

A Framework for Analyzing the Question of Pro-Poor Policy Reforms and Governance in State/Public Lands: A Critical Civil Society Perspective

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Overview

- 1. Key Concepts, Questions & Issues (3 slides)
- 2. Conventional Thinking (2 slides)
- 3. Towards an Alternative Framework (3 slides)
- 4. Selected Cases (1 slide)
- 5. Conclusion & Recommendations (1 slide)

Key Concepts, Questions & Issues -- 1

Conceptualising State/Public Land

- 1. Multi-dimensional character of land
- 2. State land law/policy = institutions created to govern relations between groups of people & entities and their (differential) access to land; they are both object & context (e.g., they shape & are shaped by human interaction); they are outcomes of (i) formulation (ii) promulgation (iii) implementation processes (e.g., both “law making” & “making law”)
- 3. Effective access to land = recognition of rights + (re)enforcement of real use control; it is an ongoing, often contentious process of “law making” & especially “making law”
- 5. The conventional private-public distinction in land:
 - > began as a formal-legal construct to facilitate nation-state building & colonisation;
 - > aimed to make foreign/frontier lands & populations “legible” (Scott 1998);
 - > but its usefulness depends on (over)simplification of complex realities.
 - > Result: serious “knowledge deficits” (Carothers 2003) that come back to haunt.
- 6. Today, “property rights” is an increasingly contested notion. Many scholars now view property rights as essentially about historically dynamic social relations among & between people & key regulatory institutions (state & non-state) (e.g., Moore 1998; Tsing 2002; Juul & Lund 2002).

Key Concepts, Questions & Issues -- 2

Interrogating State/Public Land Spaces

- If the concept of land/ property rights requires unpacking, then so does any real-world parcel of land, whether (formally designated) private or public.
- There are three interrelated dimensions to this “unpacking”:
 - ✓ **Social history** -- What are the actually existing social relations and modes of access that have evolved over time in a given parcel of land? Who was included or excluded by these processes and how did inclusion/exclusion happen?
 - ✓ **Allocation/ distribution principles** -- Who should get how much of which land, and for how long and for what purposes? As Richards (2002: 1) puts it: “Who has the right to do what with the land for how long”.
 - ✓ **Change strategy** -- Where the transfer or reinforcement of effective access over a given land territory is considered necessary and beneficial, how can the desired intervention be made -- and made successfully -- in light of underlying and often substantial power imbalances? As Cousins (2007: 282) puts it, “What kinds of rights, held by which categories of claimants, should be secured through tenure reforms, and in what manner, in ways that will not merely ‘add to possibilities of manipulation and confusion?’”

Key Concepts, Questions & Issues -- 3

Trajectories of Change and Reform in Land Policies

- Land policies are never neutral, but necessarily transform the status-quo somehow (either by undermining or reinforcing it). Land policy outcomes cannot be predetermined, since no law or policy is self-interpreting or self-implementing. Different trajectories of change and reform are possible in land policies (as illuminated by actual FIAN cases):
 1. (Re)concentration
 2. Non(re)distribution
 3. Distribution
 4. Redistribution

Conventional Thinking on Pro-Poor Land Policy and Land Governance -- 1

Two Strands

- Conventional thinking about land policy in public/state lands generally falls into two broadly distinct but basically related streams of thought. Both may voice concern with 'combating poverty', but each approaches the challenge in a distinctive way.
- Current #1:
 - Emphasizes the productive assets deemed necessary for the rural poor to construct livelihoods;
 - Views public/state lands as having potential to become active capital of the rural poor;
 - Argues that in their present form such lands fall short of this value, and so the need to carry out reforms in terms of how these lands are officially recognized, (re)allocated, and used within and between households and communities.
 - Market-led approach (doesn't matter how land used or by whom, but how clean/clear property lines are and security of individual private freehold possession under the law)
- Current #2:
 - Emphasizes making the necessary reforms while at the same time promoting good governance.
 - When applied to the land question, the conceptual framework of good governance is commonly referred to as 'land governance', which refers to the quest for the most technically and administratively efficient ways and means to carry out 'pro-poor land policies', with the most efficient means usually assumed to be primarily the most transparent, fastest and cheapest.
 - State-centered approach (does matter how land is used and by whom, but the specifics can vary widely; vulnerability of state institutions to elite capture is a key problem)

Conventional Thinking on Pro-Poor Land Policy and Land Governance -- 2

An Assessment

Shared strength:

1. *Both currents see a link between rural poverty and state/public lands.*

Shared weaknesses:

1. *Both approach state/public land as a “thing” (to be exploited), rather than as “living” sets of social relations (already dynamic, contested and negotiated, evolving, linked to processes of land-based wealth creation, among others, that do not automatically reflect or follow official categorisations);*
2. *Both tend to ignore or underestimate important and relevant aspects of stratification of human life in the countryside (actual power dynamics and political-economic conditions in a given place) -- with over-reliance on a formal-procedural perspective, under-attention to a wider range of factors and actors involved in the political processes associated with not only “law making”, but also “making law authoritative in society” (e.g., wider range of state agencies and non-state institutions, legal land rights claim making support structures, and even the availability of political-legal interpretative resources).*
3. *Both tend to reduce civil society participation in state/public land policy processes to mere adjunct status in what are assumed to be conflict-free land policy interactions - - important decisions are left to political and policy elites and bureaucrats -- not to those in society who are often the bearers of relevant (if not crucial) accumulated knowledge, or to the most vulnerable who will be the most seriously affected.*

