
Resource Rights

Laura Meitzner Yoder

Dr. Laura Meitzner Yoder presented on the topic of resource rights at ECHO's Agriculture Conference in December 2008. Several delegates commented that they wished they had heard something similar before beginning their development work. We hope that you, too, will find the information helpful!

Laura, an ECHO staff member from 1994 to 1996, became interested in resource rights issues while working in agricultural development in Indonesia and East Timor since 1998. She found that external encroachment on villagers' land and forest area often threatened farmers' livelihoods more than agronomic constraints to production. She commented that these issues are commonly found on a large scale in peri-urban areas, near protected areas or national parks, and in resource-rich regions—anywhere that a powerful group has interests in controlling access to natural resources. Similar property issues are also found worldwide among villagers and urban dwellers themselves. More information.

Introduction

Can you answer the following questions about access to resources in your community?

- Can those growing crops next to a stream or irrigation channel divert water into their fields whenever they want, or are there rules governing irrigation scheduling? If so, who or what group in the community makes these decisions and settles disputes over water allocation?
- Do individual farmers who improve soil health for permanent cropping run the risk of losing their land to more powerful people once it becomes more productive?
- Can the first people to see a wild beehive in a forest tree claim the right to harvest that wax and honey at some time in the future? How would they make that claim known or visible—putting a mark on the tree, reporting it to a local authority, etc? Once they harvest the hive, do they give a portion of the wax and/or honey to a certain individual or group with other claim to that forest?
- Who is allowed to harvest fuel wood from the forest near the village: village residents only, or also people from nearby villages, or members of an extended family? Do village residents and/or non-residents need to have permission from some local leader to collect fuel wood there? Can people collect only certain classes of wood (for example, fallen branches or dead trees), or other forest products (leaves, vines, fruit)? Are there certain types of trees that are always the special property of an individual leader or

clan/tribe? If someone is harvesting fuel wood and sees fruit fallen to the ground, is it permissible to pick up the fruit? If fruit is ripe on a tree, can anyone pick the fruit? Who is responsible for punishing those who break local regulations on wood or fruit harvesting?

- Do people plant, or harvest from, or cut down trees as a way to claim the land under the trees as their own?

Understanding Ownership

These questions deal with concepts of property rights, ownership, and resource access. To answer these questions, you need to understand the ways people claim and own resources in your region. Ownership defines who can do what with different resources. For example, the rights to walk across a field, to harvest fuel wood or forest fruits, to use water for irrigation, to plant or cut trees, to graze a herd, to give permission to use land for annual crops, to sell/lease land, or to install a fence are all governed by local norms that are often invisible to outsiders. In every circumstance, different individuals are involved in making and enforcing regulations on these actions.

This article will help you identify the different kinds of property systems that exist, and how you can learn about them in your setting. Understanding local principles of resource ownership before building permanent buildings or planting trees for your project can help you avoid mistakes and future misunderstandings.

Property claims exist everywhere. Even in places without any government intervention in identifying owners (through land titling, for example), local people have strong ideas and welldefined knowledge about ownership and access rights associated with various resources. It is important to realize that different legal systems, regulations, or norms operate at the same time (a situation called legal pluralism); people may have to consider more than one source of authority when they make decisions about resource use. For example, there may be government regulations about forest use, but there are also traditional, customary, or religious leaders who set rules about access to that same forest. In many rural areas, such customary tenure is the most important system determining resource rights.

Property rights exist at many different social levels (individual, nuclear or extended family, clan or tribe, larger group, etc.), and at different levels of "formality" or official status. For example, an urban property may have an individual owner and a government-issued (formal) title. For this kind of property, it can be simple and straightforward to understand the exact identity of the officially recognized owner (by looking at the title) and the means to transfer rights to that property (through sale or rental). Understanding rights to use areas owned by larger numbers of people—extended families, clans, or certain ethnic groups—is much more complex. For example, access rights to grazing or fishing areas vary seasonally, or according to one's clan or tribal status. There are usually local regulations concerning how group members and non-group members can use the land and its water or plant resources, and these are often not recorded on paper. Nonmembers may have access to the land if they contribute to some group event or pay someone for use rights. Resource rights at this level are likely regulated by local leaders rather than a recognized government authority, and are called "informal" or "customary" or "traditional" rights.

