

The privatization of the commons in Southern Africa: what are the trends and debates

Saliem Fakir, IUCN - South Africa, October 2003

Introduction

The theme of ‘privatization of common property resources (CPRs)’ is a complex one as it has many layers and nuances to it. My intention is not to present here a complete view, but merely facilitate debate around some key concepts on the matter. Perhaps my paper should be seen as a working document. The aim of the paper is to introduce new concepts and ways of thinking about the problem or challenges that privatization of the commons pose. While a considerable effort is being placed in ensuring security of tenure for CPRs, not enough is understood of how privatization and commercialization can serve to act against or undermine the objectives that are enshrined within a CPR system.

The paper seeks to link common property issues within the larger political and economic setting; be they domestic or global in nature. The paper also seeks to explore the different dimensions of privatization and commercialization, and their negative or positive impacts on common property systems. There are a number of concepts to clarify and sift through, since the issue of privatization and commercialization can often be muddled. What are these issues then?

1. The first is to note that the reference to privatization is applicable to tangible and intangible goods within the commons. Each is potentially subject to different forms of exploitation and monopoly by domestic or global capital. Intangible goods have acquired greater importance as the global economy is knowledge dependent.
2. Secondly, there is a need to separate commercialization from private ownership or privatization as these can lead to further un-clarity. It is possible to have commercial operations without them having to be privatized, not withstanding, that commercialization in itself brings about its own set of problems and challenges.
3. The third is to de-link the erroneous idea that common property regimes are always better than private property because of their public goods features. A public goods agenda is derived from an ethos and attitude within the entire sphere of the economy rather than solely a result of a property rights regime.

The first three parts of the paper will explore some of the theoretical underpinnings, before specifically discussing the situation of privatization and commercialization in Southern Africa.

Part A: Mapping the debate

How do we define privatization?

In exploring an understanding of the concept of the privatization of the commons, a distinction is necessary between tangible and intangible goods that are derived from the use of common property resources (within the basket of intangibles one needs to include as common property resources knowledge, customary rules, and inventions or innovations). Privatization is understood to mean a transfer of tangible and intangible assets into the hands of private ownership.

The structure of ownership will determine the degree of control, and decision-making power over the use and disposal of an asset. In a slightly different scenario the asset itself can be leased to a private entity for a specified period of time in return for a rent or fee. It is evident that if we were to search deeper into other examples of privatization, more complex structures and formats can be brought to the fore as case studies. However, this is not the point of our exercise. For now it is sufficient to describe a general sense of what privatization entails. In doing so, Brendan Martin's, definition comes handy. He writes:

“These processes, like those on a world scale, have driven a change in the role of the nation-state. Its responsibilities are being transferred to the market and private businesses big enough to sway and manipulate the market, especially in sectors vital to economic and social development and dominated by transnationals. It is for that reason that privatization is defined in this book in terms of change in the role, responsibilities, priorities and authority of the state, rather than narrowly to denote change of ownership”. (1993)

Martin's definition suggests that if we were to only look at ownership patterns, we would lose sight of how privatization and commercialization can shift the authority, culture, and management regime of existing forms of ownership that is vested in the State or communities. In other-words, privatization and commercialization ingratiates public and community goods systems with a new ethos and patterns of behaviour that are often inconsistent with public good objectives.¹

Perhaps a significant outcome of the repositioning public assets-where they are exposed to the power of the market-has led to fears that this will entail a diminished level of public accountability over these assets. Assets that have been privatized are then in danger of being subject solely to private self-interest, rather than ensuring benefit from the use of these assets for a broader society. Society is transformed as a result into a consumer and not a beneficiary. *Anecdotal evidence will suggest that in changing the reasons for production and its investment characteristics, one changes in so doing the behaviour and relations between producers, sellers and buyers.*

Ownership is a means to achieving the common good it cannot exist in and for itself only. What Martin seems to suggest is that certain ethereal moral obligations towards the common good are vested in the notion of property; or should at least be vested in them if it has not been done so already. Such an ethic embodies the view that those who own property must use it responsibly and for the common good.

The characteristics of privatization

Privatization's scope extends over two dimensions: the first; is in the area of physical resources such as land, or the specific resources on the land (This can be extended to physical resources in outer space and the oceans as well). These are generally termed as tangible goods. With the development of new technologies, physical resources (in particular genetic resources)² are subject to more intensive forms of exploitation, and regimes of ownership. Privatization of tangible goods can take the form of acquiring ownership, leasing, or the paying of use rights for extended periods of time.

In general private ownership confers exclusive rights to a good or service over which a monopoly could be exercised in a non-competitive market. In other words, maximum benefit is accrued to some, while denied to others, by limiting access of use. In the case of

¹ By public goods objectives I mean creating an economic environment that opens up opportunities for all, and seeks to maximize the benefits of every individual within that system.

² One should also include in here genetic material such as DNA, germplasm or samples of plants, animal or human tissue.

Intellectual Property (IP), under the new Trade in Intellectual Property (TRIP)s rules of the World Trade Organization (WTO), coverage of exclusive rights are extend over a period of 20 years.³

With regards to intangible goods such as ideas, inventions, and traditional forms of knowledge are also subject to different forms of IP, varying from patents, plant breeder's rights, trademarks etc. In some cases, the conferring of IP rights over an intangible good is often done to secure a commercial value at some future date. Hedging potentially ensures that if a commercial value for the intangible good is found in the future, the owner can extract substantial royalties from the uses of the product or idea.

