

Maximizing Achievements in Human Rights Development: Arguments for a Rights-Based Approach to Land Tenure Reform

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Abstract

In the past, the human rights agenda lacked persuasive power over international development practitioners for two main reasons: 1) human rights are inherently political and therefore threaten the acceptance of international development agendas by recipient governments, and 2) human rights are not conducive to benchmarks and indicators, which donors require as measures of accountability, transparency, and proof of effectiveness. This paper provides a case for how and why a “rights-based approach” (RBA) to land management creates better development outcomes than a traditional development approach, even when measured with the same indicators such as poverty reduction, household level food security, women’s empowerment, and sustainable development.

Introduction

Of the 1.4 billion people who live on less than \$1.25 per day, approximately 1 billion live in rural communities without secure access to land. Among this population, several hundred million are believed to lack any access to land.¹ Worldwide, the number of landless individuals continues to rise, as 19.5 million hectares of farmland are repurposed for industrial and real estate development each year.² As communities encroach into forests, wetlands, and other natural habitats, it is the most marginalized peoples, including women, the very old, the very young, disenfranchised minorities, and the poor, who are the most vulnerable to shifts in land management policies. The discussion of how best to manage land use is increasingly relevant as population growth, high food prices and demand for food commodities, climate change, and a burgeoning market for agro-fuels place ever-higher pressure on land use, creating asymmetric risk for these poor and marginalized populations.³

Secure access to land has been shown to produce positive outcomes for development indicators such as poverty reduction and improved nutrition, among others. On the

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contrary, lack of secure access can relegate individuals to a cycle of poverty, in which formal landholders, government authorities, or more powerful individuals can mandate forced displacement at any time. Subsequently, insecure land tenure disincentivizes long-term investments, such as infrastructure development, sustainable land use, or more profitable crop production because the land and non-portable assets can be re-appropriated at any time.

Therefore, to catalyze pro-poor, sustainable development, it is necessary to find rights-based solutions that provide secure access to land such that no groups or individuals are systematically excluded. Such an approach can simultaneously further progress toward the economic benchmarks set by international development organizations and the achievement of human rights goals set by local and international human rights organizations. At first glance, this dual achievement may not appear

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significant; human rights and international development share a similar vision of a world where all people can grow and prosper, free from hunger, fear and want. However, the road to this vision is long, and there are differing viewpoints on the best way to get there.

This paper will explain how and why a “rights-based approach” (RBA) to land management creates better development outcomes than a traditional development approach, even when measured with the same indicators of poverty reduction, improved nutrition and household level food security, gender equality and women’s empowerment, peace and security, and sustainable development. Section II will review the international development approach in contrast to the human rights approach to better understand the differences,

as well as the implications that these differences have for international development interventions, and how an RBA to land management can bridge this divide. Section III will examine the precedent for an RBA to land management and describe what an RBA to land management might look like. Section IV will discuss why access to land is a strategic entry point for international development organizations, exploring the role that property rights play in attracting foreign direct investment (FDI) and increasing productivity of small-scale farmers. Section V will explain how an RBA can promote international development goals and avoid entrenching economic and social inequalities, which historically are common pitfalls of commoditization of land and formalization of tenureship. The final section will provide reflections on why an RBA to land management should be a compelling approach for international development organizations.

Examining the Difference between International Development and Human Rights Approaches

Generally speaking, international development organizations and human rights organizations take different approaches to catalyzing change, crudely simplified to an economic approach and a political approach, respectively. Traditionally, international development organizations, including the World Bank, the International Monetary Fund (IMF), and a host of national aid agencies, focus on providing access to commodities and services, particularly those most basic and essential for survival and well-being. These organizations distribute aid in the form of grants, loans, and project-based assistance, often targeting the poorest of the poor in developing countries. Avoiding politics allows development organizations to maintain access to poor and vulnerable populations worldwide without being hampered by political agendas of recipient countries or local perceptions of differing groups.⁴

At the national level, countries often limit or reject foreign assistance, reflecting the perceived tension between aid and intervention. At a local level, perceptions of favoritism between different ethnic, religious, or social groups can cause conflict, e.g., development assistance intended to achieve security goals and “win hearts and minds” in Afghanistan was channeled to the least secure areas rather than secure areas in need of assistance. Each group believed that aid allocation was biased, and viewed gains for others as a personal loss, resulting in increasingly negative views of the U.S.⁵ For a historic example of the institutionalized division between economic and political approaches to development, consider the World Bank charter at Article IV, Section 10, which states, “The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned.”⁶ This provision was written to nominally distinguish American foreign aid from the American political agenda with the belief that economics and politics could be kept separate in the world of international development.⁷ While the lines between the economic and political approaches to development are often blurred, this theoretical division still colors all aspects of the international development field, from rhetoric to funding allocation and program design.⁸