What are "Commons"?

One very important concept for many EDN readers is that of “commons,” which are resources held, owned, or managed collectively by many different users, often from different communities. Many of the world’s poorest and most vulnerable people depend on common resources for a very large part of their livelihoods. These people depend on collecting fuel wood, medicines, or other wild foods or trade items in community forests for their basic subsistence. They use common hunting, grazing, or fishing areas that are shared with other groups, often according to well-developed local regulations governing timing or length of use, species and quantities that can be taken, and other factors. Newcomers to an area may not know what these customary regulations are, or even be aware that they exist.



Figure 1: Irrigation channel beside a farmer’s field in Haiti. Water use is often governed by local norms that may not be immediately obvious.

Learning about these norms can take quite some time, for the following reasons:

- they are usually known only by local residents or group members
- they may be unwritten
- they change and adapt over time
- they may involve learning about and dealing with layers of customary

authorities (who do not have an office or wear a uniform!), and they may be strongly linked to the relative social power of various people involved in using that resource.

For those interested in learning about common resource management, a good place to start is the International Association for the Study of the Commons (Common Property) (www.iascp.org) (<http://www.iascp.org/>), which has a worldwide network and hosts a digital library and bibliography with more than 57,000 references about common resources.

Commons are usually not “open-access” for just anyone to use however they choose—in most cases, there are well-defined, existing local regulations about who can use certain resources in which ways. For this reason, working with communities to improve their resource use or allocation means getting involved in the institutional aspects of development, including leadership, membership, and group dynamics, often requiring skills including conflict management and negotiation, that extend beyond the technical skills of agricultural projects.

In some settings, national government or international programs have tried for many years to extend individual titles to agricultural land, much like the individualized urban land title described earlier. These projects were often

undertaken with the assumption that farmers had to have government recognized formal property titles to give them the tenure security needed to make permanent investments on their land.

What these projects often ignored was that in many (especially rural) areas, customary institutions were already providing adequate tenure security. Many of these rural land titling projects also failed because they were too expensive to maintain beyond the initial round of titling. Complex collective resource management and dispersed, rotational swidden land use were very difficult to translate into individual land titles, and “formalization” through land titling could disadvantage certain vulnerable groups, including women, immigrants, or certain social groups who may have customary rights to use, but not to own, certain resources. Sometimes, informal, customary arrangements are more favorable to vulnerable groups than formal or well-defined rules that require literacy, cash, or other resources or skills to navigate.

In 2003, a World Bank report revised its decades-long policy on customary tenure of “subdividing the commons” (World Bank 2003:62). Instead of trying to replace existing customary institutions, the new policy encouraged working with and reflecting customary institutions in project design. Other programs (like CAPRI; see Mwangi 2006) have encouraged lending agencies to do several things: (1) promote land-related investments on areas regulated by customary law; (2) focus more on use rights and access than on formal ownership; (3) support rather than fragment group-based resource management; and (4) strengthen the institutional skills in negotiation and conflict resolution that are needed for effective commons oversight.

Learning about resource rights in your particular setting will take commitment to understanding complex, situation-specific issues that change over time. The following points give you a place to start learning about these issues where you are.

Local resource authorities. One of the important starting points is to identify the people in your community or region who are resource gatekeepers: people who have the power to grant or to deny access to a resource. Anticipate that there may be layers of existing authorities and social institutions who should be consulted about any intervention/project. When learning about the domain and extent of these people’s authority, be aware that some have very resource-specific jurisdiction; for example, one may regulate sandalwood or teak harvest, but another may have oversight of springs and irrigation matters.

Factors that determine ownership/access status. It is important to learn about how one group’s access rights may be different from another group’s rights. For example, in one East Timorese village, I learned that descendants of a group that settled in that village after a political conflict ninety years before did not have the right to permanently own land—so even though they had the same family name as others in the village, I had to know the migration history of a particular household to know whether they were eligible to own (or inherit, sell, or buy) land in the customary system. In another area, you may need to understand past political allegiance to understand how different groups have access to resources now. There may be issues of caste, clan, or migration. One way to understand this is to make notes of the different claims of various groups, and to ask why one group has rights that another group does not. For example, you might find that 2 out of 15

total clans do not have rights to use palm thatch from a certain forest. What makes them different? Try to determine what affects membership, and who is excluded from resource ownership or access. You can learn about, document, and advocate for vulnerable people's access to resources.

