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Institutions and Governance of Communal Rangelands in South Africa.

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Abstract

The creation of local institutions with a mandate over land access and control is seen as a prerequisite for successful decentralisation of land tenure and effective local resource management in sub-Saharan Africa. However, with land tenure reform in South Africa currently at a state of legislative impasse, real uncertainty now exists over land rights and governance of rangeland in many communal areas. This paper draws on case study material from Eastern Cape Province, to illustrate how this ongoing uncertainty has resulted in the operation of a range of traditional authority and civil society institutions in different communal areas with varying degrees of legitimate authority over land administration and highly variable performance in managing rangeland resources. Collective management of rangeland resources seems most difficult in environments where land rights are contested due to the co-existence of traditional leaders and civil society institutions. On this basis an approach to tenure reform is advocated, which vests all powers over local land administration in democratically elected and accountable civil society institutions. Some successful examples of this already exist and might serve to guide policy formation, which must be flexible enough to accommodate collective management approaches that emphasise co-operation both within and between communities.

Key words: Traditional leaders, land tenure, common property, natural resource management.

Introduction

This paper focuses on local institutions within South Africa with a mandate over governance of rangeland. Specifically, it responds to the key points raised by Vetter (2013) regarding the variable ability to manage communal rangeland as a commons resource in South Africa, the related issue of weak institutional capacity at the local level and the contested roles of traditional authority and civil society institutions within this. Drawing on common property theory and the debates around common property institutions (CPIs) and the form these should take, it uses case study research conducted in Eastern Cape Province to examine these issues with a specific focus on collective grazing of rangeland. It then discusses their importance in relation to grazing management in other parts of South Africa.

Institutions and common pool resources

Common property resources are considered to share two important characteristics; namely that the exclusion of users from these resources is difficult and that each user is capable of subtracting from the welfare of others (Berkes et al. 1989). For Hardin (1968), the inevitable outcome of this was a 'Tragedy of the Commons' scenario, in which with collective management results in the exploitation and degradation of natural resources due to the inherent desire of users to maximise individual gain at the expense of others. However, since the publication of Hardin's paper, a body of empirical research has accumulated, which suggests that this negative outcome constitutes just one of several alternative scenarios and that in many parts of the world effective governance systems are in place that enable common property resources to be managed on a sustainable basis. This re-interpretation has also led to an important distinction between common property resources themselves and the property rights regimes under which they are held (Berkes and Farvar 1989). The four recognized divisions of these regimes are: open access, common property, private property and state property (Berkes et al. 1989). On the basis of this more recent thinking about property regimes, the main shortcoming of Hardin's paradigm has been identified as its failure to distinguish between open access and common property regimes (Berkes and Farvar 1989). We now understand this distinction more clearly. According to Bromley (1989), in open

access situations users have privilege with respect to the use of a particular resource as nobody has the legal right to exclude them but they have no actual rights to the resource. In contrast, a common property regimes consist of:-

“...a set of institutional arrangements that define the conditions of access to, and control over, a range of benefits arising from collectively-used natural resources.” Swallow and Bromley (1995 pp. 100).

Based on this conceptualisation of common property regimes, considerable work has been undertaken by, amongst others, Ostrom (1990, 1999) in the development of common property theory. Central in much of this has been a focus on the design principles that enable sustainable management of the commons. Particular importance, has been placed on understanding the ‘rules of the game’ – the institutional arrangements, which enable access to and management of resources (Agrawal 2001). These conceptualisations of common property have been debated in an African context. Cousins (2000, 2007) has suggested that rather than being clearly defined, institutions and rules in African common property systems are often informal and flexible such that access to resources is secured through complex social networks and negotiation.

