

DESA Working Paper No. 91

ST/ESA/2009/DWP/91

December 2009

Property Rights for Poverty Reduction?

Ruth Meinzen-Dick

Abstract

This paper reviews the links between property rights and poverty reduction. Poor people not only lack current income, but also assets with which to generate incomes. Billions of poor people have access to land which may not be legally recognized. While legislation may provide more secure land tenure for the poor and thus reduce poverty, this outcome is not guaranteed. Policies that do not recognize the complexity of property rights have backfired, reducing poor people's security of tenure. Finally, understanding legal pluralism can lead to more effective policies and interventions to strengthen poor people's control over assets.

JEL Classification: O10 General (Economic Development), I30 General (Welfare and Poverty)

Keywords: Poverty reduction; property rights.

Ruth Meinzen-Dick is at the International Food Policy Research Institute, Washington, DC. She joined IFPRI in 1989. Her research deals with water resource management, property rights, and collective action. Much of her field work has been conducted in South Asia and Southern Africa. A citizen of the United States, Meinzen-Dick was raised in India. She received her Ph.D. and M.S. degrees in development sociology from Cornell University and her B.A. in anthropology from Washington University.

Comments should be addressed by email to the author: R.MEINZEN-DICK@cgiar.org

Contents

Property and poverty	1
Changing property rights in plural legal systems.....	2
Implications for strengthening the property rights of the poor.....	5
References	7

UN/DESA Working Papers are preliminary documents circulated in a limited number of copies and posted on the DESA website at <http://www.un.org/esa/desa/papers> to stimulate discussion and critical comment. The views and opinions expressed herein are those of the author and do not necessarily reflect those of the United Nations Secretariat. The designations and terminology employed may not conform to United Nations practice and do not imply the expression of any opinion whatsoever on the part of the Organization.

Editor: *Anis Chowdhury*

Typesetter: *Małgorzata Juszcak*

United Nations
Department of Economic and Social Affairs
2 United Nations Plaza, Room DC2-1428
New York, N.Y. 10017, USA
Tel: (1-212) 963-4761 • Fax: (1-212) 963-4444
e-mail: esa@un.org
<http://www.un.org/esa/desa/papers>

Property Rights for Poverty Reduction?

Ruth Meinzen-Dick

The links between poverty and (lack of) property rights are pervasive. It is not only that poor people lack current income, but they also lack assets with which to generate income. Millions of rural poor and the urban poor living in informal settlements lack access to land. But even when they have access to land, their rights, however understood, to the land may not be formally or legally recognized. Redressing this ambiguity through legislation to provide more secure land tenure for the poor thus seems to be a way to reduce poverty. However, experience shows that the apparent solution is not so straightforward. Land titling efforts that have not taken the complexity of property rights into account have backfired, actually reducing poor people's security of land tenure.

This paper first reviews the links between property rights and poverty reduction, including the gender distribution of property rights. It then examines the plural nature of property rights, the relevance of multiple sources of claims on property, and how this complicates property rights reform. It then explores the implications for strengthening the property rights of the poor, and in particular, how understanding legal pluralism can lead to more effective policies and interventions to strengthen poor people's control over assets.

Property and poverty

Land is a critical asset, especially for the rural poor, because it provides a means of livelihood through the production and sale of crops and other products. For both the rural and urban poor, property rights over housing (on homestead land or other forms of housing) provide shelter, dignity, and a means for accumulation. Those without property rights generally lack the incentive or even the authority to make investments in the land where they live or farm that might lead to higher returns (Meinzen-Dick and Di Gregorio 2004). In many cases, land can be used as collateral for credit to invest in the land, or be exchanged for capital to start up another income-generating activity. The landless are excluded from these opportunities, which is why they are often among the poorest. For example, data from South Asia, home to about 40 per cent of the world's poor, show that poverty is strongly associated with landlessness and insecure access to land. In India, over 30 per cent of the landless and near-landless (with less than 0.2 ha of rural land) live in poverty, and figures are even higher when they cannot migrate. In Bangladesh, those with less than 0.2 ha make up two-thirds of the poor. Moreover, research suggests that land ownership increases investment in the human development of children (Deere and Doss 2006). Therefore, property rights are particularly important in determining who has entitlements to food, and may serve as a means to perpetuate or break the intergenerational transmission of poverty.

