



Confusion vs. clarity: Property rights and forest use in Uganda

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ABSTRACT

Projects and policies targeted at reducing emissions from deforestation and forest degradation (REDD +) frequently emphasize the articulation of property rights that are new, formalized or revised. A major question for successful REDD + implementation, and forest sector reform more broadly, is how changes in formal rights are understood and internalized by resource users. This paper explores the determinants of knowledge of formal rights, and whether accurate knowledge of rights influences forest clearing and forest product harvesting behavior in Uganda. We find limited awareness of rules surrounding clearing forest, and mixed levels of awareness regarding rights to harvest specific forest products. Harvesting behavior is variably correlated with awareness of rights depending on the product and capacity of district forest officials.

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1. Introduction

A major challenge for projects and policies directed at reducing deforestation and forest degradation (REDD +) is aligning formal property rights for land, trees and carbon with the perceptions of resource users and forest officials charged with communicating and enforcing them. For REDD + to be successful, it is likely that reforms related to tenure, property rights and the enforcement of rules will be more restrictive (Jagger et al., 2014; Larson et al., 2013; Sunderlin et al., 2014), suggesting that new rules need to be communicated to forest users. Relatively little research has focused on the determinants of awareness of formal property rights (c.f., Meinzen-Dick and Mwangi, 2009; Nguyen, 2006; Thanh and Sikor, 2006). This paper explores what factors influence accurate understanding of rights to clear forest and harvest specific forest products. Beyond understanding awareness of rights, a critical question is how forest users respond to the introduction or revision of property rights. If there is little congruence between formal rights and perceptions of rights, if behavior is unrelated to perceptions of rights, or if behavior is slow to change in response to new rules, REDD + discourse on reforming formal rights may be misplaced, or warrant more careful attention with respect to project or policy design and implementation.

The aim of this paper is to explore empirically how forest users and officials interpret formal property rights, and to test how their

interpretations affect land use and harvesting decisions. Specifically the paper seeks to answer the following questions: Do perceptions of formal rights differ among and between forest users and officials? What factors are correlated with accurate perceptions of formal property rights? and Do perceptions of formal rights influence harvesting behavior? The study focuses on awareness and behavior associated with property rights to forests and forest products on private or un gazetted land that were articulated in the National Forest and Tree Planting Act (NFTPA) passed in 2003 (GOU, 2004). At the same time Uganda's forestry sector underwent a major decentralization reform; in 2003 guidance on management of forests and enforcement of rules was devolved from the centralized Forest Department to local governments.

Data were collected in 2007, 4 years after new legislation was passed and the decentralization reform was implemented. The study area is western Uganda where the incidence of fully stocked tropical high forest is the country's highest. This is a region of considerable interest to REDD + proponents as it represents some of the highest carbon value forests in Uganda. The study leverages data from approximately 500 households that fall within seven administrative districts. The focus of the analysis is un gazetted or private forest (i.e. forests that fall outside of central forest reserves or national parks).¹ Household-level data are supplemented with key informant interviews representing the nested institutions surrounding forest governance including village leaders, forest officials working at the forest gate, and forest officials that oversee activities at the district level.

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¹ Seventy percent of Uganda's forests are classified as un gazetted.

2. Property rights, clarity and harvesting behavior

2.1. Defining property rights

Over the past two decades property scholars have advanced several typologies suitable for conceptualizing property rights as they apply to both private and commonly held natural resources. Those with both theoretical and empirical application to forests include: Benda-Beckman et al. (2006), Galik and Jagger (2015), Kundhlande and Luckert (1998), Leach et al. (1999), Ribot and Peluso (2003), and Schlager and Ostrom (1992). This analysis draws on Schlager and Ostrom's (1992) classification of property rights which specifies rights of access, withdrawal, management, exclusion, and alienation. We focus on access (i.e. the right to enter a defined physical space) and withdrawal rights (i.e. the right to obtain the products of a resource), which are operational-level property rights, meaning that the activities of individuals directly affect the physical world. Analysis of operational level property rights assumes that the rules are known and do not change during the time frame of the analysis (Ostrom, 1990).²

Following Galik and Jagger (2015), this analysis extends the Schlager and Ostrom (1992) typology to include the right of *alteration* defined as the ability to change the goods and services provided by the resource. In the context of forests in Uganda this generally means clearing forest for agricultural production. Alteration differs from management, which is defined as the right to regulate internal use patterns or withdrawal rights and transform the resource by making improvements. Alteration involves long-term or permanent change that generally negates the set of tree and carbon property rights that governed the resource in its original state (Galik and Jagger, 2015). Alteration rights are highly salient for the permanence aspect of REDD+ projects and policies.