These arguments are important because they underpin the current debates around the securing and strengthening of land rights in sub-Saharan Africa. The decentralisation of land rights over the commons to local institutions is viewed by many as an essential step in securing land rights for local people (Alden-Wily 2003; Toulmin 2009, Ribot 2011). What is less clear is the form local institutions should take to try and achieve this. In many countries, customary authorities such as chiefs continue to play an important role in land administration. However, formalising these as the custodians of common land is viewed by some commentators as problematic due to their perceived corruption and lack of legitimacy and downward accountability (Ntsebeza 2005, Grischow 2008). An alternative approach is to vest rights in democratically elected institutions of local governance (Ribot 2011). For example, land boards have been the decentralised institutions of land administration in Botswana since the 1970s (Quan 2000) and equivalent institutions of natural resource governance have begun to emerge in other African states (Alden-Wily 2003, Ribot 2011). Nevertheless, even where democratic institutions of land administration are being developed the situation is complicated in some countries

(e.g. see Spiereburg 2005 for Zimbabwe and Cotula and Cissé 2007 for Mali) by the persistence of customary authorities who often continue to try exercise their authority over land. This creates uncertainty and contestation of land rights for local people and serves only to undermine their security of tenure.

Institutions governing communal land in South Africa

In post-apartheid South Africa, the removal of much of the state apparatus supporting traditional governance structures in communal areas, has created considerable uncertainty regarding land tenure and land management (Hall 2013). Indeed, the lack of adequate tenure reform has been highlighted as a key shortcoming in securing land rights, reducing conflict and promoting agrarian development (Lahiff 2008, Cousins 2010). Several pieces of legislation have been enacted by the ANC government to try and deal with this. One of the earliest was the Communal Property Association Act (Republic of South Africa 1996). This enabled local communities to create accountable communal property associations (CPAs) to strengthen property rights and facilitate local resource management (Wotshela 2011). However, the formation of CPAs has been quite limited, not least because traditional authorities in many areas have been able to contest the legitimacy of such institutions on the basis that the apartheid laws governing land allocation are still in place (Cousins and Hornby 2002, Lahiff 2003).

The Communal Land Rights Act (CLARA), introduced in 2004, was designed to definitively address this legal ambiguity by transferring title over communal land to 'communities', nominally represented by a land administration committee (Republic of South Africa 2004). In principal, communities could choose whether this committee was to be democratically elected or whether an existing traditional leader should assume this role. However, amidst fears by land activists that CLARA afforded too much opportunity for unelected traditional authorities to consolidate their control over local land rights, the Act was contested in the Constitutional Court in 2010, declared unconstitutional and must now be fundamentally rethought (Cousins 2010, Hall 2013).

Nevertheless, the position of traditional leaders in South Africa remains strong, as it is legally underpinned by the Traditional Leadership and Governance Framework Act (TLGFA), of 2003 (Republic of South Africa 2003). This Act created a framework for provincial laws which would define the status and powers of traditional leaders, as well as enabling apartheid era tribal authorities to be considered as traditional councils (Claassens 2008). Thus, despite the setback with CLARA, a legal platform has been created to enable traditional authorities to play an increasingly important role in local administration in communal areas (Ntsebeza 2005, Oomen 2005). Amidst such political and juridical uncertainty, the issue of institutional control over land in communal areas remains, necessarily, contentious (Hall 2013).

Institutional diversity: Case studies from Eastern Cape Province

The lack of a single, legislative framework defining local land rights in communal areas has enabled a range of different institutions with responsibility for land access and control to now exist in different regions of South Africa. This is illustrated below using examples from the former Transkei and Ciskei homelands of Eastern Cape Province.

Former Transkei homeland

The former Transkei exemplifies the contested environment that surrounds land access and control in South Africa. Uncertainty over which institutions are responsible for land administration has persisted since the demise of the Tribal Authority system in the early 1990s (Kepe and Scoones 1999, Ntsebeza 2005). Initially, it appeared that Transitional Rural Councils (TRCs) would assume such responsibilities (Peires 2000), but civil society leaders quickly had to accept that without repeal of the apartheid laws on land administration in communal areas, traditional leaders remained the *de jure* custodians of land (Ntsebeza 2005, 2011). The stalling of CLARA and the parallel existence of many civil society organisations at the grass roots level has done little to resolve the situation (Ntsebeza 2011).