In addition to being crucial for food security and stable livelihoods, land provides a buffer to smooth consumption in times of shocks. Land owners can sell or mortgage their land, which gives them more stability than the landless, who are less able to sustain the normal levels of consumption. Since these shocks also adversely affect the labour and food markets, those who have access to land can turn to their farm for self-employment and food production.

Beyond their economic importance, property rights—especially to land—fulfil a number of social functions. In many rural communities, land distribution is associated not only with the well-being of the household, but also with social standing in the community. Land owners are treated with greater respect and often feel a stronger sense of identity with the community. This position, in turn, shapes access to many government services, influence in local politics, participation in social networks, and intra-household relations. For example, many water users' associations define membership in terms of land owners in the service area, which limits participation by other households who also need water (Meinzen-Dick and Zwarteveen 1998). Extension agents focus their attention on land owners, which often excludes their wives, children, tenants and landless labourers.

It is not only the property rights of the household that matter: intra-household distribution, and especially differences between men and women, is also important. When women access land only through their husbands, fathers or sons, their tenure depends on their relationships with these men, and they are vulnerable to eviction and loss of land rights in cases of death of the man, divorce, or disinheritance. Land ownership gives women greater bargaining power and stronger fallback options, which is one reason research in India has found that women who own land are less subject to domestic violence (Panda and Agarwal 2005; Bhatla, Chakraborty and Duvvury 2006), a finding also supported by findings from Colombia (Friedmann-Sanchez 2006) and elsewhere in Latin America (Deere and Leon 2001). The increased bargaining power that confers on women control over resources, especially land tenure, also translates into a stronger voice in household decision-making, which may contribute to stronger investments in food, education and schooling of children, with long-run consequences for poverty reduction (Deere and Doss, 2006; Doss 2006).

As in the case of insecure tenure at the household level, women's lack of secure tenure can limit their access to credit, ability to invest in the land and its overall productivity. Women may be prohibited from planting trees on their "husbands' land" because it is seen as too much of a claim to that land, or they may be reluctant to plant trees or make long-term land improvements because they are not sure they will benefit (Fortmann and Rocheleau 1985). Research in Ghana shows that gender differences in property rights over land hinder sustainable management of tree resources, and that gifts/transfers of land to women improve cocoa productivity (Quisumbing and Otsuka, with others 2001).

Changing property rights in plural legal systems

The strong links between poverty and tenure insecurity have prompted numerous land reforms. Redistributive land reforms that transfer land from large landlords to the landless, especially agricultural labourers, have a long history, especially in the latter half of the twentieth century. Successful redistributive land reforms in East Asia did contribute to raising productivity in the region (FAO 2003) and rapid economic transformation (Kay, 2002). But they require serious state commitment, to either expropriate land from large landowners or to identify resources for market-based redistributive approaches, and then additional resources to enable those who acquire land to use it productively.

Because redistributive land reforms have economic and political costs to acquire the land to be given to the poor, statutory reforms to provide greater tenure security on land they already occupy may seem a relatively easier way to confer property rights on the poor. In Africa, over 90 per cent of the rural population access land through customary mechanisms (Wily 2006). In the urban informal settlements in which millions of the poor live, people build homes on public or other land to which they do not have state-sanctioned rights. The formalization of land rights has a long history, and has often been advocated as an instrument for development and poverty reduction (e.g. Swynnerton 1954; de Soto 2000; CLEP 2008).

But a closer look at the experience of formalization reforms indicates that legislation and formal programs do not necessarily change land tenure on the ground. This is because of the pervasiveness of legal pluralism, which gives rise to multiple sources of property rights and multiple claims on the benefit streams of a given asset (Griffiths 1986, Merry 1988, Meinzen-Dick and Pradhan 2002). Access and control of land and related resources such as water or trees do not only depend on statutory law, but also on a range of customary laws and other normative or legal frameworks. Understanding the complexity created by legal pluralism, and how different legal frameworks play out at the local level, is essential if any legal or programmatic interventions are to help the poor to strengthen their property rights. The remainder of this section discusses some of the critical aspects of pluralistic property rights that need to be considered in each context.