IP opens up a new frontier of accumulation for international capital, and made all the more possible due to the advantages globalisation confers for capital. The development of knowledge based or intensive service sectors require a strong IP system. This allows a 'fleeting' good -which is contained in human mind and language- to be bounded and in so doing making it possible for it to be exchanged in the market place like any other commodity.

Intellectual property rights (IPRs) systems are a subject of a detailed study by the authors Drahos and Braithwaite (2002) in their book: *'Information Feudalism: who owns the knowledge economy?'* They poignantly allude to two major risks from intellectual property rights:

“First depending on the resources in question it may place the holder of the right, or a small group of holders, in a position of central command in a market. Competition suffers as a result. ...Essentially the patent functions as a barrier to entry to the market, the height of the barrier varying according to the nature of the patent and market structure. ...The second and greater danger of intellectual property lies in the threat to liberty. When a group of scientist stop working on a protein molecule because there are too many intellectual property rights that surround the use of the molecule, a basic freedom to research, has been interfered with. The liberty cost of intellectual property rights may seem remote because most of us do not carry out research on proteins. But we all have an interest in seeing public research programmes into diseases and health being carried out.”⁴

The frenzy for the patenting of IP has also cottoned on with indigenous groups and communities. Their response is a result of what is referred to by economist as the prisoner's dilemma. If one stays out one loses, and if one participates one loses too, but then at least the loss is not as great as staying out completely. The extremities towards which the IP system is tilted today, is forcing all parties to the use the system rather than be left out. Without an alternative form of sharing and change in ethos we suffer both the logic of Hardin's tragedy of the commons in some circumstances (where free riding is rife) and the tragedy of the anti-commons where every piece of idea is patented. This frenzy is hampering innovation and research by increasing the cost of transaction between different holders of IP.

No further value can be added unless, one passes through the cumbersome gridlock and 'congestion' the current system of IP has imposed upon us. Inevitably, transaction costs are transferred to consumers, and this is no more evident than the exuberant cost for medicines⁵

³ During that period price distortion can result due to a conferring of a monopoly to the rights holder who often has the power to influence and manipulate the market. Which in the case of essential medicines amount to an extortion or tax on the sick or the health and well being of poor nations.

⁴ Quoted on pg.3 of their book.

⁵ Although in the case of pharmaceuticals monopoly rights have created priced distortions, and a market failure.

or biotechnology products. Benefits to consumers and users of IP are dependent on the degree of asymmetry between the holders of IP and the users of IP.⁶ For instance, in the case of plant biotechnology, if one does not hold what are defined as foundation technologies⁷, one is simply out of the innovation loop. To participate, one has to pay a high royalty to the holders of foundation technologies, in order to produce new products or innovation. While IP affects the mainstream economy is now a subject of numerous critical studies, a similar effort of reflection and analysis is required on the impact of IP on CPRs.

Key features of commercialization

There are two possible motives for commercialization: excessive profit as a form of enrichment and primarily driven by greed, or profit for the sake of creating viable and sustainable trade and business over the long-term. The latter is to ensure a means of sustained livelihood; as profit allows for diversification and investment in new ideas and products. In this manner ensuring the business operation is more resilient in a changing economic environment. New investments can lead to more employment, and greater social value. The latter form encapsulates a more acceptable ethos.

However, commercialization is not the same as privatization, as the one locates reasons for exploitation in the ownership structure, while the other in the manner in which value is extracted from commodities or services when they are transferred from producers to users in the economy. This difference is not only subtle, but substantial in nature.

Perhaps a more troubling phenomena of commercialization, and which affects communities invidiously, is the commodification of culture, identity, and traditions. Commodification denudes an object of sale or consumption from its rootedness in social or cultural value. For instance if we take the example of the Hoodia, a plant used by the San to suppress appetite, the value and richness of San local knowledge and tradition, inevitably gets excluded from the final commercial product.

However, while culture and history, is expunged from a commodified good in some cases, in others, cultural identity and history, is a way of giving the product authenticity, and character. We must understand that this association to origins has no pious intent, except, that it serves to support a commercial objective: which is to sell more of a product. It gives the product a 'cool' feel. The lack of social objectives, only entrenches the perverse consequences of commercialism. Here, the challenge is how do we make privatization and commercialism socially responsible, so as to make it work for society rather than against society.

What can we conclude?

Unbridled privatization and commercialism in a society with deep scars of inequity between the different economic classes only further ensures that the privileged are able to absorb and acquire more advantages for individual welfare, than the system allows for those already behind to catch up. In general, when private entities act without some regulation or supervision, they dominate the market and derive the greatest value from an open market. In a system of inherent inequality, State intervention, by force of circumstance and choice, is necessary.

⁶ In the case of the anti-commons, reduced asymmetries may not matter, as the asymmetry is no longer in the producers of the idea but in the transaction cost that is incurred between sellers and purchasers.

⁷ An example of a foundation technology is the use of certain kinds of vectors to be able to transfer transgenic DNA into the host plant.

While private firms may provide information to the market on products at their disposal efficiently, they do not necessarily provide information about the impact of their activities. Such public interest information on resource extraction or exploitation can only be solicited through public pressure, or public institutions regulating the environment in which private actors operate under.

In general private entities view the care of others as being the responsibility of the State and other public good institutions. Many would suggest that caring for others is a responsibility of all. In addition, not all forms of production are necessarily good, as diversion of investment and production for the purposes of producing goods that feed conspicuous consumption (producing goods for luxury and status), can hardly be regarded as beneficial to society.

