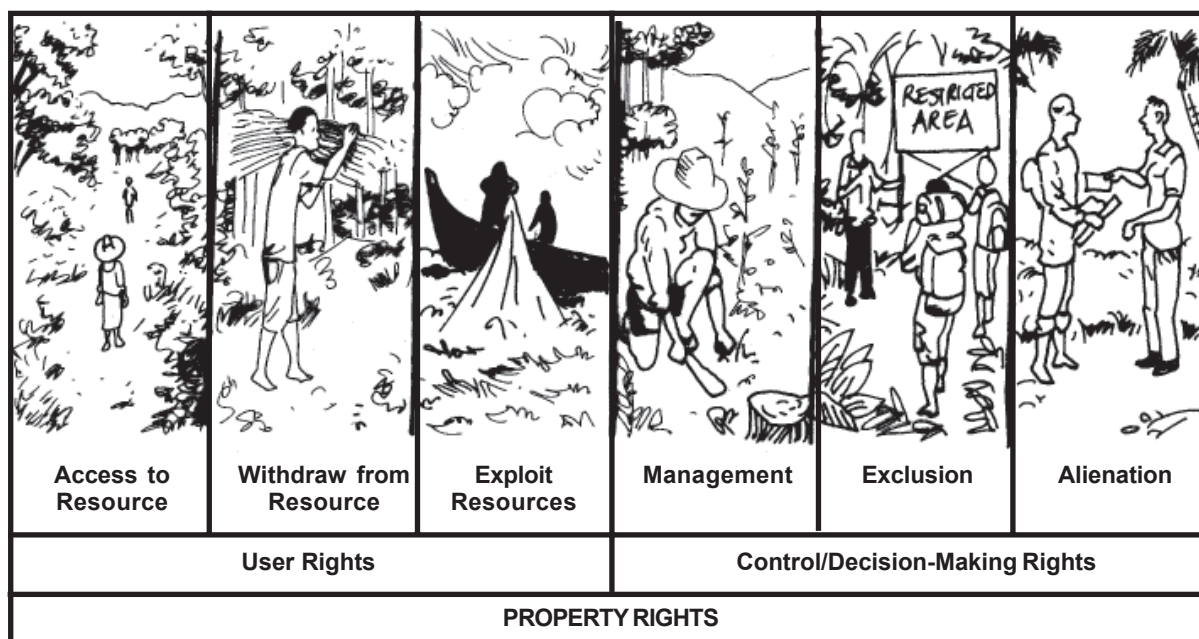


Understanding Property Rights



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

SOURCE:

Meinzen-Dick, R., R. Pradhan and M. di Gregorio. 2004. *Collective Action and Property Rights for Sustainable Development: Understanding Property Rights*, 2020 Focus Brief 11. International Food Policy Research Institute, Washington, D.C.

- **Use rights** – such as the right to access the resource (for example, to walk across a field), withdraw from a resource (pick wild plants), or exploit a resource for economic benefit (commercial fishing); and
- **Control or decision-making rights** – such as the rights to management (plant a crop), exclusion (prevent others from accessing the field), or 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 permitted to draw water to irrigate a field or to decide how to distribute that water in the dry season.

At the same time, 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 Figure 1, 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.

The co-existence 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 petitioning, demonstrations, and road-blocks, are ways of claiming locally recognized rights as well as seeking recognition of their rights by the state.