A starting point for analysis of property rights is to identify the legal frameworks that apply. Discussions often focus around a dichotomy between statutory and customary law, but property rights are also influenced by religious laws and practices, international treaties, development project regulations, and a range of other legal or normative frameworks. For example, religious laws may designate certain land as sacred; watershed management projects may designate certain land as not for grazing or other specific uses. International treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), specify that women should not be prohibited from holding property, but this may contradict clan rules about who is a member of the lineage, which influence who can inherit land. Local norms shape the interpretation of all of these, resulting in a mix of norms and rules expressed and used at the local level, called local law.

After identifying the different sources of property rights, a second step toward effective understanding is to look at how individuals and groups make use of one or another of these legal frameworks as the basis for their claims on a resource, in a process referred to as “forum shopping”. The choice of which frameworks each claimant employs will be affected by their knowledge of different types of rules, perceived contexts of interaction, power relations, and expediency (Spiertz 2000: 191). Which law is accepted and enforced depends on power and social relationships between the different claimants.

As a result of this interaction of legal frameworks and the conscious and unconscious use of different bases of claims, property rights cannot be understood as simply deriving from statutes or formal rules. Rather, property rights and the uses of resources should be understood as negotiated outcomes (Meinzen-Dick and Pradhan 2002).

The persistence of legal pluralism does not imply that all laws are equally powerful. Rather, it is helpful to think of each type of law as having a “force field”, which may be strong in some contexts and weaker in others. In relations between government agencies and local communities, statutory law is usually more powerful and used by officials. Statutory law is also often used by outsiders to claim resources in ways that are not locally recognized as legitimate. But property rights are only as strong as the institution that stands behind the claim. If the state does not have much enforcement capacity and local community institutions, such as village, clan, caste, forest user group, or religious authority, are strong, then the latter may prevail. Thus, an outsider—or a local woman—claiming land based on state law may face social ostracism and not be able to use it effectively.¹ But where community institutions are either eroding (e.g. due to migration), or where the community itself is relatively weak and the state is strong, then people claiming land based on customary rights are likely to lose out to those with state-sanctioned claims.

1 This can limit lenders’ willingness to accept land as collateral, because they know that it would be difficult to foreclose on a parcel and transfer it to someone else, or that this increases risk and transaction costs.

To return to the force field analogy, when two legal frameworks are in harmony, they are mutually reinforcing. But when they diverge, they can counteract each other. In those cases, the enforcement capacity of each is important in determining the relative strength of different types of property rights claims. What this means is that if statutory reforms aim to bring about changes that are strongly opposed to customary or other types of rules, they will require considerable state implementation and enforcement capacity. Legal literacy campaigns are needed to make people aware of the new laws—from the general public to the government agencies administering it, to the justices who will be called to hear appeals cases. The administrators of the programs (including the land registrars) will need to be accessible to poor men and women, which often means decentralized property registers, as well as enforcement authorities with enough information and capacity to ensure compliance at the local level. The difficulties in appropriating the resources to provide such decentralized administration and enforcement have led to otherwise thorough land tenure reform processes failing to deliver anticipated changes (Ik Dahl, *et al.* 2005).

If legal reforms are to help poor people strengthen their tenure security, and not weaken it or take away what they already have, it is essential to look beyond full “ownership” of land. This means paying attention to all the bundles of rights, including use, management, exclusion, and alienation rights. Many people have restricted or overlapping and conditional rights to use and manage resources, such as to graze animals or harvest certain products from land officially “owned” by the state or by other people, and these play critical roles in their livelihoods (Wily 2006). Extended family members may have a certain say over the disposal of land. Simplifying land rights to give complete authority to the owner of the underlying land, ostensibly in the name of efficiency, can cut off other claims important for the livelihoods, social standing, or security of others, with the poor and marginalized groups and individuals often suffering most (Meinzen-Dick and Mwangi 2008).