It would suggest that the benefits of an economy are better spread if the economy is structured to ensure diverse forms of economic organization and distribution of benefit to be pursued. In this scheme, both State, and communal forms of economic organization will have a place. Especially, in societies, like our own, where there is a predominant favouring or bias towards private ownership and entrepreneurship.

The natural consequence of this bias is that economic planning and investment is directed at supporting private forms of organization as the preferred option, and at the expense of other forms. In societies with different needs and wants, (and that cannot solely rely on participation in the free market for generating a livelihood) different forms of ownership could provide alternative solutions for them

Caution must be exercised in associating with any property regime the idea that they in their own right can achieve the attainment of public goods objectives. It is often the case that in attacking private ownership for undermining public goods goals, it is assumed that its alternative: communal forms of ownership are the answer. There is nothing inherent in CPRs to suggest that members who are part of this system will not seek benefits selfishly for themselves and disregard the interest of other neighbouring communities.

Collectives can reinforce privilege and exceptionalism amongst a few beneficiary groups at the expense of the nation or other societies within a particular State. It is therefore not always true that public good objectives are always secured by securing the rights of commons to a selective group of communities. They may well have substantial welfare benefits for individuals within that community, but significant impacts on communities outside of their immediate sphere of inclusion. In some circumstances the scale of their impact in an economy can be no different to a private owner or firm.

Neither private nor common property is sacrosanct. A sound and healthy economy it would seem, cannot be reliant on the dominance of one form of economic organization, but must seek solutions in plural forms of organization, production and distribution. Each must be dictated by the needs of their respective constituencies. The role of the State is to ensure this capability exists within the broader economy. It is with this view in mind that one must be supportive of common property systems, as they may generate benefits where other forms of organization are incapable of reaching or simply not the appropriate mechanism to deal with their special needs.

Part B: The philosophical roots of privatization

It is useful to remind ourselves of the early genesis of the concept, and why it still continues to have such a powerful sway over the manner in which economic forms of organization that are prevalent today are so entrenched. I rely for much of my discussion on the paper of Tibor Machan titled: *The Right to Private Property (2001)*, published by the Hoover Institute.

Machan's paper is used in so far as it is a fair representation of the vast literature that already exists on the subject. Within the constellation of the concept are not only utilitarian assumptions, but also moral assumptions. Which partly explains the predominance of the right to private property in the Anglo-American canon.

Privatization and liberalisation has become so sacrosanct that the doctrine is almost universally pervasive in government and private sector thinking. Western liberal⁸ views on private property can be traced to the philosophical works of John Locke. Locke conceived private property as a natural right. Locke introduced a further nuance to the natural right concept and that is the idea of 'mixing labor': '... when one mixes one's labor with nature, one gains ownership of that part of nature with which the labor is mixed' (Machan, 2001).

If we take the example of the chopping wood from a forest, one has the natural right to the wood, which can be used for one's purpose or sold to others. Modern revisions to the 'mix of labor' thesis are contained in theories about entrepreneurship, and the rights over the disposal and sale of goods that are a result of entrepreneurial labour and judgment. These two principles form the core threads within the notion of private ownership.

Locke's doctrine of natural right did not go uncontested. Anarchist intellectuals such as Joseph Proudhon called for the abolition of private property because he considered it a form of robbery. Proudhon's view requires elaboration. Proudhon was putting to question the legitimacy of private land that was acquired through colonial dispossession as having the character of 'natural right'. Proudhon pointed out that property acquired through violent dispossession could never be construed as being 'clean'. Illegitimate acquisition will always contain within it a legacy of injustice and the specter of impropriety will linger in the rights of ownership transferred to generations in the future.

However, the propitious claim of natural right and private property is that it is the foundation for individual liberty and freedom. Individuals are empowered to fashion their own form of social existence by giving them the means for personal authority and sovereignty. Associated with the doctrine, rather strangely, is the belief that the possession of private property increases the propensity for individuals to exercise greater moral responsibility. Within a common property system there is no incentive for individuals to act in a morally responsible way. Machan's support for this claim is his reference to a rather crude example. He writes:

“On a U.S public beach, where the tradition of public propriety is weak, litter flourishes. This does not mean that people are evil. Some simply don't care, and drop their trash where it's most convenient; others may find themselves short of time and leave their trash scattered, perhaps thinking, somewhat vaguely, that the mess will eventually get cleaned up, even though, at home, this is likely to be quite different...”

Elsewhere, Machan goes on to suggest that private property can also lead to what the Philosopher John Stuart Mill suggested is the net benefit for the greatest number of people. In other-words, if we grant individuals the right to property they have the incentive to act in benevolent ways and in so doing act for the greater welfare for others. However, the

⁸ Liberal views have traditionally been considered to be a progressive school of thought. However, liberalism has acquired a taste for conservatism. Leftist prefer to call themselves “progressives” rather than liberals. Liberalism's ascendancy is embedded in the Anglo-American tradition and first started during the period of Locke. It aroused particularly as a reaction to the stifling role of religion, and the interference of religion in the establishment of a secular State. Progressives see inequality as a threat to freedom, and the stability of free societies in the long-term. Conservatives view too much government as a threat to freedom.

persistent prevalence of inequality would such that the trotting out of such moral claims is rather absurd. Machan writes:

“If people are to act morally, everyone needs to know one’s scope of personal authority and responsibility. One needs to know that some valued item, skill, or sum of money itself lies within one’s jurisdiction to use before one can be charitable or generous to other people. Short of such knowledge, one can hardly know whether it would be courageous or foolhardy to protect something, whether it would be generous or reckless to share it, and so on. In other words, private property rights are the social precondition of the possibility of a personally guided moral life”.