To the contrary, human rights organizations such as Human Rights Watch and Amnesty International, among others, are strongly politicized. The human rights doctrine, as enshrined in the International Bill of Human Rights, maintains that all human beings, regardless of race, color, sex, language, religion, political affiliation, national or social origin, birth or other status, should be empowered to claim civil and political (CP) rights, and economic, social, and cultural (ESC) rights.⁹ Further, these rights are considered “universal and inalienable; indivisible; interdependent and interrelated,” and of equal importance such that none can be fully enjoyed without the others.¹⁰ For human rights advocates, the decision to compromise human rights in favor of service provision risks achieving short-term poverty reduction while entrenching marginalization. From this position, wealth without empowerment is a fallacy.

Human rights aspirations are ambitious even outside the resource-strapped field

of international development. Practitioners at multilateral and bilateral development organizations who are sympathetic to the human rights agenda identify the need to prioritize actionable goals in development interventions, both out of a feeling of responsibility to beneficiaries and to demonstrate impact to donors. Furthermore, for development agencies, the political nature of the human rights doctrine is a possible handicap to achieving development goals. Therefore, development organizations have traditionally avoided the use of rights-based language in their missions or goals, preferring to view rights as a potential positive by-product of development work. In sum, the human rights agenda lacks persuasive power for instrumentalist development practitioners for two reasons: 1) it is inherently political and therefore threatens the acceptance of international development agendas by recipient governments, and 2) it is not conducive to benchmarks and indicators, which donors require as measures of accountability, transparency, and proof of effectiveness.

Yet upon closer examination, an RBA to development, whereby human rights along with economic security are understood as constitutive aspects of development, and intrinsic to the achievement of international development goals, would in fact better achieve development goals.¹¹ This has been particularly well-illustrated in the process of land management, specifically land tenure security, defined as a situation in which a group or individual: “. . . is confident that they have rights to a piece of land on a long-term basis, protected from dispossession by outside sources, and with the ability to reap the benefits of labor and capital invested in the land, whether through direct use or upon transfer to another holder.”¹² Land tenure can be assessed using three measures: breadth (quantity and quality of land held, e.g., right to exclude others, to plant and harvest crops, to sell or lease land), duration (length of time for which tenure rights are valid) and assurance (the certainty of the breadth and duration).¹³ Each of these measures establishes a different component of security, which if enforced, moves land tenureship closer to a right to land.

While international development agencies such as the World Bank and the IMF have largely embraced the notion that secure ownership, property, and contract law promotes development by creating investment-friendly environments, they have stopped short of promoting a rights-based approach to land ownership.¹⁴ This, despite the fact that empirical observations and formal studies reveal that land titling programs that do not consider rights often result in the further marginalization of women, minorities, and the poor, thereby failing to achieve development goals of pro-poor growth.¹⁵ Conversely, where land management takes an RBA, the results have been notable: individuals, empowered by the right to use, manage, and exploit property, achieve not only economic growth, but also make social, political, and environmental gains.¹⁶ Analyzing approaches to land tenure reform may help identify the concrete added value that an RBA brings to development programs, thereby giving a clear and functional reason for the development community to seriously consider adopting an RBA.

Precedent for an RBA to Land Management: Considering the Options

A Human Right to Land Ownership

For rural poor people, access to productive land is an essential prerequisite for the realization of a range of human rights, including access to food, livelihood, and shelter.¹⁷ Landlessness in the context of inadequate housing is one of the strongest indicators of poverty, hunger, and homelessness, and threatens the fulfillment of a number of human rights, including certain ESC rights, as well as access to CP rights.¹⁸ Both formal and informal laws govern land management. Complex and overlapping systems of land management, as well as unique social and cultural values attributed to land, often constitute sources of conflict. Shifting property rights can curtail access to land for certain people, and allow economically, socially, or politically powerful players to exploit the system for personal gain. On the other hand, security in land rights has the potential to help develop equitable relations among social groups, thereby contributing to justice, peace, and sustainable development.¹⁹

Across much of the developing world, customary and local norms dominate land management. The World Bank estimates that across Africa, less than 10 percent of land is held under formal land tenure, most of which is urban rather than rural.²⁰ Formal legal codes tend to focus on individual and private ownership rights, usually permitting alienability (i.e., transferability) inside and outside of the group, and allowing property owners the right to exclude others.²¹ Conversely, customary systems are often community-oriented, denying landholders the right to transfer land outside of the group, and permitting various groups to use the same land for different purposes, including grazing herds, collecting firewood, or harvesting fodder.²² When formal and customary practices overlap, different people often believe they are entitled to the same property, resulting in conflict. However, in both formal and customary land management, there are hierarchies whereby certain groups hold power and other groups are excluded and marginalized.