Unless they take into account the secondary property rights held by various claimants, statutory legal reforms can undermine local land access and use that people depend upon, such as to collect water, firewood, fish or medicinal plants or graze their livestock in the fallow season. Even if their use or management rights were tenuous, their loss can still erode livelihoods, especially for people living on the margins of survival. Yet, many formal systems move toward unfettered “ownership” models, and because of their standardization, they are not as adept at dealing with local variations in secondary claims. Moreover, because land regularization is often a preamble to the development of land markets (Frías 2005; Wily 2006), it is often an explicit intent to shed secondary rights which might be seen as encumbrances that restrict the functioning of land markets. Because these secondary rights are often used for subsistence by the poor, their value is often not counted, and hence overlooked when gains from land market development are cited.

Where government legal systems are more accessible to those with education, money, influence or central location, the poor and marginalized may depend more upon customary or religious bases for claiming rights to resources. This is one reason that many land registration and formalization programs have led to the erosion of women’s customary land rights, especially in Africa, when land is registered in the name of the male “head of household” (Lastarria-Corhniel 1997). But a study of more recent tenure reforms in Ethiopia found that in regions where land certification procedures required that wives’ names be registered with their husbands’, these requirements increased both women’s awareness of the certification process and the inclusion of women in the registration; these effects seemed to be stronger where the wives’ pictures also had to be included in the certificate (Deininger, *et al.* 2008).

Thus, while the existence of legal pluralism can impede attempts to reform property rights, recognizing legal pluralism and understanding how different systems interact can facilitate pro-poor reforms. No legal framework, whether statutory or customary, is static. “Customary law” evolves in response to changing circumstances, and even without changes in statutory law, its interpretation changes over time. Nor does any legal framework exist in isolation: rather, they influence each other, and changes in one will have effects on the others, leading to changes in property rights in practice.

Rather than seeing legal pluralism as deviations from state law, or as a problem to be eliminated, it is possible to use legal pluralism to effect changes that may benefit the poor or disadvantaged groups. For example, understanding forum shopping can help anticipate responses and design measures for more equitable outcomes. Ethiopia pushed egalitarian provisions in the civil code without trying to undermine customary leaders. First, the government changed the personal law, but allowed those with disputes to lay their cases before the local authorities. However, those who wish to appeal the local decision can choose to apply civil code provisions. As a result, customary personal-law arbitrators and courts in the community have adjusted the application of outdated customary law provisions so that women disputants will be more satisfied with the outcomes and not transfer the decision to the civil courts, which would weaken the customary bodies (Gopal 2001). Thus, changes in state law may be used to effect changes when local elites have power under customary law. But when the wealthy or educated have more access to state-based property rights systems, concentrating power under formal law favours elites, but customary or religious law may exert a countervailing force.

Implications for strengthening the property rights of the poor

Property rights do play a fundamental role, not only in increasing economic productivity, but also in raising the social standing and dignity of those who have them. Strengthening the property rights of poor people can therefore make important contributions to poverty reduction. Not surprisingly, the Commission on Legal Empowerment of the Poor recommended property rights as the second pillar of legal empowerment, after access to justice and the rule of law. This is laudable because it calls for (formalization of) property rights as part of more comprehensive change, including access to justice and building a legal system based on what is working in “extralegal” systems which the poor employ. Access to justice would imply that systems are accessible to the poor, and reduce the concerns that formalization would be misused to take away their property. But if the access to justice does not precede or accompany the formalization of property rights, then the formalization may create opportunities for the elites to capture even stronger claims on resources. Too often, property rights reforms have imported models of formalization not grounded in local realities, or have not provided the financial and human resources to offer decentralized systems that ensure full access by all. The result can make things worse for the poor.

It is now widely recognized that earlier approaches that focused almost exclusively on individual titling may not always be the most appropriate because: (i) title may provide little extra protection for joint and secondary rights (e.g., those of women) that are often of great relevance to the poor and may even weaken or extinguish them; (ii) high survey standards and the centralized nature of a title registration system may increase costs beyond what is affordable to most users; (iii) even if local institutions are deficient, they have evolved over a long time. Attempts to replace them with alternatives may be unsuccessful and, to the extent that they (often inadvertently) undermine traditional institutions without putting in place a viable alternative, may increase the institutional overlap, confusion, and land-related conflict they set out to reduce (Deininger, *et al.* 2008: 1788).

