

COLLECTIVE ACTION AND PROPERTY RIGHTS FOR SUSTAINABLE DEVELOPMENT

Understanding Property Rights

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Collecting firewood from a forest or water from a stream, grazing a herd, felling trees, preventing entry to a protected area, and making decisions about who should or should not have rights to collect firewood or water are all expressions of the exercise of property rights to natural resources.

Property rights govern who can do what with resources. They specify the claims and related obligations of different actors—individuals or groups—to the benefits of a resource. The assigned set of rights and obligations shape the authority and incentives structure of the rights holder.

MANY TYPES OF RIGHTS

People often think about property rights in a narrow sense as ownership—the right to completely and exclusively control a resource. But property rights are better understood as overlapping “bundles” of rights. There are many combinations of such rights, but they can often be grouped as

- use rights, such as the right to access the resource (for example, to walk across a field), withdraw from a resource (pick some wild plants), or exploit a resource for economic benefit; and
- control or decisionmaking rights, such as the rights to management (plant a crop), exclusion (prevent others from accessing the field), and alienation (rent out, sell, or give away the rights).

These rights may also be conditioned by the amount, timing, and other aspects of resource use and management. Several individuals or groups may have different kinds of rights over the same resource. For example, all members of a community may be allowed to bathe in a river or collect drinking water, but only certain farmers may be allowed to draw water for irrigating fields and to decide how to distribute that water in the dry season, while the state may claim ultimate “ownership” of the water, including the right to reassign it to others. Even on land declared as state forest land, individuals from a community may have the right to collect medicinal plants or fallen branches for firewood (use), local groups may have the right to plant trees (management) and guard them (exclusion), but the state may retain the right to approve any felling of trees and to collect revenue from users.

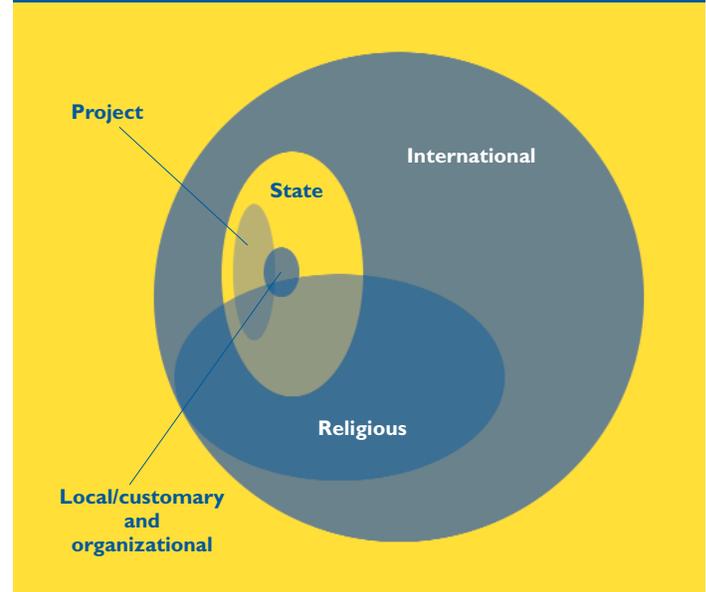
LEGAL PLURALISM: MANY SOURCES OF RIGHTS

To recognize property rights in practice, we need to look beyond state-issued titles to the resource. As illustrated in the figure, there are multiple sources of property rights, including:

- international treaties and law;
- state (or statutory) law;

- religious law and accepted religious practices;
- customary law, which may be formal written custom or living interpretations of custom;
- project (or donor) law, including project or program regulations; and
- organizational law, such as rules made by user groups.

Coexisting Multiple Sources of Property Rights



To understand this complexity, it is useful to start from people’s experiences with access to and control over resources. From this vantage point it is clear that people draw upon a range of strategies for claiming and obtaining resources, depending on their knowledge and assessment of which best suit their situation.

The coexistence of these laws does not mean that all laws are equal or equally powerful. Each is only as strong as the institution that stands behind it. Often state law is more powerful and used by government officials, for example, to declare and enforce forests as state property. Statutory law is also used by powerful outsiders, such as logging companies with concessions in customary lands, to claim resources in ways that are not locally recognized as legitimate. On the other hand, actions of local communities, such as petitions, demonstrations, and roadblocks, are ways of claiming locally recognized rights as well as seeking recognition of their rights by the state.