There is limited current empirical material detailing how this is playing out in the rural Transkei. The following draws mainly on a recently published study by Bennett et al. (2013) supplemented by local research reports. Together these suggest that traditional leaders have responded to these new challenges in quite different ways in different parts of the former Transkei. In some communities traditional leaders have effectively withdrawn from most aspects of local governance except land allocation. This is exemplified by the village of Nyandeni, where they have been marginalised by the emergence of highly effective ward councillors and local farmers' organisations, which link directly to municipal councils (e.g. Nyandeni Local Municipality) in service delivery (Bennett et al. 2013). Despite still having to be consulted over allocation of land to individuals or community projects, the chief and headman at Nyandeni no longer have an active role in controlling how common land is managed as a natural resource. Indeed, none of the local governance structures that co-exist at the village seem to play any role in this. As a result boundary fences with neighbouring communities and those that separate rangeland from arable land and divide the rangeland into separate paddocks have fallen into severe disrepair. This is partly as a result of lack of maintenance but also as a result of youths within the village actively cutting some fences as a form of defiance of traditional authority. The lack of an enforceable boundary enables livestock from neighbouring villages to gain access to Nyandeni's rangeland and stock also gain access to arable land allocations damaging crops. The lack of clear boundaries or a defined group that makes use of the resource suggests that management of grazing as part of a recognisable common property regime is no longer possible and the rangeland functions effectively as an open access resource. This represents a significant breakdown in recognised land rights at the village (Bennett et al. 2013).

Conversely, in other communities, traditional leaders have attempted to consolidate their power by marginalising local government actors such as ward councillors who might potentially undermine their authority. In Mdudwa Village, Ntshona and Lahiff (2003) documented an ongoing power struggle between the sub-headman of the village and the elected ward councillor, which created political divisions amongst residents. The sub-headman retained complete control over land allocation but some residents believed the process was unfair and driven by vested interest to favour certain groups. They wanted a greater role for the ward councillor in land

allocation but this was contested by those aligned with the sub-headman who considered this attitude to be 'anti-chief'. For his part the ward councillor recognised that his primary role was in project delivery and, as such, successfully oversaw the installation of telephones and piped water at Mdudwa. However, his efforts were undermined by the repeated claims of the sub-headman that such interventions were a waste of money (Ntshona and Lahiff 2003).

Likewise, in Dudumashe village, the headman has refused to have any form of communication with the local ward councillor (Bennett et al. 2013). She has been marginalised to the extent that she is not even allowed to attend village meetings and struggles to be involved in delivery of development projects at the village. Instead, many service delivery projects continue to be brokered by the headman using his extensive contacts to interact directly with local government. An example is the Integrated Livestock Development Plan (ILDPA), which was introduced in 2001 and involved the re-instatement of much of the fencing that had been provided under previous apartheid development schemes with the creation of some additional grazing paddocks and the provision of shearing facilities for sheep. The scheme enables the maintenance of fenced rangeland boundaries with neighbouring communities and thereby defines the resource and limits the user group to graziers from Dudumashe only. However, in terms of control over grazing there is no attempt by the headman to manage grazing on a collective basis through the rotational resting or grazing of paddocks. Rather, individual graziers are allowed to make their own decisions about where to graze their livestock and generally put them in the camp nearest to their homestead. Thus, whilst individual rights to rangeland are defined, the institutional arrangements do not extend to community-based management of the resource (Bennett et al. 2013).

A further strategy documented by Bennett et al. (2013) through which traditional leaders have attempted to maintain authority over land is by actively incorporating civil society structures and local government representatives into structures of local governance which they themselves control. This is exemplified by the Land Use and Development Committee (LUDC) at Rockcliff village, which incorporates representatives of civil society groups such as local farmers' associations as well as those from local government such as the ward councillor. It is chaired by the village

headman, enabling him to keep control over land allocation and development at Rockcliff (Bennett et al. 2013). In his role as chairman of the LUDC, he effectively functions as a conduit in that all requests for land are fed through to him at the village level and he in turn feeds these on to the Chief for his consideration.

