

EarthTrends Featured Topic: Understanding the Scope of Resource Tenure

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Understood broadly, "Tenurial Rights" over natural resources are synonymous with "property rights." Tenure covers all the means by which individuals and communities gain legitimate access to and use of natural resources. To know who has tenure over a natural resource is to identify who owns the resource, who can use or extract it, who can exclude others from having access to it, and who benefits from exploiting it. As such, the details of how tenure is determined and recognized—particularly through national laws and policies—greatly affects the rural poor, whose lives depend on access to ecosystems.

Typical tenure rights and obligations include:

- The right to use the resource (the "usufruct" right) or control how it will be used
- The right to exclude others from unauthorized use
- The right to derive income from the resource
- The right to sell all or some of these rights to others, either permanently, or for a limited time (such as through a lease)
- The right to pass these rights down to one's successors (the right of descendants to inherit land or resource rights)
- Protection from illegal expropriation of the resource
- An obligation not to use the land in a way that is harmful to

others

- An obligation to surrender these rights through a lawful action, (e.g., in a case of insolvency, the rights are surrendered to creditors; in the case of default on tax payments, the rights are surrendered to the state) (FAO 2002:10)

Resource tenure includes rights over land, but it encompasses other natural resources as well. Land tenure is the usual focus of public interest, but distinct tenure arrangements apply as well to forest resources (Lynch and Talbot 1995), fisheries (Kinch 2003; Pereira 2000), mangroves (Hue 2002), wetlands (Rahman et al. 1998), watersheds (Kumar et al. 2004; Ayudhaya and Ross 1998), wildlife (Alinon 2002; Hasler 2002), and other natural resources. In a forest, tenure might translate not just to the right to harvest timber but to the ability to harvest fruit from certain trees, to collect fallen branches for fire wood, or bamboo for building materials. In fisheries it might mean the right to fish certain waters, harvest certain species but not others, or fish at certain times of the year.

Resource tenure covers not only formal property rights recognized by the legal system and enforced by the government, such as land titles or forestry licenses. It also refers to traditional practices—often unwritten and informal—through which rural people secure access to natural resources. Official documents issued by the government are not the only ways that tenure is recognized in rural areas. Evidence

of long-term occupation or of observance of customary law are other recognized ways of establishing tenure. Experience shows that where states emphasize the use of formal processes and official documents to acknowledge resource tenure rights, it is likely that poor communities, particularly indigenous peoples, will be disenfranchised (Lynch and Talbot 1995:7).

Tenurial rights include but are not equivalent to ownership. The absence of full ownership over a natural resource does not preclude the possibility of other tenure rights over a natural resource (Schlager and Ostrom 1992:256). For example:

- The state may own the forests in its territory but recognize the right of occupants to utilize timber or non-timber resources through some kind of permitting system.
- Protected areas may be part of the public domain, but the right of indigenous peoples and other long-term occupants to inhabit these areas may be legally recognized.
- Coastal waters may be claimed by the state, but local fishers may be granted rights over customary, near-shore fisheries.

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