

Entitlements and Rights in Land and Natural Resources

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This paper provides a succinct overview of the types of land and resource rights which can be held by legal bodies (individuals, private corporations, communities, government bodies, etc.) under conventional (modern) law in most countries.

These rights and entitlements can be found in the four basic categories of land and natural resource regimes, - private, communal, state, and open access.

Communal property rights are included in this overview, but the wide variety of traditional rights and customary laws among many peoples, especially indigenous peoples, in many countries cannot be fully reflected in this short view.

Differences between common property regimes and co-operative forms of ownership are also summarised.

Entitlements and Rights to Resources

Entitlements

Entitlements are sets of benefits derived from environmental goods and services over which different groups of people have differential effective command, and which are instrumental or significant in achieving well-being (or Quality of Life), and thus for livelihood. Entitlements enhance

people's capabilities of what they can do with the 'endowments'. [¹]

Entitlement mechanisms cover the whole gamut of customary/modern, traditional/innovative, legal/illegal, official/unofficial, open/hidden mechanisms by which institutions or groups or individuals believe that they have some command over resources or services (the endowments) in terms of their use, access or ownership (e.g. the rights to lend, share, or dispose of in some way). The mechanisms rely upon modern legal systems, customary law, social conventions, norms, traditions, etc.

Rights

Rights are the sub-set of entitlements over which people have a 'legitimate' control and/or ownership – though there may be many different forms and justifications of what people accept as 'legitimacy'. Legitimacy may be seen differently by different actors – examples of customary hunting or

¹ Endowments is used here to mean the existence of useful resources – including material environmental (land) resources, - and environmental products and services, and environmental functions and attributes existing in the relevant location, i.e. the area associated with a particular community or social group - prior to making any assignation as to who does, can, or is 'allowed' to', use them. Endowments can be related to "a person" or to a group or community.

gathering rights seen as poaching or trespassing.

Rights are a sub-set, albeit a very significant sub-set, of entitlements.

Land Tenure and Tenure Rights

Rights can be converted because *Use* and *Ownership* are different concepts.

Bundle of Rights in Property

Access right to enter a defined property

Withdrawal right to obtain (withdraw) / make use of / the products of a resource in a property

Management right to regulate use patterns internally, and to transform the original resource by making transformations (e.g. improvements)

Exclusion right to determine the access rights, & transferral of those rights
Alienation right to sell, lease, etc. the various rights (Schlager & Ostrom 1992)

Simple Ownership Rights:

- to possess, to use
- to sell
- to provide for inheritance, to *devise*
- to lease
- to mortgage
- to sub-divide
- to grant *easements*:
- one parcel *servant*
- one parcel *dominant*

e.g. road access, lighting, shading (e.g. by trees or by building), overlooking view, water provision.

State's Reserved Rights

- to tax
- to take for public use

- to control the use of (e.g. land use planning restrictions)
- to confiscate, to *escheat*.

(Natural Resource) Property Regimes and Rights

Open Access *Res Nullius*

Non-formal, de facto tenure; Free for all. Rights are neither Exclusive nor Transferable. Rights are owned by all or none. Exclusion costs are too high

Communal Property *Res Communes*

Use Rights are controlled by an identifiable group (not private, not government). There are rights and rules for access, use, exclusion, and benefits (for individuals or groups. Maybe, there are also rules for sustainability.

Communal property may exist under: Communal ownership under customary or traditional or tribal law, or: Communal ownership by a neighbourhood, cooperative, municipality, condominium –this is private property held corporately. (see table below).

State Property *Res Publica*

Ownership rights and management control are held by the state or crown. Exclusion rights are held by state - though there may be specified use or access allowed.

Public freehold; or Public leasehold – often known as *state* or *crown* land.

Private Property

Rights and rules for access are Exclusive (held individually or corporately). Property rules are sanctioned and supported by the state. Private freehold; or Private leasehold is private property.

Common Property vs. Cooperative Resource Management

Attributes	Common Property Resource Management	Co-Operative Ownership (Of Private Property)
Ownership	Traditional/Informal	Legal Entity; Legislated
Exclusions and Control	ditto	Subject to outside Sanctions
Disposal	Cannot be Sold	Can be Legally disposed of
Legitimation	Traditional social Norms	Sanctioned by State
Management	Shared Group Interaction	Semi-professional Individual (or hired) Individual Contributions
Basis Of Collaboration	Sharing an Asset	Increased Personal Gain
Primary Purpose	Subsistence?	Income-oriented Market sales
Distribution Of Benefits	According to Needs	Market Relations Inputs-determined
"Investment"	Communal - Group	Sum of Individuals
Sustainability	Multi-Generational	Short-term
Purpose	Multi-purpose	Likely to be Single-purpose

Reference

Schlager, Edella; and Elinor Ostrom (1992) Property Rights Regimes and Natural Resources: A Conceptual Analysis. Land Economics 68 (3) 249-262.