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A “right to land” is not legally codified in any international legal instruments, including human rights covenants, treaties, or declarations.²³ Convention 169 concerning Indigenous and Tribal Peoples, adopted by the International Labor Organization (ILO) in 1989, is the only internationally binding instrument on the rights of indigenous peoples. Article 14 relates to land and “requires States Parties to identify lands traditionally occupied by indigenous peoples and guarantee ownership and protection rights.”²⁴ While Convention 169 and other international legal instruments address the importance of land, each stop short of explicitly recognizing access to land

as a human right. Although it would arguably be impossible to enforce a right to land, this is not distinct from other human rights, which in practice, often serve to set a shared goal more than resulting in a new reality. The ensuing lack of clarity about the extent to which state and non-state actors are obliged to ensure access to land as a component of protecting livelihoods and culture leaves significant flexibility for interpretation. Therefore, although the international development community may agree that rural poor people should not be excluded from land use, there are currently no international standards and no legal mechanisms to ensure accountability, enforcement, or regulation of land rights and access to land.

While codifying access to land as a human right could help establish standards and accountability, such a proclamation would also present a variety of challenges. First, although access to productive land is essential for rural poor people to achieve development goals, it is less important for urban dwellers, particularly those in the middle and upper class. This implies that individuals have different needs when it comes to land, and therefore unlike universally applicable human rights, the right to access land is defined differently for different people. Any law delineating a human right to land must account for this, perhaps by focusing on land as it relates to livelihoods. Second, although an RBA stresses that every person has certain rights (e.g., to food, shelter, livelihood, etc.), efforts to acquire such rights must not infringe on the individual rights of others or violate national laws. This is particularly relevant to the case of access to land, where in the past, land reform has often meant land redistribution. Such government-led policies, in which land is forcibly transferred from certain groups to others without providing just compensation, creates a host of political and human rights concerns and can instigate enduring tension and conflict. Historically, such policies have often followed civil war or significant political change.²⁵ Further complicating the issue is the reality that states may not have the capacity to provide land to all citizens, the legal or administrative resources to title land, or the political will to do either.

Policy that transfers significant portions of land and provides just compensation is usually too expensive for a state to implement at scale. One proposal to address the issue of cost is to focus on provision of micro-plots, as small as 0.10 acres, which do not require the same scale of land transfer and redistribution, yet still provide significant benefits for people who own only the land their home is on, or rent from a landlord.²⁶ A second concern is that newly landed people will sell their land and return to their initial state of landlessness. However, secure land tenureship also provides an avenue for just compensation, and so long as land is sold at an appropriate price under fair and transparent terms, the right to sell is an aspect of empowerment. These challenges reflect the complexity inherent in land management and the need for an approach that allows for a degree of flexibility to create situation-specific policies and address unpredicted outcomes, while still aiming to achieve security in land tenure.

An RBA to Land Management

An RBA to land management does not necessitate that land ownership be codified as a universal human right. Rather, an RBA to land management would first consider how land policies impact the ability of any individual to claim his or her ESC and CP rights, and second, empower these individuals both a means and an end to achieving sustainable development in a given community. As discussed, access to land has particularly acute ramifications for rural peoples' abilities to secure rights. In this context, an RBA to land management can serve as a targeted tool to support poor, vulnerable, and land-dependent populations gain secure access to land such that they can realize their ESC and CP rights.