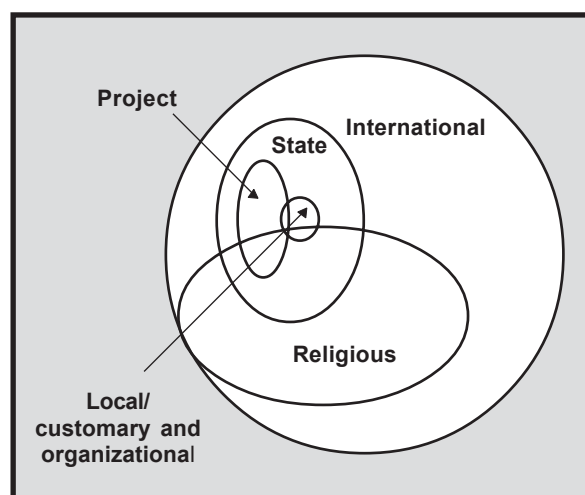


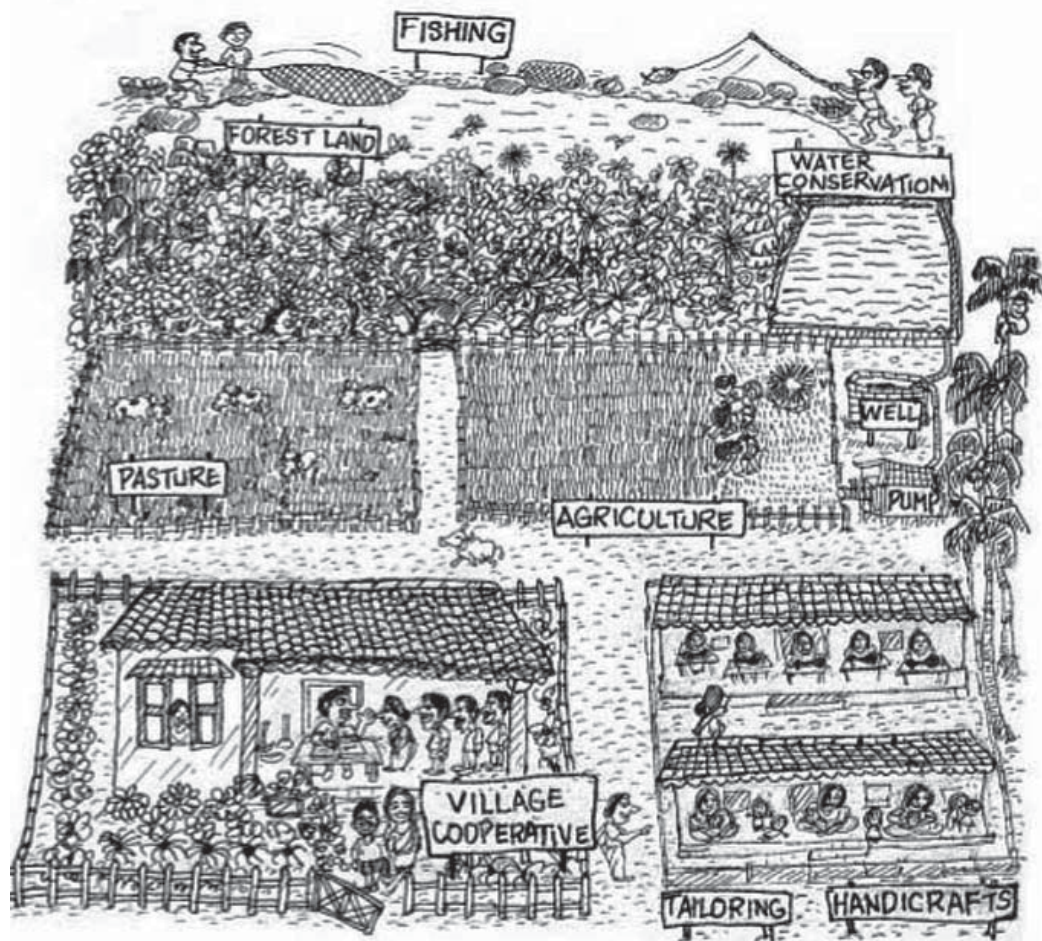
Figure 1. Co-Existing Multiple Resources of Property Rights.

In some cases, state law is not as relevant as the village, ethnic community, or user group in determining 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 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 interaction between types of law. These different legal frameworks do not exist in isolation, but influence each other. Changes in state law can influence local custom, and changes in customary practices can also lead to changes in state law.

For state law to be effective on the ground, effective implementation is required. 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 on 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 the responsibilities that come with 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 user groups or local government, that particular institution becomes the gatekeeper that determines individuals' rights over the resource. An effective voice in those organizations becomes essential in exercising any decision-making rights over the resource. This situation can be especially problematic for women when formal rules limit membership to the "head of household", or where social norms make it unacceptable for women to speak up in public. Because strengthening the control rights of some means restricting the use rights of others, those who are not members of the groups 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 institution is complex. Property rights do change over time, but legislative reform alone is unlikely to alter the manifestation of property rights on the ground. Rather, change occurs through social and power relations and negotiations between different groups, who 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 laws 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.

Suggested Readings

Bruns, B. R., and R. Meinzen-Dick (eds). 2000. *Negotiating Water Rights*. New Delhi and London: Vistaar Publications and Intermediate Technology Development Group Publishing.

Meinzen-Dick, R. and R. Pradhan. 2002. *Legal Pluralism and Dynamic Property Rights*. CAPRI Working Paper 22. Washington, D.C.: IFPRI. (<http://www.capri.cgiar.org/pdf/capriwp22.pdf>)

Spiertz, J. and M. G. Wiber (eds). 1996. *The Role of Law in Natural Resource Management*. The Hague, The Netherlands: VUGA.

Sourcebook on **Resources, Rights, and Cooperation**, produced by the CGIAR Program on Collective Action and Property Rights (CAPRI)