These inscriptions of faith are impositions on the doctrine of natural right, than that which meets the test of reality. Machan’s thesis is far too simplistic, although it provides an interesting interlude into some of the fundamental doctrines that seem to be used to legitimate the idea of less State, the dismantling of the communes and more privatization. Furthermore, proponents of private property rights have often failed to show how deep rooted inequality can be addressed by their model of economic organization. Their defense, recurrently, is that inequality should be left to the markets to resolve, and not the State.

Amartya Sen’s remarks on the way markets should work are poignant. He writes:

“The market mechanism, which arouses passion in favour as well as against, is a basic arrangement through which people can interact with each other and undertake mutually advantageous activities. In this light, it is very hard indeed to see how any reasonable critic could be against the market mechanism, as such. The problems that arise spring typically from other sources-not from the existence of the market per se-and include such concerns as inadequate preparedness to make use of market transactions, unconstrained concealment of information or unregulated use of activities that allow the powerful to capitalize on their asymmetrical advantage. These have to be dealt with not by suppressing the markets, but by allowing them to function better and with greater fairness, and with adequate supplementation. The overall achievements of the market are deeply contingent on political and social arrangements.” (Sen, 1999)

This brief interlude into the philosophical underpinnings of private property demonstrate that its topography of assumptions and beliefs do not provide an adequate space to secure the interest of those who hold strongly that CPRs are a solution for them. There is a need for a philosophical repositioning of CPRs within the economic mainstream. The battle is both philosophical, leading by example, and in ensuring that institutions such as the market widen the space for other models of economic organization to participate freely and legitimately in the economic.

It would seem that a solution for inclusivity cannot solely come from the acceptance of the right of other property systems to co-exist with its dominant counterpart. But, rather, it would seem that healthy co-existence is only possible if these alternative forms of organization are part of the center: the very places where economic planning and forms of organization are decided. As will be demonstrated in part C, that CPR’s longevity is subject to the performance and character of the economy as a whole, rather than its token co-existence with dominant counter-parts.

Part C: The decapitalization of the commons

This section will highlight some important challenges for CPR within the macro-economic environment that it needs to be responsive too. The decapitalization of the commons, is

reflective of the fact that capital which is held in private property enjoys unprecedented levels of security and protection. The disproportionate investment in securing the interest of private holders of property rights has led to the further marginalization of those who hold rights in other forms of property.

In considering the problem of decapitalization of the commons a full spectrum of the capital base needs to be considered, viz: human capital, financial (cash), physical assets (such as housing fencing etc), environmental (access and quality to natural resources), and institutional (including culture and customs). In measuring the impact of privatization it is usually the financial and economic indicators that become the measure of success and not other assets possessed by the poor. Both cash, and non-cash forms of economic co-existence have become an important feature of developing economies.⁹ Decapitalization, occurs when one of these forms of capital are reduced in value and can longer be secured or guaranteed by the poor for their livelihood. Decapitalization is brought about by three key processes:

- The first entails the reduction of the value of physical assets, as they are not convertible in the formal economy.¹⁰
- The second type of decapitalization results from new forms of political organization, that do not recognize the rights of individuals that wish to live under customary norms and rules.
- Thirdly, resilience within any system is also a result of the convertibility of its assets and the mix of options they can pursue between both cash and non-cash based activities.

The role of monetarization in weakening traditional social capital

Monetarization has conferred to individuals greater power, access and mobility than the traditional confines of community life. With monetarization we are witnessing the emergence of a new kind of cultural positioning, i.e. the privatization of individual identity. Individuals can exchange their labour for cash if he or she finds the commune wanting. This ability to exchange one's capital in the economy of others is perhaps the most important challenge that the communes face in keeping the whole and sense of community intact.

When an individual acquires cash, he or she, can claim a new status and punctuation of their role within the political and cultural space of the community. Monetarization opens up once closed systems and exposes them to new kinds of goods and services. These in many instance substitute traditional forms of goods and services. For example, increased cash income from migrant labour in Mozambique has had the effect that the seasonal collective activity on local salt mines has been relegated to a distant memory. With cash in hand, salt can be purchased from the markets in the city, without needing to mine local salt deposits.

As a consequence, the salt mines, as a locus for collective activity and bond-ship has had to be abandoned. Similar scenarios may prevail for others resources, goods or services.

⁹ In Africa the population is predominantly rural. Largely living on communal lands, where traditional forms of organization, exchange and rules still govern the use and disposal of various assets possessed by individuals or the commune as a whole. With colonialism, and the post-colonial era, traditional systems have come under pressure through colonial appropriation of land, the resultant landlessness, and the need for surplus labour to work in mines and factories. This historical legacy resulted in the emergence of new city and agricultural cash economies, that provided a supply of commodities to colonial States, hence opening up closed societies to new trade links with Europe and elsewhere. These interventions have forever changed the cultural and political landscape that once defined the communal 'enclosures'.

¹⁰ It is useful to read Hernando de Soto's work: "The Mystery of Capital", to gain a deeper understanding of the importance of the informal economy, and the non-transferability of the assets of the poor.

Monetization has diminished the importance of social purpose in communal production. Labour within the commune is but part of social function whereas in the industrial and knowledge economy labour is merely seen as units of production. They are seen as a cost per factor of production and not forms of collective social reinforcement. In conventional communal settings labour and social ritual are unison.