In practice, an RBA to land management would require five key components, two in a theoretical domain and three in a practical domain. Within the theoretical domain, an RBA would first ensure that people who are the most affected by access to land (i.e., landless and poor farmers, indigent peoples, pastoralists, and others for whom access to land is essential for survival) participate in the creation, development, and implementation of these policies. Second, an RBA would require that groups that most need access to land are not excluded, regardless of potential conflicting government priorities to catalyze economic growth, improve infrastructure, increase agricultural production, or achieve some other benefit.²⁷

In the practical domain, an RBA to land tenure reform would require explicit reference to an international law that justifies and protects access to land for those who depend on it as an internationally recognized human right. This could be done, for example, via article 1.2 of the International Covenant on ESC Rights, which states, "In no case may a people be deprived of its own means of subsistence."²⁸ Substantiating a right to land in an international legal agreement would establish the groundwork for a normative consensus among state and non-state actors on their obligations and responsibilities. As with other human rights enshrined in international law, a legal justification for access to land could prompt mechanisms to enforce, protect, and regulate those rights. Additionally, others have argued that although a legal framework cannot change culture, it legitimizes the possibility of change and allows those who are passionate or desperate enough to seek change through legal means.²⁹ Forth, states must implement specific national-level legal measures to ensure that the most vulnerable groups receive access to land as needed and to protect access rights in the long term. This is clearly a complicated stipulation, and it touches on sensitive issues of land redistribution and

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resettlement. Policies of just compensation, transparency, and respect for indigenous peoples' rights to land are important, and although they do not provide a panacea, they can help mitigate these concerns. Finally, as with all policies, accountability at the level of national governments and international organizations is a necessary prerequisite for an RBA to be effective. In the short and medium term, especially in much of the developing world, a sufficient degree of transparency and accountability may be unrealistic. However, the path to rule of law is not straight and narrow—the international development community should support an RBA to land management to guide goals and expectations for state and non-state actors.

While the proposal for an RBA to land management sounds ambitious, international development organizations already engage in the field of ownership policy, with the recognition that security in land tenure creates investment-friendly environments, subsequently fostering various forms of development, including increased GDP, an energized job market, and investment in infrastructure.³⁰ An investment-focused approach may be effective at achieving the aforementioned goals. However, international development organizations should take an RBA so as to maximize both economic and rights-based outcomes. The next section considers how systems of land management have increasingly become strategic entry points for international development organizations striving to catalyze economic growth via FDI and small farm productivity. Both of these approaches have inherent risks for development goals that an RBA can help avert, which will be discussed below.

Secure Access to Land as a Strategic Entry Point for International Development

To Increase Foreign Direct Investment

One rationale for promoting institutionalized private property rights in favor of localized customary law is that a predictable and transparent system is essential to foster a market economy, economic growth, and poverty reduction. Hernando de Soto, famous for his argument that property and contract law explain the discrepancy between standard of living in “developed” and “undeveloped” countries, explains that even invasive structural readjustment is merited to speed the establishment of a formal property rights system:

If we don't do anything explicit [...] it could take 300, 500 years. [...] What we say in *The Mystery of Capital* is that there are shortcuts, and once we learn what you [the West] did, what was necessary, especially the importance of property rights beyond ownership, we should be able to get there very quickly. The Japanese did it, for example, under MacArthur's occupation. They converted from a feudal system to a property-ownership system.³¹

Subsequently, development practitioners and academics in the fields of economics and political science have focused on how formal legal structures and market-based land reform attract FDI and create the necessary environment for secure land tenure.

De Soto argues that FDI is a potential driver of international development and

uses the case of Peru to illustrate a positive spillover effect that property rights can have for national and family level economic growth. He suggests that engaging in the formal economy is more efficient for governments, businesses, and individuals, while participating in an informal system incurs a host of costs. First, informal businesses must remain undetected by authorities, which limits growth and capital investment, prevents marketing of products, and often requires paying bribes to avoid forced closure, arrest, or eviction. Second, the loss of profit to the formal system results in indirect taxation and inflation. Informal businesses cannot receive any of the formal reciprocal gains offered to legal entities. Finally, the cost of evasion prevents technological advancement and limits access to skilled labor.³² Participating in the formal economy also has costs, including taxation, adjudication, and the procurement of necessary permits and permissions. Without strong laws and law enforcement, maintaining a formal economy can be time consuming, cumbersome, and corrupt. The time that an individual must spend adhering to administrative procedures rather than engaging in productive labor represents system inefficiency, causing profit loss and opportunity cost.³³

These opportunity costs for individuals are amplified in the national economy. At a national level, costs of customary systems can include reduced national productivity in the case that customary law conflicts with civil law or limits certain individuals' ability to use land productively, decreased investment to the extent that foreign investors view the market as hostile to their interests, inefficiencies in tax systems that rely on the relatively small number of individuals participating in the formal economy, and the difficulty of formulating good macroeconomic policy due to inadequate information about the overall national economy. Therefore, de Soto argues that national economies and, by proxy, the international economy have much to gain by improving access to and efficiency of the formal economy, of which property rights are a large part. De Soto further asserts that in addition to attracting FDI, a strong legal system promotes rule of law, political stability, and social justice, and it is therefore the main explanation for the discrepancy between the standard of living in industrialized and non-industrialized nations.³⁴ De Soto's argument makes a compelling economic case for property rights entirely apart from any human right to access or use land.

