

Effective and Transparent Management of Public Land:

**Experiences, Guiding Principles
and Tools for Implementation**

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Effective and Transparent Management of Public Land

- The big picture
- The range of problems
- Towards a framework for effective and transparent public land management
- Accountability chain: building a framework around good practices
- What could be done at international level
- What could be done at country level

The global picture on nominal state land ownership

- Nominal: 37 % of the planet is “owned” by around 147 states (*China, Singapore, Cuba, Israel, Ethiopia, Russia (ultimate ownership, all land belongs to the state)*)
- 21 % of the planet is “owned” by 26 monarchs holding ultimate ownership (*The King of Saudi Arabia, the Pope in State of Vatican; King of Thailand; King of Jordan.....*)
- Around 30 % of all land is common property either as recognised land tenure category (Uganda) but mostly as property right on state land

Nominal: all land is state land in many countries

De facto: Private and common rights are granted

- Tanzania: All land is vested in the President
- Indonesia: Land is controlled by the State to achieve prosperity of the Indonesian people
- Although the State is nominally the owner, long-term property and use rights have been granted
- What is the content of the rights and how robust are they? Rule of power practices?

Need for clarifying property relationships and hierarchies of tenure models

- Definitions of property categories are not homogeneous in social science, law and technical disciplines
- Bundle of rights metaphor can help to identify and manage the many possible partial interests associated with the management of public land
- Public land management means holding, acquisition, disposition and allocation of state and public property for economic, social, cultural, environmental and development objectives

The Range of Problems

- Political interference in management, allocation and acquisition of public land
- Vested interest of powerful people lead to strong resistance for improved governance
- Lack of policy orientation (Land Policy, Fiscal Policy, Central versus local level)
- Lack of information about where is what
- Fragmented institutional arrangements (often on purpose)
- The state does not protect its property
- Central level interests over-ride local resource rights

Public land deals in the spot light:

- Global survey on Human Right violations through forced evictions on state land (Cohre www.cohre.org)
- Land grabbing in Kenya, www.hrw.org
- Mining concessions on state land violating common property rights (ILC)
- Illicit value-added public land swaps
- Central government allocations over-ride local common property rights (OXFAM)
- Beneficiaries of land allocation are mainly politicians and a privileged minority (IIED)

Searching for good experiences and lessons learned

- Only few countries did explicitly and comprehensively tackle the deficiencies of their public land management system (Canada, New Zealand)
- Little information is available on such reform processes compared to land administration and land management in general
- Governance and Effectiveness in Public Property Management is work in progress; there is a long way to go

Towards a framework for effective and transparent public land management

1. Policy orientation and strategy
2. Reforming the regulatory framework
3. Enhancing the tool box
4. Regularization processes
5. Compulsory acquisition (fair and just)
6. Complementary governance support
7. Land management rules for public property
8. Options for institutional arrangements
9. Fiscal management, audit, performance indicators
10. Inventory and information system
11. The role of civil society
12. Building the capacities

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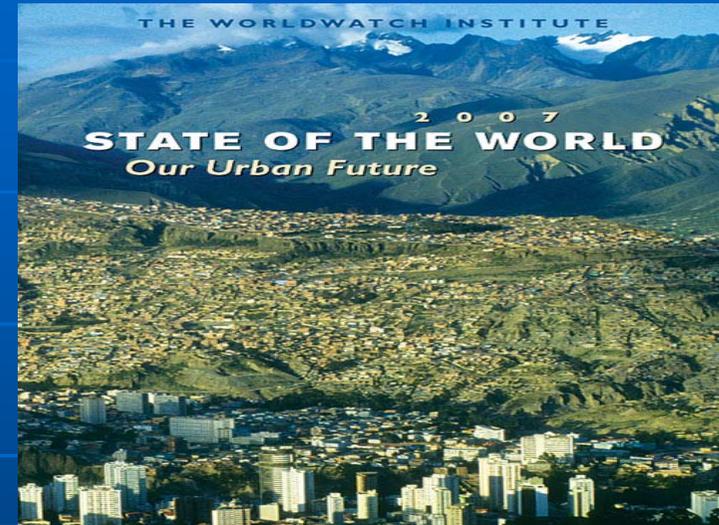
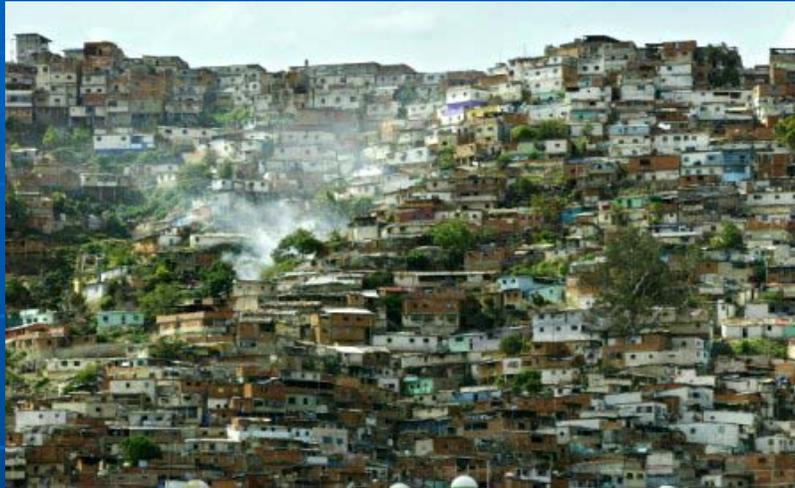
(2) Reforming the regulatory framework Human Rights, Sust. Dev. Principles, MDGs