With monetization, the role of the formal cash-based economy, as the de facto means of exchange defines access to other goods, convertibility of assets, and in so doing individual participation in the formal economy and political system. This may suggest that those who are part of communal systems are likely to enjoy greater integration in the formal economy if they are able to convert their assets readily into cash. The mainstreaming of the communes into the formal economy also brings with it greater power to participate in the political system, and hence lobby for better rights, access or investments from the State.

Perhaps as result of monetization, the primary effect of this is that social capital is weakened, forcing the need for new forms of social contract, incentive and compliance. Local institutions that are unable to adjust to these new social pressures are incapable of maximizing the value of their collective economic assets. With monetization of the overall economy, new conceptions of share-holding, rights of access, use and apportioning of benefit become a prerequisite. This brings to fore the need for a supportive environment that allows for rapid adaptation to new kinds of social contract and institution building at the local level.

In ensuring that the value of the commons is retained, new models for maintaining the capacity of the communes to regenerate certain ways of life and welfare should be considered. It may well mean that in some circumstances traditional forms of management may be wholly appropriate and applicable, and in other circumstances hybrid forms between modern and traditional may need to be considered and applied.

The role of markets

Increasingly communities are encouraged to participate in the market. It is assumed that the markets can work the same way as they do for private entrepreneurs. There is no doubt that the market economy provides new opportunities, but from the outset rural and communal enterprises face a great hurdle. Neither, can we assume that the free market is cognizant of the inherent inequality with which poor communities must participate in this market. The encouragement of their participation in the market comes from a residue of naivety or the fear that if a greater proportion of the poor do not see the benefits of the market they will revolt against it. The participation of the poor in the formal economy is always from a position of asymmetry. There are a number of factors contributing to this unequal participation:

- Estrangement from the market due to the lack of information and unfamiliarity with the rules of the market.
- Lack of direct access to the market, where access can only be achieved through the support of intermediaries, hence shaving off their profits as such access comes with a price.
- The need for specific entrepreneurial and management skills that allow greater agility and responsiveness to this market in societies that have traditionally been reliant on agriculture as the primary and only form of economic activity.
- Access to technology such as information and communications technology (ICT) has improved in some countries direct access to the market than rely on intermediaries. But, ICT is not accessible to all.
- Finally, access to credit, for local community entrepreneurs is limited, as formal banks will not loan without the support of credible guarantor. This is largely because their assets are inadmissible.

The harsh reality of unforgiving markets results in whatever precious tangible or intangible goods communities may have; they are left out of desperation to pawn-off their belongings to the highest and most available private bidder or subject themselves to the unequal rapacious free market. As evidence would suggest that such pawning-off is a result of economic duress and not willful participation in the 'free market'.

The consequences of privatization on environmental assets

Hardin's tragedy of the commons cannot be explained simply by looking within a commune for its failure, but one must also look on the outside. In particular one needs to examine the influence of external economic forces in creating new incentives for non-cooperation and increased private gain preference over collective gain and preference. The incentive therefore for individuals to conform for the sake of collective benefit, runs at a risk when the benefits and incentives in terms of what can be offered from a cash economy to individuals is higher.

Hardin's solution to the problem of free-riding within the communes is to suggest that it can only be addressed through aggressive privatization and increased government control of the commons. This solution has been resisted in some quarters for good measure. As critics of Hardin's view have pointed out that private title is possible within the commons, except that it is rule-bound by common property institutions and decision-making authority. Here, private title, does not take on the character of ownership in the sense of a Western liberal tradition, but it is seen rather as a form of custodianship for which the user has certain rights and responsibility assigned by the collective.

Furthermore, the choice of allocating collective control or private allocations within a CPR is dependent on the resource itself. Those resources that are renewable and show consistency in production tend to be delegated to the management of private individuals, whereas resources that are variable in their production, such as grazing land, fall under common property jurisdiction. However, CPRs, if they work well, can lead to greater equity than private allocations of rights can achieve.

A recent economic valuation study showed that the insurance and welfare impact of the commons far outweighs the benefits that can be derived from the privatization of the commons. (Baland and Francois, 2003) The impacts are most noticeable in terms of distributional effects of common property vs. that of private property. In circumstances where no gainful employment in the formal economy can be obtained, the unemployed find in the commons a fall-back position, as a resource can be shared by more than one individual. The value of the natural asset is diminished if they are degraded, polluted, or their rates of regeneration have been impacted by over-utilization.

Hardin inadvertently inspired a whole raft of 'free market environmentalist' that were eager to seek ways in which markets through a redefinition and reconfiguring of the property rights system can be spurred to deal with environmental problems. Free market environmentalist emphasise the need for secure property rights if effective markets are to operate. What they mean or imply by property rights in general is the moral superiority of freehold tenure or private property as the primary mechanism to change behaviour amongst those who have control over resources.