This argument resonates with international and national development organizations, which consequently dedicate substantial aid in the form of grants and loans to institutional reform, including promoting free market mechanisms like private property and ownership, free trade, and market transparency.³⁵ As the spillover theory has gained traction over the past fifty years, legislation that regulates property and ownership has become increasingly popular with both international development organizations and governments of developing countries.

To Bolster Small Farm Productivity

A second prong of de Soto's argument explains that security in land ownership can catalyze development at a grassroots level. Research has shown that, in general,

when people have secure land tenure, the result is higher productivity and farm yield, more efficient land use, fewer land disputes, increased access to credit, increased investments in land in terms of infrastructure and housing, reduced costs incurred through protection of informal land holdings, more responsible land stewardship, political stability, and reduced pressures for urbanization.³⁶ On the other hand, a lack of security of land rights results in economic inefficiencies and limitations, including construction of expensive fences to demarcate borders, land disputes that require mediation or litigation, and an incentive to reap profits in the short term at the expense of environmental sustainability.³⁷

The rise in productivity observed in association with secure land tenure has been credited to “the release of vast personal energies of the new owner when he has at last become free to determine his own destiny,” rather than a change of inputs, such as improved equipment, technical advice, or financing.³⁸ The central advantage, then, to providing people with secure land tenure according to this argument is that increased productivity can be exchanged for other material or non-material assets. Even a plot of land as small as 0.10 acres can support sufficient produce to bolster the diet of a single family, decreasing food costs and improving nutrition. For example, in the former Soviet Union, small plots called *dacha* plots, averaging 0.15 acres, have shown to be disproportionately productive compared to larger plots.³⁹ Currently, about 14 percent of agricultural land in the form of *dacha* plots produce over half of the region’s agricultural output.⁴⁰ In the case that the land yields more than a family consumes, produce can be sold or bartered with neighbors or in the local market. Even minor profits can provide resources sufficient to enhance child nutrition, decrease time spent

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gathering food and firewood, and increase family income. Slight improvements in each of these categories can be sufficient to fight malnutrition and child mortality, allow children to attend school, increase access to healthcare, and expand future opportunities, effectively lifting families out of the cycle of poverty and allowing them to chart a new path toward development. This explanation for increased productivity and its impacts implies that property ownership is empowering and gives people the ability to actively pursue and achieve development goals.⁴¹

Securing long-term ownership also incentivizes sustainable farming practices, which in turn derive positive externalities, including enhanced land quality and higher productivity.

For example, instead of growing short-term cash crops that exhaust the soil, farmers might plant orchards or other food commodities that have higher margins of return but can take years or even decades to become profitable. Ownership also encourages

practices such as irrigation, agroforestry, and use of organic fertilizer that over time improve crop yield and soil quality. Although long-term investment typically yields lower immediate profits, such practices can boost long-term land value and future payoffs. This aspect of sustainability, as well as environmental responsibility, is an integral component of the international development agenda.

A third potential benefit arising from formalizing land tenureship is that land becomes a transferable asset that can function as a safety net in times of financial crisis, as collateral for a loan, or as a secure investment in an unpredictable economy.⁴² In urban areas in particular, those without secure land rights must constantly occupy the land they are using, or risk eviction or displacement. The threat of eviction can create psychological and economic stress. This is generally a greater concern in urban or peri-urban areas, or in rural regions with significant natural resources. Without secure title to land, rural and urban poor have little leverage to protect themselves against eviction. Further, eviction can severely curtail livelihood opportunities.⁴³ Those left at home to guard the nest are often women or children.⁴⁴ Secure land rights allow women and children to join the public sphere, either working or attending school. In this way, responsible land tenure reform can help achieve development goals of gender equality and access to education.

Regardless of this evidence in favor of formal land ownership policies, few developing countries have well-established, formalized, and enforced legal frameworks for land ownership. In addition, even if a government sees the benefit of formalizing property laws, it is unlikely to voluntarily seek to empower marginalized populations. Quite the contrary: marginalized peoples typically have different political, religious, or social interests; they are marginalized for a reason. Additionally, in resource-poor economies, governments might be wary of giving any additional rights to citizens that could be politically or financially costly in the future. However, from the standpoint of the international development community and local populations, an RBA can help ensure that interventions that seek to formalize land management policies do not inadvertently entrench and codify social inequalities.

