

# research evidence for policy



Multiple rights to land in Northwest Pakistan: the owner of the property pictured here rents it out to a tenant who in turn employs local farmers to harvest the sugarcane. As payment, the farmers are permitted to keep the green leaves as fodder for their livestock. Photo: Urs Geiser

## Ensuring land rights benefit the poor



Case studies featured here were conducted in: Kyrgyzstan, Pakistan

### Policy message

- Securing private or common property rights to land resources is key, but it is not enough to help people escape poverty.
- Secure property rights do not guarantee that people can use and benefit from the resources. Property reform must be accompanied by measures to support land and labour productivity.
- Property is generally defined through state-issued titles, but may also be governed by customary practices and social relations – which are often more powerful than the state's rules. It is therefore crucial not to bypass customary property rights.
- One-size-fits-all approaches risk aggravating existing power disparities. It is essential to acknowledge differences within and between communities when designing land-related policies.

- Secure rights to property are vital for people to escape poverty. Such rights enable them, for example, to access and transfer land, borrow money using their house as collateral, graze their animals on common land, use water for irrigation, and collect fuelwood in forests. These rights are often formalised and guaranteed through state law.
- But attempts to strengthen private- and common-property regimes have not always produced the expected results. Instead, local disputes often arise. This is because these rights are subject not only to government regulation, but also to customary norms and local power relations. Further, rights that are recognised by the government do not by themselves guarantee that people may use a piece of land in a productive way. Pro-poor property reforms must therefore be accompanied by efforts to strengthen legal security and local acceptance by considering customary practices as well. Support for land and labour productivity is also required, as the poor often lack the necessary means to benefit from land.
- For people to escape poverty and construct sustainable livelihoods that secure their well-being, they need various basic resources, including land, water, education, health, and jobs. Land and land-based resources are crucial in both rural areas (arable land, forests, pasture, water) and cities (housing). If people have limited access to such resources, they may not be able to support themselves. Therefore, improving access to these resources is crucial for the poor.
- Many governments try to overcome the problem of access to resources by legal reforms to secure formal property rights – for example by giving people land titles. The 1990s saw an unprecedented array of privatisation programmes all over the world. More recently, governments and donors have also tried to strengthen and enforce the rules governing common property such as forests, pastures, and water.
- But despite the establishment of formal property regimes, people in



Arable land outside a Kyrgyz village: small, fragmented plots and a lack of seeds, proper irrigation, agricultural knowledge, and capital investment prevent many landowners from benefitting from their land. Photo: Bernd Steimann

## Definitions

### Property rights

Property rights govern who can do what with resources, for how long, and under what conditions. They specify the claims and related obligations of different actors as to the benefits of a resource. Property rights are determined not only by formal state-issued titles, but also by cultural ideals, people's social relations, and their daily practices concerning the use and management of resources. Property rights are best understood as overlapping "bundles of rights", consisting of rights to use and exploit a resource as well as decision-making rights, which include the rights to manage a resource, to refuse others access to it, or to alienate it through sale or lease (Meinzen-Dick et al. 2004).

### Access

Access means more than physical access to a given resource; it entails as well the ability to derive benefits from a thing. Thus, the notion of access broadens the classical definition of property as the right to benefit from things (Borras and Franco 2008).

- many countries still find it hard to
- access and use land-based resources
- in a way that truly supports their livelihoods. NCCR North-South research indicates that this is because:
  - ▪ Formal state-guaranteed property arrangements may be of limited importance as they come into conflict with customary legal systems.
  - ▪ Property rights are embedded in the local society and are subject to local power relations.
  - ▪ Formal property rights can be associated with certain livelihood risks: for example, they may expose the rights-holder to taxation, conflicts with other land users, or the risk of losing land that has been offered as collateral for a loan.
  - ▪ Even if people have rights to land-based resources, they may still be unable to use the resources productively, for example, if they lack inputs needed for production.