The power of the headman at Rockcliff extends not only to land allocation but also to control over collective management of rangeland (Bennett et al. 2013). This is exercised not through the LUDC but via a separate grazing committee. The basic system is a perpetuation of the apartheid grazing system in that two of the eight grazing paddocks at the village are rested for an entire year whilst the remainder are grazed on a rotational basis. The grazing committee decides which camps should be closed or rested and approval for this is obtained through a community meeting. Sanctions are imposed for transgressing the grazing management rules. Livestock found grazing in paddocks that are off-limits are impounded and the owner forced to pay a fine of ZAR 5 for each animal found in paddock under rotational rest and ZAR 10 for each animal found in a paddock under long term rest. Thus, in principle a system of collective grazing management is in place which fulfils the tenets of a basic common property regime. In practice, however, it appears that the poor quality of the fencing dividing some of the paddocks makes enforcement of the rotational grazing system very difficult as livestock are able to gain access to rested paddocks unless they are constantly watched. This creates disgruntlement amongst some livestock owners who feel that the system of fines is unfair under these circumstances. Indeed, the imposition of fines appears to serve more in raising revenue for the traditional authority rather than ensuring effective management of the grazing resource (Bennett et al. 2013).

Two key messages emerge from this research. Firstly, in the absence of a definitive land tenure framework for communal areas, traditional leaders in the Transkei are holding onto their power over land allocation as a means of legitimising themselves (Bennett et al. 2013, Ntshona and Lahiff 2003). This is causing divisions within communities, particularly where traditional leaders refuse to interact with civil society actors, leading to the formation of separate political groups, which contest their authority. Secondly, although traditional leaders (or an associated committee) still have ultimate responsibility for governance of rangeland resources they are

generally ineffective in undertaking this. It seems that without the power of the apartheid state behind them and the ability to maintain perimeter and camp fences, they are no longer able to enforce community-level decisions over the grazing of rangeland by livestock (Bennett et al. 2013, Ntshona and Turner 2002). Indeed, it appears that some local graziers may actively flout these decisions as a means of demonstrating their resistance to traditional rule. In more extreme cases, politically-motivated youths actively cut fences to ensure such control is almost impossible to achieve (Bennett et al. 2013).

Former Ciskei homeland

The former homeland of Ciskei is quite unlike other communal areas of South Africa, in that responsibility for land administration and local resource management in most areas rests with democratically-elected civil society organisations and structures of local government. These emerged in the aftermath of the overthrow of former president Lennox Sebe in March 1990 (Manona 1997). At this point Tribal Authorities were effectively dismantled and the position of headman, which had been such a lynchpin of village-level control during the apartheid era, was officially abolished. They were replaced by democratic, civic structures called Residents' Associations (RAs) (Manona 1997). Despite some frequently difficult beginnings, these RAs have persisted and remain the main institutions of local governance in rural villages in the former Ciskei, forming the bottom rung of a hierarchical system of local government, involving ward, municipal and district level councils (Van Averbeke and Bennett 2007, Wotshela 2011).

Amongst other responsibilities, these RAs have a key role in land administration in communal areas. They allocate arable land to those who require it and are also nominally responsible for the management of communal grazing at most villages (Van Averbeke and Bennett 2007). However, whilst the majority are effective in guaranteeing secure access to arable plots and rights over the crops and residues these produce (Bennett et al 2010), their degree of involvement and performance in controlling communal grazing is highly variable (e.g. Ainslie 1999, Bennett and Barrett 2007, Bennett et al. 2010). For example, Bennett and Barrett (2007) describe how in the traditional village of Koloni, the fencing established during the

'betterment' process during colonial and apartheid rule, is still maintained and enables a basic system of rotational resting to be perpetuated by the community. The management and enforcement of this is the remit of a grazing committee, which is formed from a small contingent of elected members. Likewise at Allanwater, a former commercial farm transferred to communal ownership in the 1970s, the fencing is maintained in most areas and a basic system of rotational resting is practised (Bennett et al. 2010). This involves paddocks that have permanent water being rested in the wet season and those that do not being rested during the dry season. Importantly, a CPA called Vukani Farmers' Association (VFA) exists at Allanwater, which is responsible for collective management of rangeland. The management committee of VFA decides which areas are rested and grazed and can impose fines on members for non-compliance. Membership of VFA extends to almost the entire community and involves payment of an annual membership fee, which covers the cost of chemicals for dipping of livestock and to maintain fences (Bennett et al. 2010). These measures are viewed as important by the community as Allanwater is part of the National Wool Growers Association (NWGA) and many sheep owners derive a substantial income from the wool clip they generate from their animals (Bennett 2012). Thus, where dedicated farmers' associations or similar institutions exist in conjunction with fencing, then collective management of the commons is possible as part of a defined common property regime.