How do people acquire new rights? Ask how people came to own or use the land they have. Did they simply settle there? Did they have to cut old forest, or simply start farming, or make some kind of enduring modification (like terraces or hedgerows), to secure their claims? Did they have to get permission from some local leader? If someone plants a tree, who owns that tree—the person who plants, his/her extended family, or the landowner? Does planting a tree on empty land effectively “claim” that land under the tree? Is there some other labor input that confers ownership? Use maps to understand different people's knowledge about domains and resources, and to discuss access.

Misunderstanding this factor has caused failure in countless tree-planting projects around the world. I know of a very ambitious, agronomically sound international project in which youth planted trees on a prominent bare hillside within view of the capital city; one morning, all the trees had been uprooted by the landowner, who felt that the outsiders' tree-planting was an action meant to “steal” his land. Tree-planting is a long-term investment, so take time early on to determine the possible ownership effects of planting trees in a given location.

Study existing resource conflicts. One of the best ways to understand issues of ownership is to learn about a particular conflict in great detail. Perhaps you heard that two villages have fought about access to a bamboo forest for decades; if you learn why this problem exists (from the different sides), you will probably uncover some of the points that affect conflicts over access to other resources as well. If your work involves resource development (e.g. building a structure, or some other kind of investment), anticipate that there will be property disputes, and consider who will be able to help you deal with these matters.

Resource-specific rights. Every resource has property rights that are specific to that resource. For example, in many areas of Southeast Asia, someone who buys land might not also own the trees that have been planted on that land. Tree ownership does not pass from one person to another by sale, but only by inheritance. Planted trees (and their leaves, fruits, or timber) remain the property of the family that planted them, even after the land on which the trees stand is sold to someone else. In western New Guinea, a hunter pursuing a wild deer can follow the deer across clan boundaries, but a hunter pursuing wild pigs does not have the right to kill a pig on another clan's land. Harvesting rights are different for various types of trees: for example, in one area, tamarinds or guavas may be available to anyone who wishes to pick them, but durian or coconuts are considered individual or family property. These differences make it necessary to clarify which resources in a forest, for example, are individually or communally owned, and those which are considered common property.

Conclusion

Learning about resource rights is an important part of development work. Since many smallholder farmers and landless people depend heavily on common resources and use communally owned areas for their livelihoods, understanding resource access is important in identifying and implementing useful interventions.

There are usually layers of existing authorities and social institutions that should be consulted before making agricultural improvements. Ask yourself, "Who might lose if this program is successful?" Keep in mind that customary arrangements may govern how people negotiate access to various resources, and sometimes these arrangements are more favorable to vulnerable groups than more formal property regulations. Understanding local resource rights can enable you to document and to advocate for justice in resource access.

If you wish to correspond with Dr. Meitzner Yoder on the topic of customary ownership issues and common resource use/access, feel free to send an e-mail to echo@echonet.org (with "Resource Rights" in the subject line), and we will forward your message to her. You can also post comments from the online version of this article.

Footnote: Elinor Ostrom just won the 2009 Nobel Prize in Economic Sciences for her lifetime of work on the commons, especially the role of cooperation in resource management. Dr. Meitzner Yoder commented, "The study of institutional aspects of commons resource management has been marginalized from mainstream economic development theory for a long time. Dr. Ostrom's winning this award is a significant step toward broader recognition of people's potential to collaborate in resource management to produce positive results. See the IASC(P) website for her publication list and more information on her work. She was a founding member of the IASCP."

References and Resources

CAPRI: CGIAR Systemwide Program on Collective Action and Property Rights (www.capri.cgiar.org (<http://www.capri.cgiar.org/>))

IASC: International Association for the Study for the Commons (www.iascp.org) (<http://www.iascp.org/>)

Mwangi, Esther, ed. 2006. Land rights for African development: from knowledge to action. Washington, D.C.: Consultative Group on International Agricultural Research (CGIAR)

World Bank. 2003. Land Policies for Growth and Poverty Reduction. Washington, D.C.: World Bank. Downloadable; do a web search, then open the document and "Save to computer."