MIGRATION INDUCED LEGAL PLURALISM IN LAND TENURE

Implications for Environmental Change

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1. INTRODUCTION

Increasingly pervasive migration in the developing world is emerging as an important force in global environmental change scenarios (e.g., Amacher et al., 1998; McGregor, 1994; Southgate, 1990; Myers, 1997; Doos, 1994; Ghimire, 1994; IUCN, 2000). Whether by forced dislocation or self-selected migration, a wide variety of causal factors related to resource conditions, from food insecurity, conflict, and water resources, to political, social and economic disruptions, are increasingly leading to larger scale migrations with significant impacts on the environmental resources needed to sustain livelihoods. Such impacts can then lead to additional dislocation and migration due to resource scarcity and conflict. The impact on natural resources and resource use systems in temporary and permanent destination areas extends beyond direct environmental degradation, leading local (non-migrant) communities to change resource use arrangements due to the presence of significant migrant populations, and governments to search for appropriate policy and enforcement instruments.

Given that a large proportion of migrants in the developing world are rural inhabitants who seek rural destinations (Ghimire, 1994), the environmental impact of migrant presence in destination areas operates within the domain of interaction with land based resources and the local communities who have pre-existing claim and use rights to those resources. In this context rural land resource rights (land tenure) play a primary role in how migrants intersect with destination resources and communities, and the resulting environmental consequences. A great deal of valuable work has contributed much to our understanding of the important role of land tenure with regard to how humans interact with the environment (e.g., Katon, et al., 2001; Ostrom, et. al., 1999; Amacher, et. al., 1998; Thesihuesen, 1991; Southgate, 1990). And in aggregate land tenure plays a primary role on land cover change at various scales (Unruh, 1995a). In a migration context often the first and most important interaction between migrants, and between migrants and local communities, is over access to resources, and most often,
the land resources needed for near term food security (e.g. McGregor, 1994; Unruh1995a, 1993).

One of the more important emerging aspects of migration in the developing world is the increasing diversity of those who migrate. (McGregor, 1994; Schmeidl, 1998). McGregor (1994) reviews the literature on migrant and refugee livelihoods, noting that the economic and ecologic changes that take place in destination locations for migrants result in very diverse experiences in different places. Not only are migrants emerging from a wider variety of states and regions within states, but from a wider variety of livelihood systems, religions, ethnic groups, and socioeconomic strata (Schmeidl, 1998). As well, the array of specific reasons for dislocation, and the variety of experiences during migration, add to the diversity of migrant characteristics, and importantly, to the diversity of their approaches to resource access in temporary and permanent destination locations. Diversity in tenurial constructs in a migration context comes about both as migrants carry with them notions about property rights arrangements that are familiar, and seek or are compelled to pursue new constructs in new locations.

Due to the diversity of tenurial constructs coming into contact with each other through migration, and the primary role that land tenure issues play in impacts on the environment and environmental change, what is the aggregate land tenure pattern which is likely to emerge as migrants and migrations become more common, complex, and conflictive? And what are likely to be the primary environmental repercussions of this pattern? This paper draws on a literature review and the author’s research and policy experience with land tenure, migration, and environmental change conditions in East, Central, and Southern Africa to examine the increase in forms of ‘legal pluralism’ with regard to land tenure which result from migration and the interaction between migrants and local communities. The argument is made that the primary land tenure issues that will develop with increased rural migration in the developing world will be associated with a significant increment in legal pluralism in land tenure--or, multiple operative notions about resource use, access, and claim. Land tenure related impacts on environmental change will to a significant degree be associated with this pluralism, and as a result how states are prepared to contend with pluralism will become an important concern. The availability of legislative tools along with the ability and willingness of states to employ these, will impact how conflictive situations of legal pluralism over land resources become, and their overall impact on the resources needed for food security, development and conservation.

Subsequent to a brief introduction to legal pluralism, the bulk of the paper examines several of the more important ways that legal pluralism in land tenure develops in a migration context. This is followed by a brief