This means that we need to move from viewing statutory law as laying out property rights, to recognizing that this is only one element that shapes tenure security in practice. Statutory reforms can play an instrumental role, but instead of using a single tool for “pro-poor property rights reform”, a broader approach is needed. Legislative changes need to be accompanied by effective implementation, as well as by awareness campaigns, which may use the media, movies, local dramas, or a range of approaches. Civil society and religious leaders can be engaged as well, because customary and religious law are not unchanging. In some cases, redistribution of land from large land holders may also be needed for real poverty reduction (de Janvry *et al.* 2001).

It would be naïve to attempt any reform of property rights, especially those intended to help the poor, without dealing with power relations. Those who lose out from reforms will resist or subvert the reforms. If those who stand to lose are the powerful, then there will need to be a countervailing force or means of engaging them.

The importance of property rights for poverty reduction comes alongside many challenges that arise in trying to create policies and programs aimed at promoting tenure security. No universal prescription can apply because tenure regimes need to be adapted to the nature of the resource and the society in which it is to operate. Rural and urban land tenure arrangements are necessarily different; systems appropriate in an irrigated area may not work for rangelands or forests; those suitable for a highly individualized society may not be appropriate where traditions of collective resource management are strong, and vice versa. Security is important, but so is flexibility in many contexts, and property rights reforms need to accommodate differences from one area or type of resource to another.

Instead of looking for clearly defined rules within a single, coherent legal system, it is more useful to recognize the ambiguity of rules, and the multiplicity of legal systems. This ambiguity and pluralism gives scope for human agency, through forum shopping and adapting rules in shaping *de facto* rights. Allowing people to make such choices is critical for dealing with uncertainties that arise from environmental fluctuations, livelihood changes and other sources.

However, the rules created by local groups are not necessarily more equitable than those made by the state. Even where there are nominal rights, power differences and social relations can prevent people from exercising those rights, which especially affects women or low-status groups. Externally-defined laws (from the government or donor projects) can strengthen customary property rights (e.g. by recognizing the resource rights of indigenous peoples) or even provide disadvantaged groups with additional bases for claiming property rights, and thereby increase their bargaining power in negotiations for resources. Such law then becomes a ‘resource’ that can be used by the disadvantaged groups in their struggles over natural resources (von Benda-Beckmann and van der Velde 1992). However, for this to be effective, new laws aimed at strengthening the rights of the poor or other marginal groups must be accompanied by programs to create awareness by all parties, so that the new laws can be cited and accepted in the negotiation process.

In general, legal pluralism calls for greater humility in policies and programs. It is not just a matter of getting the “right” law or “right” institution to allocate or manage resources. Instead, rights to resources will be determined through messy, dynamic processes. Yet, this also provides the scope to respond to the ecological, livelihood, knowledge, social and political uncertainties that all resource users face.