Problems with the Current Approach: Lost Opportunities to Achieve Development Goals

As previously discussed, many developing countries depend almost entirely on customary land tenure systems, which tend to differ from formal land systems with respect to land alienability and rights to exclude others. Many land titling programs do not account for these basic differences, or other social, cultural, or political characteristics unique to a given community. Communities are in fact often divided along ethnic, age, religious, and gender lines, and therefore some members of the community hold power while others, most often poor people and women, tend to be marginalized.⁴⁵ Due to existing inequalities, the commoditization of land, be it via formalizing land tenure or privatizing government-held land to individuals or groups, can easily result in unfavorable development outcomes. For example, commoditization

of land can both entrench social hierarchies, often by failing to account for gender discrimination, as well as facilitate “elite capture,” whereby wealthy, influential, or socially empowered groups receive formal control over land, to the detriment of

Case Study on Community Based Land Management by Forest User Groups in Nepal

In the 1990s, Nepal embraced a system of community based resource management (CBRM) in the form of forest user groups (FUGs) to reverse nationalization policies that had incurred a tragedy of the forest commons. Subsequently, over 25 percent of Nepal’s population has been organized into 14,000 FUGs, which manage nearly 1 million hectares of forests out of a total forested land area of approximately 4.2 million hectares.⁴⁶ Research has found that just as with providing secure land tenure for individuals, ensuring access to forest resources for community members vastly enhances resource management. Due to actions taken by FUGs, forests have been regenerated, biodiversity has increased, access to forest products has improved, and significant local income has been generated. However, FUGs have not achieved the social development goals, such as women’s empowerment and pro-poor growth, that advocates believed might be an additional benefit derived from community management.⁴⁷ Therefore, while FUGs have achieved the original development goal of improving sustainable resource use, they have fallen short of achieving greater social welfare. FUGs provide a useful illustration of how the process of privatization of land resources can entrench social hierarchies.

The belief that CBRM will produce pro-poor development outcomes assumes that groups are inclusive, representative of community interests, and fair for all members. These assumptions, however, do not hold, particularly in Nepal, where a caste system dictates people’s positions and opportunities in life.⁴⁸ Because FUGs include members from different castes, religions, and socio-economic levels, inclusion does not equate to participation. Just as the elites dominate decision-making in society at large, they dominate in user groups. In the case of CBRM, this is particularly concerning because typically, poorer members of the community are more dependent on forest resources for livelihoods and survival, while wealthier families have alternative sources of income. Additionally, in Nepal, women are responsible for collecting firewood and fodder from the forest for daily family needs. Therefore, while the socially disenfranchised (women and lower caste members of society) have less decision-making power over how, when, and who can use forest resources, they are disproportionately impacted by changes in forest management policy.

Further, many FUGs require a nominal membership fee, which effectively excludes the poorest community members and leads families to pool resources and purchase membership for a single family member. In practice, the family

representative is almost always a male head of household.⁴⁹ Additionally, the location of FUG meetings has been found to have a significant impact on participation: when held in the house of a high-caste person, people of lower castes remain outside, effectively excluded from significant negotiations and decision making. This illustrates the need to consider both who is formally invited to participate, and the extent to which their participation is made meaningful.⁵⁰

Andrea Nightingale provides an illustrative example from research in the upper Karnali zone of Nepal, where she observed FUGs for a year. Nightingale explains that although women are present at many user group meetings, their opinions often are not reflected in the final decision. One group that she observed decided to improve conservation measures by limiting the period to collect leaves to two five-day periods during the year. This policy placed disproportionate pressure on women, who would be unable to collect enough leaves for household needs in that period of time. Although the women presented this concern in the user group meeting, the final decision made no provisions to allow for longer collection periods or exceptions in case of sickness, marriage, or other obligation.⁵¹ In the end, the women disregarded the policy, thereby weakening the authority and the utility of the group.

Introducing an RBA to the process of forming, maintaining, and managing FUGs would help ensure inclusion and decision-making roles for all those involved in using forest resources, particularly those whose livelihoods are most dependent on forest resources. The case of FUGs and CBRM shows how failing to explicitly recognize the different interests and needs of stakeholders, including women and lower caste community members, results in their exclusion and marginalization. This has two major impacts: first, it can entrench inequalities, hampering the achievement of human rights. Second, it can undermine the legitimacy or efficacy of the group, causing excluded people to defect from group rules and undermine sustainable development outcomes. The challenges reflected in this approach to CBRM are common to land management more generally: policies that do not account for local power relations and social differences between people (men and women, different castes, age groups, and ethnicities) are likely to suffer from problems of elite capture and may entrench social hierarchies that marginalize and disenfranchise certain people while strengthening the position of others. An RBA can help address these concerns by creating opportunities for participation, accounting for cultural norms, and considering and shifting power dynamics to further social development goals, including improved education, health, access to justice, and income. This example illustrates how an RBA to CBRM specifically, and to land management policies generally, is necessary to achieve social welfare goals.

marginalized groups.