A throng of government officials, donors, multi-lateral agencies and policy wonks eager to implement Hardin's hypothesis embarked in Africa and other regions of the world on a mass-scale privatization of land in the hope that environmental degradation will be halted. George Monbiot, argues that the dissolution of the commons through privatization is at the 'heart of our environmental crises'. Monbiot further notes:

“But when the commons are privatized they pass into the hands of people whose priority is to make money. The most efficient means of making it is to

select the most profitable product and concentrate on producing that. So, in Kenya, the Masaai's savannahs-a mixture of woods and scrub, grasslands and flowering swards-are replaced with uniform fields of wheat. ... As land changes hands, so does power. When communities own the land they make the laws, and develop them to suit their own needs. Everyone is responsible for ensuring that everyone else obeys him or her. As landlords take over, it is their law that prevails, whether or not it leads to the protection of local resources.” (1994)

The impact of privatization on sustainable livelihoods

What is not fully understood is the manner in which the rapid privatization of strategic state assets and public goods are having an impact on rural livelihood strategies and adaptations. As numerous studies have show livelihood diversification is becoming an increasing feature of those seeking to make ends meet in times of economic uncertainty and upheaval by the poor. (Ellis, 2001) Privatization of key state assets and services stands to effect livelihoods via two pathways: direct and indirect. Direct privatization imposes restrictions on the pursuit of multiple livelihood strategies through the privatization of resources, use rights and access. The lack of access to resources leads to general insecurity, as basic needs cannot be met, as well as investing in new opportunities that will lead to sustainable livelihoods in the long-term.

Indirect impacts from privatization are a result of the privatization of water services, health care, education, or transport, which reduces the income of households. The reduction of income to households places greater a burden on the savings of households and disrupts the pattern of staid investments in various forms of capital that enable the poor to secure livelihoods. Perhaps the most adverse effect of privatization is the reduced political participation and influence of the communes. For instance, with privatization and the increased concentration of land in the hands of a minority has enabled them to have a greater say over the distribution of resources and investment of capital. In many countries privatization of land has also weakened the political power and influence of women.

Part D: Privatization and commercialization in Southern Africa

In defining the nature of changes in the use and disposal of CPRs in Southern Africa, I will highlight some trends, and issues emerging from a few select case studies. I will also seek to categorize the nature of some of these trends, and propose a few questions for future research and investigation.

The key factors contributing to the decline of common pool resources; which is also representative of the situation elsewhere in Southern Africa, that have been identified are:

- Population growth
- Deforestation and loss of animal and plant habitats;
- Civil war;
- Insecure tenure;
- Monetarization of the economy;
- Liberalization of markets

The descriptions below provide a broad sense of the trends for tangible and intangible goods generated within the communes. They also highlight the degree to which privatization and commercialization have penetrated the communes. Within each of the examples being examined, further research work needs to be done, to assess in what manner or form privatization and commercialization is having positive or negative impacts.

Examples and trends in privatization and commercialization

1. Wildlife and tourism

Southern Africa's largest experiment in privatization involves the conferring of private property rights over the ownership of wildlife. Wildlife, in general, is regarded as *res nullius* (without formal owner) or state-owned. Special legislation in countries such as Zimbabwe, South Africa, Namibia and Botswana over the last 40 years or so, has made it possible for private owners to gain access to what is a public good.¹¹ The private sector model of concessioning and game ranching has of late been extended to communities, such as the statutory communal conservancy programmes in Namibia. There is evidence that privatization of wildlife, largely due to inadequate State capacity, and the lack of comparable rights to communities, has led to the flourishing of wildlife in Southern Africa. The largest proportion of benefit so far is being accrued by private owners.

The viability of the industry is attributed to increased hunting concessions granted in the 1960s. The granting of hunting rights ensured that the industry was more profitable as commercial meat production of wildlife on its own did not prove to be viable. (Muir-Leresche and Nelson, undated) The industry at present survives on a combination of wild-meat sales, hunting, auctioning of wild animals (mainly antelope) and tourism. Viability has improved with the addition of valued-added activities within the chain of production by the production of biltong, leather products, photo and filming rights, and taxidermist activity. The total value of the industry, including its value-added components, is hard to estimate with any high degree of accuracy. However, the Zimbabwean, South African and Tanzanian sport hunting industry is estimated to be worth about \$500m.¹² (Barnett, undated)

While aggregate figures demonstrate that the industry is growing, there have been no studies to show how deep and wide the socio-economic benefits are if one to compare the industry to agriculture. The actual contribution in terms local economic benefits is still speculative. Anecdotal evidence would seem to suggest that the main beneficiaries of wildlife trade are predominantly private owners. In 2000, the Constitution of Kenya Review Commission found in submissions made to it that local people throughout Kenya reported that "one of the most common areas of complaint related to the use of land for game parks, but to the exclusion of the local people". The commission went on to state that "a sense experienced very widely: that local control of resources, and therefore of their lives, had been wrested away". (Nelson, 2003)

Ensuring wider benefits for local communities from the wildlife industry is still a challenge governments face in Southern Africa. Where communities are owners of the land, like the Bagkatla and Makuleke, sales of wildlife have brought substantial benefits to the community. In the case of the Makuleke, the culling of elephants in 2001, allowed the cash generated to be converted to other forms of assets and business. In Botswana's Controlled Hunting Areas, leasehold rights exist for wildlife, and can be used to attract private capital or the establishment of joint ventures. In so doing, giving communities greater say and control over the flow of benefits.

For the tourism sector, different models have sought to encourage community participation in the industry. In South Africa the commercialization or privatization of State resorts and facilities to tourism operators has been accompanied with policies that aimed at ensuring

¹¹ To only simply see the success of privatization on the basis of conferring private ownership rights is not to look at the full picture. Private ownership has come about because of lobbying by the industry, having better managerial, and financial capacity, as well as private owners having established a good network of markets overseas.

