productive activities. Some fundamental bases for change include:

- **Correcting gender imbalances in land holding and use** through deconstructing, reconstructing and reconceptualising existing rules of property in land under both customary and statutory law in ways that strengthen women's access and control of land while respecting family and other social networks. This would be consistent with commitments made by African states in the AU's 2003 Maputo protocol to the ACHPR on the *Rights of Women in Africa* and the 2004 *Solemn Declaration on Gender Equality in Africa* which call for action to address gender inequalities including women's unequal access to land;
- Empowerment of women within the holistic agro-ecological framework – integrating farming practices with food security and natural resource management through changing farm practices to holistic agro-ecological systems, including tried and tested models like organic and permaculture farming which integrate community management of natural resources with food production activities<sup>9</sup>;
- Enhancing the proactive contribution of women in defining and implementing alternative solutions to their local fuel needs, shifting towards clean and renewable energy systems;
- Supporting the mobilization, political consciousness and organisation of rural and urban women to improve their situation, influence policy and realise their rights – at decentralized, local, national and political levels;
- Raising public awareness about rights and access to natural resources as both a public service and a human rights concern.

---

9. IAASTD (2009) concludes that *small-scale farmers and organic, agro-ecological methods are the way forward to solve the current food crisis and meet the needs of local communities*. Greening agriculture in developing countries and concentrating on smallholders can reduce poverty while investing in the natural capital on which the poor depend. Greening the small farm sector through promotion and dissemination of sustainable practices could be the most effective way to make more food available to the poor and hungry, reduce poverty, increase carbon sequestration and access growing international markets for green products.



## 7. Conclusion

Human rights have become a Trojan Horse, conscripted to spread a particular economic agenda founded on individual property rights. The attainment of the right to own cannot be understood as a sufficient means to level the playing field for rural women. Instead, the property and environmental wealth of the weak is exposed and vulnerable to the agenda and incursions of the powerful.

A holistic recalibration of natural asset values has to take place at the community level with the involvement of men and women in the community. Enabling people to grasp the imperative of organising and mobilizing to work together to maintain the value of their common assets will require taking a longer view on economic and social / cultural development.

It is increasingly apparent that the realization of civil and political rights alongside economic, social and cultural rights is indispensable for sustainable growth and human development. The post 2015 principles currently under discussion relate to *integrated* approaches to development, equality, human rights and resilience – building environmental sustainability as a fundamental factor in human development and well-being.

The lofty universal principles of human rights need to be brought down to scale, translated into the nuts and bolts of policy and practice, and integrated with environmental and social, public and private, individual and community, national and local interpretation and valuation of human rights. A complex undertaking, this will require nuanced and culture-specific competencies and concerns, considerable political sensitivity and the wholesome engagement and participation of the local peoples involved.

As much as human rights is about self-determination, power and empowerment, the road to put in place the necessary policies and practices to bring about the realization of these objectives will require commitment, engagement and personal and professional leadership. We need to use all avenues at hand to protect the futures of African generations to come. Building the awareness of grassroots women of their collective human rights, and applying these as investment standards - will be one such avenue.

## References

- Balachandran, Lakshmi, E. Herb, S. Timirzi and E. O'Reilly (2012) *Everyone must eat? Liberia, Food Security and Palm Oil*. (Paper presented at the International Conference on Global Land Grabbing II October 17-19, 2012. Organized by the Land Deals Politics Initiative (LDPI) and hosted by the Department of Development Sociology at Cornell University, Ithaca, NY.) Available at: <http://www.cornell-landproject.org/download/landgrab2012papers/balachandran.pdf>.
- Bullock, S. (1993) *Women and work, women and world development series*. London: Zed Publications.
- Camilo, P. B. (2003) Towards International Poverty Law: The World Bank, Human Rights, and Indigenous Peoples in Latin American. In H. Van Genugten, W. & S. P., Mathews (Eds.), *World Bank, Human Rights, and IMF*. Nijmegen, Netherlands: Wolf Publishers.
- IUCN (2009) *Understanding Diversity: A Study of Livelihoods and Forest Landscapes in Liberia*. Report prepared for Livelihoods and Landscape Strategy, Forest Conservation Program. [http://cmsdata.iucn.org/downloads/liberia\\_lls\\_report\\_sept\\_2009.pdf](http://cmsdata.iucn.org/downloads/liberia_lls_report_sept_2009.pdf).
- Kachingwe, N. (2012) *From Under Their Feet: A Think Piece on the Gender Dimensions of Land Grabs in Africa*. ActionAid International.
- Knight, R., Kpanan', S., Siakor, A., & Kaba, A. (2013) *Protecting Community Lands and Resources: Evidence from Liberia*. Retrieved from [http://www.sdiliberia.org/sites/default/files/publications/2013 Protecting Community Lands and Resources.pdf](http://www.sdiliberia.org/sites/default/files/publications/2013%20Protecting%20Community%20Lands%20and%20Resources.pdf).
- OECD (2012) Empowerment of poor rural people through initiatives in agriculture and natural resource management. OECD. Retrieved from <http://www.oecd.org/dac/povertyreduction/50157503.pdf>.
- Ofori-Budu, K., & Sarpong, D. (2013) Oil palm industry growth in Africa: A value chain and smallholders study for Ghana. In A. Elbehri (Ed.), *Rebuilding West Africa's Food Potential*. FAO/IFAD.
- OXFAM (2013) *Promises, Power, and Poverty: Corporate land deals and rural women in Africa*. Retrieved from <https://www.oxfam.org/sites/www.oxfam.org/files/bp170-promises-power-poverty-land-women-090413-en.pdf>.
- Rifkin, J. (1991) *Biosphere Politics: A New Consciousness for a New Century*. New York, NY: Crown Publications.
- UNEP (2011) *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication - A Synthesis for Policy Makers*. Retrieved from [http://www.unep.org/greeneconomy/Portals/88/documents/ger/GER\\_synthesis\\_en.pdf](http://www.unep.org/greeneconomy/Portals/88/documents/ger/GER_synthesis_en.pdf).
- Vogt, E. (2015) Establishing a Human Rights Policy for the World Bank: Toward integrating Human Rights within the Environmental and Social Safeguards (forthcoming). *Environmental Policy and Law – The Journal for Decision-Makers*, 45(3).



African Centre for Technology Studies (ACTS)  
P.O. Box 45917, Nairobi, Kenya  
Tel: (254-2)710 60 72 10  
E-mail: [info@acts-net.org](mailto:info@acts-net.org)  
Website: [www.acts-net.org](http://www.acts-net.org)  
ISBN 9966-41-178-X