We focus on formal or legal property rights specified by property laws and regulations. Formal arrangements including constitutional provisions, statutes and judicial rulings are examples of formal rights (Schlager and Ostrom, 1992). Legal rules governing property rights are part of the institutional framework that conditions the appropriation of labor, goods and services.³ People can also access resources in the absence of constitutionally sanctioned property rights. Informal property rights are formulated and observed at the operational-level. They are often dictated by informal conventions and customs regarding the allocation and use of property and access to benefits. Both formal and informal rights are important analytical indicators of who holds power, and how powers are differentially distributed.

2.2. Clarity—or knowing your rights

The creation or reinforcement of statutory rights by altering the legal framework specifying rules of use is an important component of forest sector policies and reforms (Agrawal and Ostrom, 2001; Edmunds et al., 2003; Nguyen, 2006).⁴ Reforms that increase and/or secure benefit streams are expected to benefit resource users by providing opportunities for diversified livelihood strategies contributing to poverty reduction and economic development (World Bank, 2008). Conversely, reforms that place restrictions on how forests and forest resources can be used, and/or increase enforcement capacity may enhance

² Management, the right to regulate internal use patterns or withdrawal rights and transform the resource by making improvements; exclusion, the right to determine who will have an access right, and how it might be transferred; and alienation, the right to sell or lease management or exclusion rights complete the typology.

³ Other components of the framework include: organizational forms; enforcement; and norms of behavior (North, 1990).

⁴ The terms "rights" and "rules" are often used interchangeably in the natural resource management literature. Rights are the product of rules, where rights are actions that are authorized, and rules are the prescriptions that create authorizations (Schlager and Ostrom, 1992). Rules are differentiated from norms in that rules are generally monitored and enforced; actors that break rules face both formal and informal sanctions (Ostrom, 2005).

sustainability and carbon sequestration outcomes, but may limit economic opportunities associated with forests (Jagger et al., 2014; Meinzen-Dick and Mwangi, 2009).

An implicit assumption of reform motivated changes in legal rights is they are automatically reflected in operational level resource use (Thanh and Sikor, 2006). However, changes in statutory rights are affected by the political economy setting in which devolution takes place. Consideration of the availability of information, local power relations, production systems, and local institutions are important (Andersson, 2006; Sikor and Nguyen, 2007). Evaluating operational-level implications of changes in constitutional rights is central to understanding the relative success of policy and governance reforms (Agrawal and Ostrom, 2001).

Research on forest sector reform and awareness of rights suggests that changes in formal rights are infrequently accompanied by analogous changes in the actions of resource users. Nguyen (2006) and Thanh and Sikor (2006) found that forest sector devolution in Vietnam led to discrepancies between formal and informal rights and forest use, and McCarthy (2004) made similar observations in a study of forest sector reform in Kalimantan, Indonesia. Discrepancies between formal rights and forest use result from uncertainty and confusion due to multiple coexisting legal and normative systems that determine access to resources (McCarthy, 2004), poor implementation decisions regarding what, how and to whom the transfer of rights is made (Ribot, 1995), and failure to provide local users with significant information about new legislation and associated rights (Jagger, 2010; Nguyen, 2006; Thanh and Sikor, 2006).

2.3. Does clarity matter?

The link between perceptions of property rights and behavior is central to this analysis. Riker and Weimer (1993) cite clarity of as one of four characteristics of property rights systems that are salient to economic behavior.⁵ But, if people are aware of their property rights, does it directly influence their land use and harvesting decisions? Clear and precise allocation of private property rights to all productive commodities and assets is a necessary precondition for Pareto efficiency within perfectly competitive markets. Economic systems allocate rights to commodities and assets using a combination of formal and informal rights (Kundhlande and Luckert, 1998; Ostrom, 2005). A challenge for property rights reforms is that while formal allocations of rights may be precise, they are seldom complete; informal patterns of use complete the allocation of rights, and in some cases override formal allocations (Weimer, 1997; Jagger et al., 2014). Holding a right does not necessarily ensure that resource users can access the benefit stream associated with that right (Kundhlande and Luckert, 1998; Ribot and Peluso, 2003). Heterogeneity in perception and observance of rights emerges from the rents associated with the resource, the transaction costs associated with observing the rights; and costs associated with failing to observe rights as they are stipulated (i.e. breaking rules underlying rights) (Hegan et al., 2003; Kundhlande and Luckert, 1998; Pearse, 1990).

Most empirical studies examining property rights are focused on implications for sustainable forest management. Comparing private and community forest management in Guatemala, Gibson et al. (2002) found that informal institutions and their enforcement are much more important than formal property rights for ensuring sustainability. In a study of decentralization reforms in India and Nepal, Agrawal and Ostrom (2001) found that governance reforms that delegate rights of access and use of forests did not produce much change in forest management or the relationship between state and community actors.

With respect to livelihood outcomes, Thanh and Sikor (2006) observed a high degree of negotiation over rights at the local level

⁵ Other salient characteristics of property rights for ensuring economic efficiency are: cost of alienation; security from trespass; and credibility of persistence (Weimer, 1997).

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