### Types and sources of rights

- Property rights encompass more than the private or common ownership of a resource. They are better

understood as overlapping "bundles" of rights. They may include **use rights** (the right to access and use a resource, e.g., to collect firewood from a forest) and **control rights** (the right to manage a resource, to exclude others from using it, or to sell it, rent it out, or give it away). Different individuals or groups may have different kinds of rights to the same resource. For example, local herders may be allowed to graze their animals on a farmer's fields during the dry season, while the government may claim ultimate "ownership" of the resource and can reassign it to others – such as a mining company.

Though the state usually claims sole legitimacy to regulate property rights, other authorities do the same. This especially refers to religious law and customary rules that are firmly embedded in people's social relations that govern local practice. That means constant negotiations are needed among different claims to resources based on state laws, customary authorities, and religious norms. To facilitate such negotiations and minimise conflict, external actors could play a role in providing neutral platforms and mediation based on locally accepted conflict-resolution mechanisms.

### Legal pluralism as a strategy

People can refer to various sources to legitimise their claim to a resource. Formal state law is just one of these. People often use such "legal pluralism" to cope with uncertainties. During drought, for example, people who need access to water may appeal to norms for sharing, although in normal times they prefer rules that exclude others. They may cite basic livelihood needs to justify their claim to certain property rights, even though formal law does not recognise or may even prohibit this.

### Local power relations govern property rights

In negotiations over rights, the power relations between different actors can be decisive. Powerful people can draw on more sources to legitimise their claims, so can establish stronger property rights in practice. Local elites may often overrule government authorities at the local level. In many contexts, people's ability to bend the rules depends on their

personal status, wealth, and social connections. Actors with fewer means are often unable to defend the formal rights they possess, or unable to enforce their claim to informal property rights, and end up losing access to the property. The notion of “community” – often referred to in development circles – tends to mask such local relations of power.

### **Making it possible to benefit from access**

Yet even when property rights are not contested and access to a resource is secured, there is no guarantee that people can benefit from the resource. Access is important, but it is not enough. A crucial aspect is whether people can use the resource productively to make a living. A private title to land may even be a liability for someone who has no way to cultivate it. He or she may have to pay fees for irrigation or rent equipment from others. Cultural restrictions may make it impossible for women to cultivate land. And natural resources are often subject to taxes, irrespective of whether people use them or not. In rural Kyrgyzstan, for example, the state collects a lump sum for pasture use even from households that have no animals. Without savings or credit, poor people often go to local moneylenders to borrow cash to pay the tax. This creates dependency and may aggravate the gap between the rich and the poor.

In general, rights to land-based resources are crucial, but supporting them requires:

- Looking beyond state-issued titles and acknowledging that other rights, embedded in society, can guide practice as well.
- Looking beyond secure access in itself, and overcoming hurdles that prevent people from using the secured resources in a productive way. Only then can secure property rights help to support livelihoods and alleviate poverty in the long run.