Gender discrimination is particularly pertinent as it relates to land management, since in many cultures, women are disproportionately dependent on land for cultivation and resource use. Over half of women in the developing world work in agriculture. In Africa, women produce nearly 80 percent of food through subsistence farming and small landholding, while in India, there are more rural women workers than men.⁵² Women-headed households including *de jure* (single, widowed, divorced or separated women) and *de facto* categories (wives of migrants) range from approximately 25 percent to 60 percent of rural households across eastern and southern African countries, and account for a growing majority of the extreme poor.⁵³ Females stand to benefit from land rights in the same way as males, deriving a secure source of income from agricultural production, rental or sale of land, collateral from credit, housing, and food security.

In the case that formal titling institutionalizes male-dominated ownership and access, it undermines short- and long-term development goals. In the short term, formal land tenure can threaten women's ability to access land and resources and can reduce bargaining power in the home and community. In the long run, it can result in institutionalization of a gendered power imbalance that becomes more challenging to shift. Empirical evidence shows that women invest more resources in their children and sustainable practices relative to their male counterparts.⁵⁴ Therefore, marginalizing women has a dual negative outcome: it reinforces gender inequality and excludes actors who have a proven potential to play a valuable role in furthering development outcomes.⁵⁵

However, in many developing countries, customary practices for marriage, divorce, bride price, dowry, or polygyny may impede or preclude a woman's ability to own, use, or access land. Formalizing these customary practices can result in "loss of non-ownership rights that women have to use land."⁵⁶ Particularly in polygynous societies, a law that titles land often does not account for second or third wives. For example, in Benin in 2004, the president signed the Persons and Family Code, stating that only monogamous marriage is legally recognized. Under customary law, second and third wives would have certain rights to use and cultivate land, even if they lacked formal ownership. Under the contemporary civil law, additional wives technically have no right to land, and are therefore at greater risk of becoming landless and destitute.⁵⁷ Other government plans have titled land only in the name of male heads of households, either intentionally, or, for example in the case of West Bengal, because registration forms only had space to write the name of one titleholder, which inevitably was the man.⁵⁸ Still other countries have proposed laws that require equal rights for women or co-ownership of land by married spouses, though such laws are rarely enacted. In effect, such a provision would elevate the status of women, since they are rarely included as co-owners of land. Without such laws, the default is that land is titled to the husband or male head of household, reflecting a male-dominated political structure from local to national levels of government.⁵⁹

As demands on land increase, women are more likely to be excluded or evicted from land. In certain cases in sub-Saharan Africa, women have lost control over land after they introduced irrigation systems and other improvements.⁶⁰ Such realities discourage women from improving land or investing in sustainable practices. While titling does not necessarily increase the likelihood that women will be marginalized and excluded from land use, it can institutionalize this dynamic and entrench gender inequalities in both customary and formal law. Other reasons women may face exclusion in the titling process include having: 1) on average, lower levels of education relative to men, which

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may make it difficult to engage in the formal, administrative process of titling and decrease understanding of the benefits of holding a title to land, and 2) diverse obligations that restrict the time available to engage in the administrative process to request and receive formal titles.

Elite captures of land, resulting in discrimination against socially, politically, or economically marginalized peoples, represent a significant danger inherent in the process of formalizing land tenureship, or any form of land privatization. Even programs that attempt to take into account the diversity within a community, the unique needs of each individual, and the hierarchies and

power dynamics that might challenge equitable access to resources, often fail. The International Fund for Agricultural Development (IFAD) writes:

Indeed, promotion of exclusive, alienable and legally registered individual land rights is not always the best solution for poor rural people, many of whom depend on more flexible, diversified, decentralized and common property systems over which they can often exert greater influence and that are more conducive to optimum uses of land.⁶¹