Towards an Alternative Framework -- 1

A Human Rights Approach

“Human rights tradition”

- People are viewed as rights-holders (rather than mere beneficiaries);
- States are viewed as duty-bearers (rather than service-providers), with the obligation to respect, protect and fulfil people’s human rights;
- Governments should be held accountable when they fail to meet this obligation and rights are violated.
- The UN Committee on Economic, Social and Cultural Rights has elaborated a set of criteria that further details what this obligation means, and which incorporates a bias in favor of the poor (it intrinsically means a pro-poor approach).
- There is no explicit human right to land in international human rights law.
- According to FIAN: the right to land of rural communities is implied in other human rights recognised in international covenants and legal instruments (e.g. -- right to property, right to self-determination, rights of ethnic minorities, right to an adequate standard of living, right to food).
- Given the above, if the goal is to construct a framework for land policymaking that is truly pro-poor, then a human rights approach is a powerful tool precisely because it takes sides in favor of the poor (it is not pro-elite).
- Essential elements of a human rights approach to land policy:
 - 1. Starting point is recognition of the most vulnerable human beings as rights-holders.
 - 2. The right refers to actual and effective control over the land resource, including the power to control the nature, pace, extent and direction of surplus production, extraction and disposition.
 - 3. The right also involves land understood as “territory” where people live and reproduce their communities and “cosmologies” (e.g., -- shared understandings of origins and evolution of the universe and their place in it).

Towards an Alternative Framework -- 2 Implications of a Human Rights Approach

- Implies an obligation to recognise and take seriously the actual heterogeneity of agrarian societies.
- This means that state/public land policymaking must take into account key dimensions of human life that are integral to and shape the complex and diverse realities that obtain in state/public lands:
 - Class -- to ensure that benefits go to landless and near-landless working classes;
 - Gender -- to uphold the distinct right of women to claim effective access to land as peasants, rural labourers, forest dwellers, pastoralists, and as women;
 - Ethnicity -- to promote or reinforce the distinct right of ethnic groups to their territorial claims;
 - History -- to bring to let and set right the social injustices that have been committed against the most vulnerable segments of society.

The historical record is littered with land policies that failed in part because of their failure to consider any one, some combination, or all of these aspects.

Towards an Alternative Framework -- 3

Explicit Articulation of How a Policy is 'Pro-Poor'

- Finally, any public policy that claims to be pro-poor must explicitly articulate what it means by this and how it purports to qualify as such.
- In our view, a truly pro-poor land policy would contain the following two key features:
 - Transfer or protection/ reinforcement of land-based wealth to the landless and near-landless rural poor (e.g., land itself + water and minerals therein + other products linked to it such as crops and forest + any farm surplus created from it); and
 - Transfer or protection/ reinforcement of socio-political power to the landless and near-landless rural poor (e.g., power to control decision-making vis-à-vis the land resource regarding nature, pace, extent and direction of wealth creation from the land and distribution/ disposition of such wealth + the power to participate fully and meaningfully in any and all development decision-making that affects their lives and livelihoods).

Such an approach moves the challenge from one of “land governance” to one of “democratic land governance” (increasing rural poor people’s empowered participation + increasing state accountability to them).

Selected Cases

- It is of course difficult for a human rights based approach to be achieved in the real world or in real world conditions (varied and contradicting -- e.g., where land is scarce and landless and near-landless claimants are abundant: if forced to choose one category of claimants over another, which to choose?)
- There is surely no “magic bullet” land policy that will guarantee that the key features/ criteria will always be attained each and every time, especially because land policy making (law making + making law authoritative in society) is a contested process.
- But this does not mean that we should not strive toward such a policy, nor does it mean that there are no positive real-world efforts to inform and guide us in trying.
- In the paper, we offer just a few selected cases for consideration (see paper for details):
 - Mozambique’s innovative, highly consultative process that led to the 1997 Land Law (Tanner 2002)
 - A case in the Philippines where CBFM mode under CARP led to redistributive results (Borras 2007)
 - A case in Brazil where public pressure served to enforce their legal land rights in a declared extractive reserve (FIAN)
 - A case in Vietnam that bucked the trend in government land allocation processes, leading to egalitarian, inclusive and pro-poor (re)allocation outcomes (Borras, unpublished manuscript)
 - A case in India (West Bengal) where the state sought to work with a community to manage forestland for mutual benefit (FIAN).

Conclusion & Recommendations

- The link between actually existing rural society and state/public land is diverse and complex. This diverse complexity, if ignored, will inevitably impede truly pro-poor land policymaking, as numerous cases from FIAN's records show.
- Amidst this diverse complexity, it may be difficult, but certainly not impossible to achieve truly pro-poor outcomes in state/public land policy processes, as our selected case studies from varied sources suggest. The existence and toleration (or not) of sustained and systematic rights-advocacy and claim-making efforts tend to spell the difference between truly pro-poor land policy processes and outcomes, and those that fall short.
- More generally, our data from the field shows that what is needed -- at minimum -- are for basic human rights principles and criteria to be built into land policy frameworks, as well as explicit articulations of exactly how a given policy aims (and not just claims) to be pro-poor.
- Resources must be dedicated to sociological-anthropological research and grounded knowledge accumulation about real land areas and parcels.
- Resources should also go to supporting the expansion of sustained and systematic civil society rights-advocacy and claim-making.