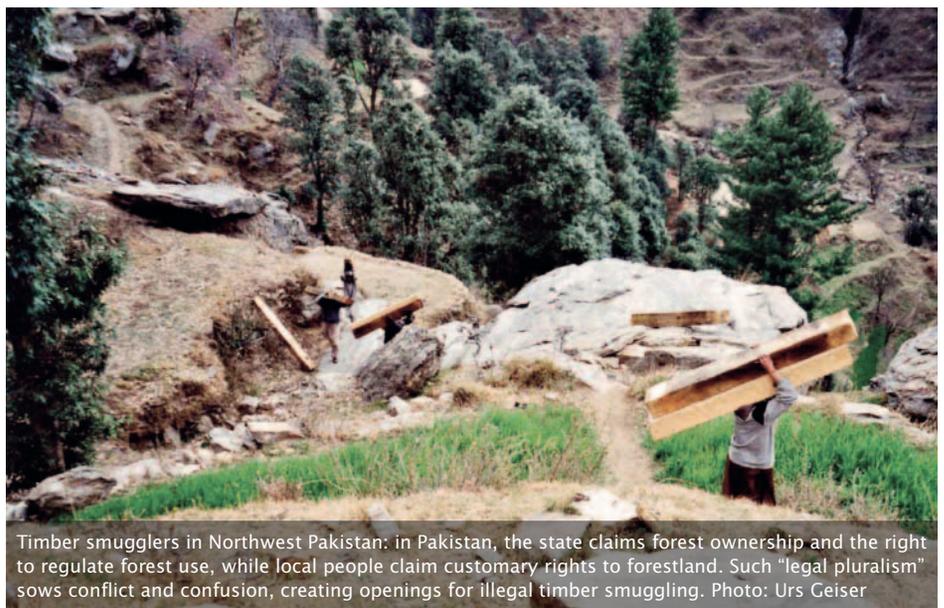
## **Featured case studies**

### **Effects of Kyrgyz land reforms**

One of Kyrgyzstan’s radical reforms after independence was to privatise state property. By the mid-1990s, most rural households had received formal ownership titles for a piece of arable land. But many of the less wealthy still struggle to cultivate this land. They lack money to rent equipment, pay for irrigation services, and buy good seeds, and they lack the knowledge needed to cultivate their land in a sustainable way. Without affordable credit and professional support, formal titles to land do not help them to improve their livelihoods, but burden them with new liabilities, often resulting in further indebtedness. As a result, large amounts of arable land lie fallow (Steimann 2011).

### **Negotiating access to forests in Pakistan**

In 1969, the Pakistani government extended its forestry legislation to areas in the Northwest that were previously governed by local customs. Overnight, forests were declared to be government property, greatly restricting the existing local use rights based on complex common law. Still today, many people see themselves as the genuine custodians of the forests and consider state regulations as an imposition. This explains in large measure why “joint forest management” (which involves both state forest departments and local communities) often has little success: it does not recognise customary institutions or locally important, deep-rooted regulations. Regulating forest use often reflects deeper social tensions, and addressing such issues requires a critical look at the balance of power (Shahbaz 2009, Geiser 2006).



Timber smugglers in Northwest Pakistan: in Pakistan, the state claims forest ownership and the right to regulate forest use, while local people claim customary rights to forestland. Such “legal pluralism” sows conflict and confusion, creating openings for illegal timber smuggling. Photo: Urs Geiser



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## Policy implications of NCCR North-South research

Legal reforms to secure property are important to fight poverty. But they are not enough to change the reality of access to resources on the ground, where social relations, customary law, and religious practices are often more powerful than government-issued titles.

To make government titles locally compatible and accepted, property rights reforms need to take local rules and regulations into account. In addition, reforms need to provide legal security at all levels, give people access to affordable legal remedies, and inform them about their rights and responsibilities. This will make it easier for poor people to defend their claims against more powerful actors.

Secure property rights are important, especially for the poor. But so is the ability to use the secured resources in a productive way. Governments and donors need to make sure that people can benefit from the resources. Property reforms should be accompanied by measures to support land and labour productivity, for example by providing affordable credit to enable people to invest in their property, or by supporting extension services to help them improve their farming techniques.

Since property regimes are governed by diverse and often site-specific local power relations, one-size-fits-all approaches risk aggravating power disparities. Local communities are not always egalitarian, and differences within and between communities are often vast. Redefining property rights is highly political, and policy-makers and development practitioners need to understand the complexity of existing property regimes and power relations. A case-by-case approach to address resource reallocation issues is essential.

### Further reading

**Borras SM, Franco JC.** 2008. Land Based Social Relations: Key Features of a Pro-poor Land Policy. *UNDP Oslo Governance Centre Brief 2*, May 2008.

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**Steimann B.** 2011. *Making a Living in Uncertainty: Agro-Pastoral Livelihoods and Institutional Transformations in Post-Socialist Rural Kyrgyzstan*. Human Geography Series, Vol. 26. Bishkek, Kyrgyzstan and Zurich, Switzerland: Department of Geography, University of Zurich.

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### This issue

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