¹² In South Africa it is estimated that there are more than 6000 wildlife ranches in the country with an estimated value of \$115m creating about 42 000 jobs.

private sector investments involved community empowerment. Other examples of private sector attempts to widen benefits involve procuring local services, labour, and the initiation of community enterprises. In many parts of the region, community outreach schemes or the establishment of community trust was not only good corporate PR, but a way of gaining legitimacy and acceptance in a climate where governments and communities mistrusted the motives of private entrepreneurs. (Ashely and Wolmer, 2003)

2. Forest and woodland management

There have been a plethora of new laws in looking at ways by which to decentralize forest management to communities in Southern Africa. (Wily, 2000) Forest law case studies in the region demonstrate the extent to which the State is beginning to concede that it cannot manage all these resources by itself. For instance, in Tanzania a new forest act in Zanzibar (1996) makes it possible for communities to form an association in order to create a Community Forest Management Area.

These measures can be construed as 'conditional' forms of self-governance, and are meant to prevent a situation of open access, or plundering of State protected resources. Elinor Ostrom defines self-governed forests as one "... where actors, who are major appropriators from the forest, are involved over time in making and adapting rules within collective-choice arenas regarding the inclusion or exclusion of participants, appropriation strategies, obligations of participants, monitoring and sanctioning, and conflict resolution". (1998) Presently, legal frameworks in the region allow for differing degrees of control and benefit, but may preclude self-adaptation without some kind of State supervision. Often, the granting of conditional rights make it possible for communities to use wood for subsistence or sale on the commercial market. (Issufo, 2003)

On the whole there are positive steps are being taken to improve community forest and woodland management in Southern Africa. This is partly due to the fact that forest and woodland are an important source of livelihood, especially in Mozambique, where more than 70% of the population is dependent on forest resources (Issufo, 2003). The decentralization of access and ownership may offer new commercial opportunities, and the possibility of investment by private capital. Or in some cases like South Africa, in particular the East Cape, communal land in high rainfall areas is sought after, for the expansion of commercial forest. However, where there is sound policy and regulation, community and private sector partnerships are less exploitative.

3. Natural Products Industry

A range of natural products produced from the use of indigenous knowledge, and community-based resources are finding their way into the commercial market in the last decade or so. The development of natural products industries involve several different types of rural enterprises. The ownership of these enterprises varies from being community owned, or community based, but supported by intermediaries such as NGOs, government or the private sector. For example, PhytoTrade is a non-profit trade association whose main objective is to establish viable natural products industry in rural areas on resources that are accessible to poor people. The enterprises are involved in non-conventional (outside the realm of farming) activities, and can only be sustained by the acquisition of new skills, forms of organization, and penetration into non-traditional markets whether they are formal or informal in nature.

Trade in a variety of natural resources in Southern Africa incorporates a range of resources, such as, phytomedicines, fiber, wild fruit and essential oils. In South Africa alone, trade in medicinal plants is estimated to be about 19 500 tonnes on the informal market per year, which is valued at R270 million with secondary uses generating some R2 billion from

the resale/use of these plant materials. In the case of Devil's Claw, which is traded and harvested extensively in Botswana and Namibia for over the last 40 years there are about 30 villages and 900 harvesters involved in this 'industry'. Thus demonstrating the range of dependencies that are emerging from the establishment of various trade networks. The total number of households involved in the industry in the region is estimated to be about 10 –15 000 households. (Steyn, 2003)

Similar figures of the numeracy of household involvement in other natural products industries may well exist. A detailed database of people and institutions involved in indigenous plant commercialization and domestication has been compiled by the CPWild Consortium¹³. The database covers activities in South Africa, Namibia, Botswana, Zimbabwe, Malawi, Mozambique, Swaziland and Lesotho. Community enterprise development in the region is being facilitated by a host of non-profit, private and State agencies. Activities in the natural products industries would suggest that demand is not 'sympathy' trade, but the emergence of niche products for which there is commercial demand.

4. Commercialization of indigenous knowledge

Encroachments in the field of intangible goods are now widespread. These occur in a milieu of undefined rules, and the setting of development objectives that meet specific national or regional priorities. The overarching system of rules that define patterns of ownership, use and benefit from intellectual property (IP), are dictated by the WTO's Trade in Intellectual Property Rights System (TRIPs). The Convention on Biological Diversity, is the only other international treaty, that pursues a developmental agenda under its provisions for access and benefit sharing, and principles for science and technology transfers between developed and developing countries.

The use of IP has taken on idiosyncratic forms like the attempt by a US based company to acquire a defensive trade-marked in order to prevent South African companies from selling the product in the US and Netherlands as a result. (Business Day, 2003) There is also intellectual property associated with bio-prospecting ventures. Recently, a little unknown plant the *Hoodia* attracted a great deal of media attention. A plant the San communities in Namibia, South Africa, Botswana and Angola used to suppress appetite when going out on long hunting expeditions.

Their use of the plant was studied by South Africa's Council for Scientific and Industrial Research (CSIR), which led to the isolation of the appetite suppressant compound P57. The CSIR to signed a licensing agreement with a British pharmaceutical company, Phytopharm to exploit the plant's commercial value. In turn Phytopharm sold the rights to Pfizer, one of the largest pharmaceutical multinationals, to take the development of an appetite suppressant product to full commercial development. Without the San's knowledge the ethno-botanical link would not have been possible.