References

- Bhatla Nandita, Swati Chakraborty, and Nata Duvvury. 2006. Property Ownership and Inheritance Rights of Women as Social Protection from Domestic Violence: Cross-site Analysis. In *Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience*. International Center for Research on Women, Washington, DC.
- CLEP (Commission on Legal Empowerment of the Poor). 2008. *Making the Law Work for Everyone*. Volume 1. Report of the Commission on Legal Empowerment of the Poor, United Nations Development Programme, New York.
- De Janvry, Alain, Gustavo Gordillo, Elizabeth Sadoulet, and Jean-Philippe Platteau (eds.) 2001. *Access to land, rural poverty, and public action*. New York: Oxford University Press.
- De Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism triumphs in the West and Fails Everywhere Else*. Random House, New York.
- Deere, C. D., and C. R. Doss, 2006. The gender asset gap: What do we know and why does it matter? *Feminist Economics* 12 (1-2): 1-50.
- Deere, C. D., and Magdalena Leon de Leal. 2001. *Empowering Women: Land and Property Rights in Latin America*. University of Pittsburgh Press, Pittsburgh.
- Deininger, Klaus, D. Ayalew Ali, Stein Holden, Jaap Zevenbergen. 2008. Rural Land Certification in Ethiopia: Process, Initial Impact, and Implications for Other African Countries. *World Development* 36 (10): 1786-1812.
- Doss, C.R. 2006. The Effects of Intrahousehold Property Ownership on Expenditure Patterns in Ghana. *Journal of African Economies* 15 (1): 149-180.
- Fortmann, Louise, and Dianne Rocheleau. 1985. Women and agroforestry: Four myths and three case studies. *Agroforestry Systems*, 2: 253-272.
- Frías, Zoraida García. 2005. Introduction: gender equity and land rights. In *Gender and land: Compendium of country studies*. Food and Agriculture Organization, Rome: ix-xvi.
- Friedmann-Sanchez, Greta. 2006. Assets in intrahousehold bargaining among women workers in Colombia's cut-flower industry. *Feminist Economics* 12 (1-2): 247-270.
- Gopal, Gita. 2001. Law and Legal Reforms. *2020 Focus No. 06 - Brief 12*. Washington, D.C.: International Food Policy Research Institute. <http://www.ifpri.org/2020/focus/focus06.htm>
- Griffiths, John. 1986. What is legal pluralism? *Journal of Legal Pluralism* 24: 1-50.
- Ikdahl, Ingunn., Anne. Hellum, Randi Kaarhus, T.A. Benjaminsen, , Patricia Kameri-Mbote. 2005. Human rights, formalisation and women's land rights in southern and eastern Africa. *Studies in Women's Law* No. 57, Institute of Women's Law, University of Oslo.
- Kay, Cristobal (2002), "Why East Asia Overtook Latin America: Agrarian Reform, Industrialisation and Development" *Third World Quarterly*, Vol. 23, No. 6, pp. 1073-1102
- Lastarria-Cornhiel, Susana. 1997. Impact of privatization on gender and property rights in Africa. *World Development* 25 (8), 1317-1333.
- Meinzen-Dick, Ruth, and Monica. Di Gregorio (eds). 2004. Collective action and property rights for sustainable development. *2020 Focus 11*. International Food Policy Research Institute, Washington, DC. <http://www.ifpri.org/2020/focus/focus11.htm>
- Meinzen-Dick, Ruth, and Rajendra. Pradhan. 2002. Legal Pluralism and Dynamic Property Rights. CAPRI Working Paper No. 22. CGIAR System-Wide Program on Collective Action and Property Rights, Washington, DC. <http://www.capri.cgiar.org/pdf/capriwp22.pdf>
- Meinzen-Dick, Ruth, and Margreet. Zwartveen. 1998. Gendered participation in water management: Issues and illustrations from water users associations in South Asia. *Agriculture and Human Values* 15 (4): 337-345.
- Merry, S. E. 1988. Legal pluralism. *Law and Society Review* 22: 869-896.
- Panda, Pradeep, and Bina Agarwal. 2005. Marital violence, human development, and women's property status in India. *World Development* 33 (5): 823-850.
- Quisumbing, Agnes and Keijiro Otsuka, with S. Suyanto, J. B. Aidoo, and Ellen. Payongayong. 2001. *Land, Trees, and Women: Evolution of Land Tenure Institutions in Western Ghana and Sumatra*. Research Report 121. International Food Policy Research Institute, Washington, DC.
- Spiertz, H. L. J. 2000. Water Rights and Legal Pluralism: Some basics of a legal anthropological approach. In Bryan R. Bruns and Ruth S. Meinzen-Dick (eds). *Negotiating Water Rights*. Intermediate Technology Publications, London: 162-199.
- Swynnerton, R.M.M., 1954. A plan to intensify the development of African agriculture in Kenya. Government Printer, Nairobi.
- Wily, L. A. 2006. *Land rights reform and governance in Africa: How to make it work in the 21st century?* UNDP Dryland Development Centre, New York.