There also appears to be a tentative relationship between such management efforts and the quality of the grazing resource. At Koloni the good quality of the grazing resource was demonstrated by condition surveys conducted by Goqwana (1998), which showed the rangeland to have a carrying capacity of 5.14 ha/large stock unit (LSU). This compares well with benchmark values of 4 ha/LSU for rangeland of this type when in good condition (Tainton 1999). At Allanwater the rangeland was also classified as being in relatively good condition overall with a local carrying capacity of 7-9 ha/large stock unit (LSU) in most places (Bennett et al. 2010). This is further underlined by figures on animal productivity at the village. Mean wool clip during 2001 was 3.9 kg per sheep, which compares well with commercial yields in the Eastern Cape which have historically averaged 4.5 kg per sheep (King 2002).

However, scenarios involving clearly defined boundaries and user groups and strong institutional arrangements governing grazing appear to be uncommon in the former Ciskei and it is more usual that one or more of these factors are absent within local rangeland management systems. For example, the village of Roxeni has a similar CPA to that of Allawater, called Roxeni Farmers' Association (RFA). What the village lacks is the capacity to enforce its resource boundaries in the absence of perimeter fencing. Grazing is thus largely unregulated at the village with livestock from neighbouring communities grazing Roxeni's rangeland and vice-versa. However, given the paucity of rangeland available to the village the absence of fencing to reinforce arbitrary, historical rangeland boundaries makes sense in terms of enabling livestock to gain access to more grazing, particularly during the dry season (Bennett et al. 2010). This lack of regulation may be having long term impacts on the quality of the grazing resource. Range condition surveys undertaken in 1997 showed the recommended carrying capacity to be just 18 ha/LSU (DALA 1997), which is very low considering that the benchmark for this rangeland type in good condition is 4ha/LSU (Tainton 1999). Even where fencing exists within communities, grazing may still be unregulated if local institutions are insufficiently developed to coordinate this on a collective basis. This has occurred in areas immediately adjacent to the former Ciskei, where commercial livestock farms have been transferred to communal ownership as part of the post-apartheid land redistribution process. An example of this is Gallawater A Farm, which was transferred to a local community in 1995 but the development of community-based institutions to manage rangeland resources effectively and equitably has proved impossible due to resistance by a few powerful local graziers (Vetter and Goqwana 2000).

Discussion and Conclusions

Some key points emerge from these case studies regarding local institutions and governance of rangeland in Eastern Cape Province. It is clear that the absence of a definitive land tenure framework for communal areas encourages the existence of a range of different traditional, civil society and local government institutions, many of which claim some mandate over land access and control. The co-existence of these

institutions in areas of the Transkei creates insecure and contested land rights in many communities and is a source of political conflict. A key part of this is the fact that unelected traditional leaders persist in these regions through their control over land allocation, despite lacking legitimacy amongst some sectors of the communities they purport to represent.

Conflicts over land rights are particularly apparent around common property rangeland resources. Many communal rangeland systems in Eastern Cape Province are characterised by an inability to enforce boundaries with neighbouring groups and, in particular, a lack of enforceable rules for collective resource access. Similar scenarios have been documented in communal areas of KwaZulu-Natal (e.g. Von Maltitz 1998, Salamon 2011). In the absence of effective local institutions that might be able to co-manage resources between different groups, communities in both provinces frequently use fences as a means of keeping others out. This is symptomatic of a mentality developed under apartheid which is still persists amongst many older livestock owners and is being reinforced by the current policies of provincial agricultural departments such as that of the Eastern Cape (Bennett et al. 2010). In some instances there is clear evidence that fences are effective in enabling basic common property regimes to exist for the management of grazing resources. In many areas of both the Ciskei and Transkei, however, the appeal of fences seems to be based more on preventing livestock loss and their presence still fails to facilitate any attempt at collective grazing management. Likewise, in the Okhombe area of KwaZulu-Natal, Salomon (2011) has documented how attempts at the introduction of a collective resting and grazing system for rangeland failed even with secure fencing because many livestock owners refused to let their animals move to the upper slopes of mountains for fear of them being stolen. However, other regions of South Africa illustrate how grazing can be undertaken according to collective rules and norms in the absence of fences. In the Leliefontein area of Namaqualand, for example, animals are actively herded by shepherds who, even in the absence of fences, are cognisant of unmarked boundaries with other communities and the movement patterns of other herds, in the choices they make about where to herd their stock (Cupido et al. 2013). They also have rules about which areas are grazed at particular times of the year and how they adapt the system to try and retain forage for stock in times of drought (Allsopp et al. 2007).