- Defining public property and classifying/re-classifying public property
- Regulations for disposal, allocation
- Compulsory acquisition and resettlement regulation (fair and just), anti-eviction rules
- Land exchange (land swap) regulation
- Contracts (regulation for concessions and contracts such as disclosure, public display, right to appeal), contract law compliance
- Content of rights to be registered !!, partial interest, bundle of rights
- Mechanism for dispute resolution, recovery of public land?, the right of appeal

(4) Regularization of public property is an important governance procedure: Why?

- Existing cases of invasion
- Informal settlements in rural and urban public land
- Public land often cannot be located
- Appropriation of public right of way
- Fuzzy boundaries and unclear bundle of rights in natural resource tenure
- Partial interest and clarification of hierarchies
- Concession areas on public land are not demarcated and are unclear

2005: 1 Billion People live in slums, 30 % of urban population
2025: 1,8 Billion people will probably live in slums
Priority for Regularisation of informal settlements on public land



source:
UN Habitat
2006



5 Compulsory Acquisition is a governance issue

Lessons learned Ethiopia: Source: A. Hilton, FIG 2007

- Large number of expropriations, 'Public Purpose' is widely applied, including for private purposes and investments
- No right of appeal against the 'purpose' of the expropriation
- Township/Urban Expansion represents a large proportion of expropriation cases
- Farmers have little knowledge of their rights
- No compensation paid for 'communal' land
- Acquiring Authorities had insufficient funds
- Compensation payments too little to sustain life after eviction, 57% increase in poverty

(6) Complementary governance support: General Auditor, Judiciary and / or Anti- corruption Agencies:

Best practices: Hong Kong, Uganda, Botswana DCEC
www.gov.bw/government/dcec/

Land Administration professionals must (i) be protected from power pressure and (ii) must comply with a professional code of conduct (such as declaration of assets)

Three pronged attack principles:

Investigation, Prevention and Education

(7) Public Land Management and common property

- Public land and common property regimes
State common property, clarification of resource rights, bundle of rights
- Security of tenure: What secondary rights can be registered and what should be left for participatory Land Use Planning
- Co-management models in NRM and concessions (the concept of sharing power)
- Common property regimes, case studies 2005 (FAO, IFAD, CAPRI, ILC)
- Governance principles and rules for concessions and contracts

(8) Options for effective and efficient institutional arrangements

There is no universal model but a state of active institutional/organizational evolutions

1. Oversight body at a high government level
2. Centralized approach through specialized government agency
3. Central level custodian model
4. Decentralized management model
5. Special purpose cooperation
6. Contract-based trust management (PPP)
7. Mixed model for (i) normative task, (ii) institutional/organizational enforcement and (iii) management and operation

What could be done at international level

- Create awareness and generate synergies between Land Governance initiatives and public sector reform
- Develop guiding principles for international cooperation (based on good practices)
 - Compendium on public land legislation
 - Public Land Management Practice guide for implementation
- Exchange of experience for project design (Land projects including “all Land”)
- Knowledge management: update statistical information and analysis on public property
- Provide training options
- Promote action research on specific topics

What could be done at country level:

1. Awareness and recognition in Governments
2. An explicit public land policy is developed (balancing social, economic, cultural and environmental functions of public land and define surplus
3. Reforming the regulatory framework and making it coherent
4. Accountability chain and performance benchmarks are established
5. Fiscal management and auditing procedures are transparent and accessible
6. Options for the institutional landscape and stakeholder model (custodians) are discussed and developed

What could be done : continued

7. Government property board (oversight body) is set up to lead and integrate strategy
8. Co-management models are tested (central-local, PPP, the commons)
9. Information system and knowledge network is established
10. Public land management practice manuals are developed
11. Specific training is provided
12. Civil society has to play a role (public land should be held in trust of the people)