The availability of ethno-botanical knowledge helped short circuit the path of discovery for the pharmaceutical companies and hence reducing the cost of discovery. The controversy ended with a signing of a royalty sharing deal. In March 2003, an agreement was concluded with the San receiving 6% of all royalties received by the CSIR and 8% of the CSIR's milestone income received when certain targets are reached. Revenue received from the deal will go into a Trust fund. (Laird and Wynberg, 2003).

¹³ They have a list of 250 organizations/individuals. Commercial Products from the Wild is spearheaded by the Institute for Natural Resources (INR), University of Pretoria Agricultural Economics and University of Stellenbosch Forestry Department. There are 60 members in the consortium. They operate predominantly in South Africa.

Conclusions

In those parts of the region where communities have had clear and firm tenure rights over the land, they have been able to secure significant commercial benefits and attract private sector investment. Asymmetrical relations between communities, government and the private sector can be a cause for fear, mistrust and suspicion. These can be further fuelled by lack of knowledge of the commercial sector, absence of rights, and a supportive environment. Private investment and commercial opportunities work best when there are clear policies, controlled regulation and a supportive environment.

The vulnerability of the communes to various political and economic threats is reflection of the extent to which the macro political and economic environment has accommodated their interest. The future fortunes of the communes is inextricably linked to macro political and economic reforms. As the paper has argued: the lack of inclusivity for diverse models of economic exchange and production hinders the potential and rewards from CPRs. Privatization and commercialization can be both exploitative (as threat) as well as create new opportunities for the poor. However, opportunities largely depend on the degree of asymmetry between communities, vs. private and commercial actors.

In order to answer the question as to whether privatization and commercialization is detrimental to the communes is not a straightforward one. Evidence would suggest that while the general economy is biased in favour of private property and commercialization through the markets, there is an increased propensity to neglect and ignore the interest of those who could be exploited and made more vulnerable by these processes. To correct this imbalance active state intervention is required so that overall economic growth and development is directed towards the interest of the poor.

The communes cannot exist in a vacuum of the changing cultural and institutional reality of the broader social context. Therefore, neat notions of identity, and tradition are no longer tenable, no matter the reasons for this change. Collectives, or communal societies that are embedded in concepts of tradition, or indigenous culture and value orientations are not immune to changes that are taking place within the broader milieu. In as much as there is a need to adjust to new political and economic forces; so there is a need to also revisit cherished notions of identity and values that often are associated with the idea of commune, or traditional forms of community life. Local institutional building, and the formation of new kinds of social contract and security of rights is pivotal in ensuring this adjustment process is undertaken with the least of pain and social upheaval.

More investment in communal tenure and rights of access for the poor is significant contributions that the State can make. These are already evident in case studies of tenure reform in forestry, and conservation, as examples. However, macro-economic stability is critical in reducing vulnerability and its impact on the poor. Understanding the risk that the macro-economic environment poses to the communes and the poor in general is where new cutting edge work is required. To a large extent, much of the literature on CPRs can be classified within the domain of micro-economics. They are perceived as individual entities or 'firms', but their performance is not measured against the macro-economic policy environment.

References

1. Ashley, C. and Wolmer, W. Transforming or Tinkering? New Forms of Engagement between Communities and the Private Sector in Tourism and Forestry in Southern Africa, PLAAS, Research Paper, No. 18, March 2003

2. Baland, J. and Francois, P. Commons as insurance and the Welfare Impact of Privatization, CMPO Working Paper Series No. 03/069, March 2003.
3. Barnet, R. Regional Overview of Sport Hunting Industry in the SADC Region, IUCN-ROSA, USAID funded initiative.
4. Berkowitz, P. The Liberal Spirit in America, Policy Review, No. 120, 2003
5. Campbell, et. al. Household Livelihoods in Semi-Arid Regions: Options and Constraints, CIFOR: Indonesia, 2002
6. Drahos, P. and Braithwaite, J. Information Feudalism: Who owns the knowledge economy? Earthscan: United Kingdom, 2002
7. Laird, S. and Wynberg, R. Biodiversity Prospecting and access and benefit sharing: An Introductory Primer, IUCN - South Africa, Pretoria, 2003.
8. Lastarria-Cornhiel, S. Privatization of Land Rights and Access to Factor Markets: a Path to Gender Equity?, Land Tenure Center, Wisconsin (USA), 14-17 October 2001.
9. Issufo, A. Current Legislative and Policy Changes and their effect on Forestry and Land Use in Mozambique, October 2003.
10. Machan, T. R. The Right to Property, Hoover Institute, 2001.
11. Monbiot, G. The Tragedy of the Enclosure, Scientific American, January 1994.
12. Muir-Leresche, K. and Nelson, R. H. Private Property Rights to Wildlife: The Southern African Experiment, undated.
13. Martin, B. The Public Interest? Privatization and Public Sector Reform, Zed Books: USA, 1993.
14. Nelson, R.H. Environmental Colonialism: "Saving" Africa from Africans, The Independent Review, Vol. 8, No.1, Summer 2003
15. Ostrom, E. Self Governance and Forest Resources, Plenary Presentation, International CBNRM Workshop, Washington D.C, USA, 10-14 May 1998.
16. Reynolds, T. Rooibos sparks brand row as it enters global market, Business Day, 13 August 2003.
17. Sen, A. Development as Freedom, Anchor Books, New York, 1999.
18. Steyn, L. Draft Situational Analysis of Institutional Support for Natural Resource Based Enterprises (NRBE) in Southern Africa, IUCN-SA, August 2003.
19. Wiley, A. Forest law in eastern and southern Africa: moving towards a community-based forest future? Unasyuva 203, Vol. 51, 2003.