Thus, the requirement for fencing in the governance of rangeland resources seems to depend very much on local circumstances.

Where collective resource management has been possible, one of the key elements appears to be a clear set of institutional arrangements. In the former Ciskei these are generally articulated and enforced through a specific CPA or an elected grazing committee, with a remit to manage grazing on a collective basis. In Namaqualand collective access to grazing of rangeland is undertaken in accordance with a clearly recognised set of rules and norms that are adhered to and enforced by the livestock keepers themselves (Allsopp et al. 2007). An important point is that institutional arrangements in these areas are not obfuscated by the co-existence of alternative institutions such as traditional leaders. As the Transkeian case studies underline, such institutional overlap can create political factions within communities, with those who align themselves with democratic institutions refusing to participate in the collective management of natural resources as a way of contesting the rule of traditional authority. Under these conditions governance of rangeland grazing through collectively agreed institutional arrangements becomes almost impossible.

This suggests that in South Africa, the development of appropriate, community-based institutions for collective resource management should draw on the approaches to decentralised land tenure being developed in other parts of Africa (Alden Wily 2003, 2008, Cotula 2007). These emphasise responsibility for local land administration being vested in fully decentralised and downwardly accountable local institutions (Toulmin 2009, Ribot 2011). The current ambiguity around land access and control and the general failure of natural resource governance that characterises many communal areas within provinces such as Eastern Cape, suggests that such decentralisation will not be achieved in an accountable and effective way in South Africa while traditional authorities continue to be involved in land administration. An alternative is to use the local democratic structures that already exist within many communal areas – RAs, CPAs and farmers' associations – as the main locus of decentralised land tenure.

The Ciskeian case studies demonstrate that such institutions can successfully enforce the rights of communities to collectively access and manage land and

thereby also help to maintain better quality grazing resources. However, previous failures in the functioning of CPAs (Cousins and Hornby 2002), particularly in the promulgation of a one-size-fits-all approach by government (Lahiff 2003) must be acknowledged and learnt from. Thus, the reform of land tenure to support the emergence and functioning of such institutions must be far-reaching and policy must be sufficiently flexible to accommodate a range of appropriate decentralised rangeland governance approaches. Where necessary these should allow individual communities to hold rights over clearly defined parcels of land (e.g. in situations where former commercial farms have been 'released' for occupation) or groups of communities to have collective and equal access to areas of land that they currently make use of. This would enable the formalisation of existing arrangements of land access and management in extensive rangeland areas such as Namaqualand and might equally offer a way to facilitate co-management of rangeland across existing arbitrary community boundaries in communal areas of Eastern Cape Province where the existing rangeland resources of individual communities are often insufficient. Facilitating collective rangeland management across multiple communities will be difficult but not impossible and might draw on the institutional arrangements underpinning the extensive management approaches currently being practised in Namaqualand.

Moreover, it must also be complemented by other supporting policy measures and changes in attitudes. Notably, the current attitude of both communities and local government to fencing needs to be rethought. Fences might continue to be appropriate for communities such as Allanwater, which occupy a former commercial farm and where many residents depend on fairly intensive rangeland management to achieve good yields of wool from their sheep. However, in many other situations communities should not aim to fence themselves in along historical colonial boundaries but rather to adopt more progressive and flexible approaches to collective resource management such as extensive herding across 'pooled' rangeland resources.

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