Landesa, an organization dedicated to researching land tenure reform and proposing new or revised laws, suggests that although formal tenure can increase security in many situations, it is not always necessary for optimal tenure security. Even when it is necessary, it is not sufficient, primarily owing to the above-mentioned challenges.⁶² However, national and international actors continue to press for codifying access to land due to the perceived benefits for development. For revised laws to avoid the pitfalls inherent in restricting land ownership, it is necessary to invest in an RBA that uses a process of creating culturally, geographically, and temporally appropriate policies for formalizing land tenure. An RBA would focus legislation on how changes in land policy impact the individual, rather than GDP or agricultural productivity. This is important, because while increases in both GDP and productivity are used as indicators of development and poverty reduction, they do not necessarily demonstrate

improvements in living standards across individuals within communities. Moreover, without additional interventions, increases in GDP and productivity may simply serve to solidify and institutionalize existing power hierarchies, which exclude socially marginalized peoples, including women, minorities, disabled people, and the poorest members of society.

Hypothetically, market-based land tenure systems could provide positive outcomes for local populations. In practice, however, market-based reform and non-legally binding principles have not resulted in equitable access to land, poverty reduction, food security, and stakeholder empowerment. Particularly in a developing country context, where rule of law, transparency, and accountability are weak, property rights and privatization are blunt tools. Altering customary or civil land rights has a complex set of outcomes that impact each demographic of society in different ways, in which often the poorest are disenfranchised and lose previously informal rights to access and use land. To reduce poverty, improve living standards, and avoid further marginalization

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of the disenfranchised, it is essential to continue revising development techniques pertaining to land reform by integrating components of the human rights agenda. An RBA provides a strategy to this end.

Conclusion: The Argument for an RBA to Land Management

In the past, theories of growth posited that international development organizations could motivate economic development and poverty reduction without directly engaging the very poor: specifically, it seemed international organizations could support governments to strengthen property and contract laws, and investors would supply sustainable capital via financial investments. Over time, the positive spillover of investment would

eliminate poverty, bolster rule of law, and perhaps even cultivate human rights. Clearly, such an idyllic vision has not yet been realized. The arguments are strong that land reform may be a vehicle to catalyze significant development and human rights benefits for the rural poor, including empowering individuals to make decisions in their families and communities, providing security against eviction, increasing incomes to allow families to better meet nutritional and basic health needs, and fostering new opportunities for education and employment. Each of these benefits would help engender ESC and CP rights. However, as discussed, the formalization of property rights without social or legal protections has often entrenched social hierarchies, exploiting and marginalizing those most in need of protection.

An RBA can help transform land reform policy from a blunt market-based tool

for national economic growth to a directed strategy that addresses the needs of the marginalized in the short- and long-term, thereby helping to achieve the development goals of poverty reduction and human welfare improvement. As Thea Gelbspan and Vijay Nagaraj write in a working paper awaiting publication:

The global human rights framework has much to offer by way of mediating between apparently competing claims, clarifying obligations and informing policymaking around land issues in ways that enable people dependent on land for their livelihoods to enjoy an adequate standard of living and a life of dignity.⁶³

This viewpoint highlights a two-directional relationship between land and human rights. On the one hand, meaningful enjoyment of land rights depends on other human rights, including rule of law and due process. On the other hand, especially for marginalized groups such as indigenous peoples, women, and the poor, land rights are a necessary condition for realizing basic human rights.⁶⁴ This complex relationship is not unique to land rights. Rather, it accompanies most ESC and CP rights and illustrates the tension that can arise in situations of limited resources, where it is not possible to promote all rights simultaneously and organizations are forced to prioritize certain development or human rights goals at the expense of others.

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From this analysis, it is apparent that security in land tenure empowers people to invest in improving their long-term welfare. In this way, an RBA can help those targeted for development programs—the marginalized and poor—become advocates and actors for their own cause. The positive implications that an RBA has for both development and human rights goals are empirically observed in three dimensions: poverty reduction, sustainable growth, and social equity. First, empirical observations show increased agricultural production resulting from a “release of vast personal energies” as opposed to increases in material input.⁶⁵ Increased production augments family incomes, subsequently improving nutrition, the likelihood of children to attend school, and access to health care. Second, people with rights to land make longer-term investments in the environment and infrastructure, fostering sustainability and future prosperity. Third, an RBA to land tenure reform calls for equitable security to access land for all people, empowering women and minorities, and shifting social dynamics toward gender equality and anti-discrimination. Each outcome described above represents a development goal, and therefore makes a compelling argument to the international development community to take an RBA in land reform policies and programs. Further exploring this relationship would strengthen the argument that the

international development community should adopt an RBA not as a replacement of the goal of poverty-reduction, but as a strategic means to improve welfare as measured both with international development metrics and human rights achievements.

Endnotes

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