In some cases state law, although important, is not as relevant as the village, ethnic community, or user group in deter-

mining property rights on the ground. For example, state laws on inheritance are often ignored in favor of religious laws or local custom. Research has shown that state titling programs do not always provide stronger security than customary rights and may even be a source of insecurity for women and households with less information or fewer connections to obtain government land registration.

While legal pluralism can create uncertainty because rival claimants can use a large legal repertoire to claim a resource, multiple legal frameworks also provide flexibility for people to maneuver in their use of natural resources.

PROPERTY RIGHTS AS FLEXIBLE AND DYNAMIC SYSTEMS

Often the more variable the resource, the more flexible are the property rights that develop over it. Water rights are particularly fluid, changing by season and year, depending on the availability of the resource and demands for water. Similarly, many customary rangeland management systems negotiate access rights depending on factors like weather and the social relations between the groups. This flexibility provides a measure of security in times of drought or other disasters, by creating reciprocal expectations of resource sharing between groups.

Another source of change in property rights comes from the interaction between types of law. The different legal frameworks do not exist in isolation, but influence each other. Changes in state law can influence local custom, but changes in customary practices can also lead to changes in state law. For state law to be effective on the ground, it must be implemented effectively. Legal literacy programs may be needed to inform the public—and even government officials—about changes in the laws.

How exactly these different legal orders influence each other depends on power relationships between the “bearers” of different laws. Power relationships also determine the distribution of rights and whether people can effectively claim their rights. Actual rights to natural resources are therefore a product of locality, history, changes in resource condition and use, ecology, and social relationships and are subject to negotiation. Thus, in practice, property rights are not cast in stone or in title deeds, but negotiated.

PROPERTY RIGHTS, RESPONSIBILITIES, AND DEVOLUTION PROGRAMS

Effective resource management entails balancing benefit entitlements and responsibilities of property rights. After failing to effectively manage natural resource systems centrally, many governments are now undertaking decentralization and devolution programs to transfer responsibility for resource management to local governments and user groups. Unfortunately,

many such programs emphasize the transfer of responsibilities without transferring the corresponding rights. As a result, user groups may lack the incentive, and even the authority, to manage the resource.

When devolution programs do transfer rights over resources to a user group or local government, that institution becomes the gatekeeper determining individuals’ rights over the resource. Effective voice in those organizations becomes essential to exercising any decisionmaking rights over the resource. This situation can be especially problematic for women when formal rules limit membership to the “head of household” or when social norms make it unacceptable for women to speak up in public. Because strengthening control rights of some means restricting the use rights of others, those who are not members of the group in question may have less access to the resource.

Thus, while effective transfers of rights and responsibilities from centralized government agencies to local organizations can lead to more sustainable resource management, authorities must give due attention to the equity outcomes, especially noting who loses access to resources.

IMPLICATIONS

Although property rights have a powerful influence on human welfare and natural resource management, this key institution is complex. Property rights do change over time, but legislative reform alone is unlikely to change the manifestation of property rights on the ground. Rather, change occurs through the social and power relations and negotiations between different groups, which may appeal to a variety of legal bases for claiming property rights. Instead of looking for simple “solutions” to property rights issues, it is more useful to try to understand the complexity. This approach involves looking at the claims and the bases of the claims made by individuals, groups, or government entities to different bundles of rights over the resource and at the different types of law that pertain to the use or management of the resource. Security of tenure is important, but so is flexibility to respond to changing conditions that affect resource use and property rights. ■

For further reading see **R. Meinzen-Dick and R. Pradhan, “Legal Pluralism and Dynamic Property Rights,” CAPRI Working Paper 22 (Washington, DC: IFPRI, 2002), <http://www.capri.cgiar.org/pdf/capriwp22.pdf>; J. Spiertz and M. G. Wiber, eds., *The Role of Law in Natural Resource Management* (The Hague, the Netherlands: VUGA, 1996); B. R. Bruns and R. S. Meinzen-Dick, eds., *Negotiating Water Rights* (New Delhi and London: Vistaar Publications and Intermediate Technology Development Group Publishing, 2000).**

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