Territorialisation and marginalisation in the forested landscapes of Orissa, India

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ABSTRACT

Internal territorialisation or the formalisation of forest rights has led to increased state ownership in many countries, often ignoring traditional or customary tenure and land use. Because of its roots in a formal government process, the disjuncture between formal rights and local practices may be seen as unproblematic to policymakers, even though it harms the livelihoods of marginalised forest dwellers. In India in 2006, this situation was sought to be addressed by the passage of the Forest Rights Act, which acknowledged the injustices of the territorialisation process and aimed to restore some rights over forest use to forest-dwelling people. In this paper we examine the history of the territorialisation process in forested areas in the state of Orissa, India, and its implications for local inhabitants' land rights and livelihoods. We use archival research and case studies to examine how imposition of formal land tenure in forested areas failed to recognise rights and led to exclusion, contestation and conflict. The archival research and the case studies were among the evidence presented in the Indian Parliament in support of passage of the 2006 law. They demonstrate the important role that researchers can play in the political process through careful documentation targeted at policymakers.

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Introduction

Forested landscapes in the global South are home to hundreds of millions of people and overlap significantly with concentrations of poverty and marginalisation (Sunderlin et al., 2005). A key feature of these impoverished landscapes is the historical takeover of vast areas by the state or private corporate interests, often ignoring local people's claims and rights (Sunderlin et al., 2008). The complex intersections between the processes of tenure transformation, customary land use and the politics of resource control have had strong implications for the marginalisation of forest dwellers.

Property rights regimes in forested areas reflect complex historical and political processes widely discussed in the literature (Rangarajan, 1996; Sunderlin et al., 2008). Vandergeest and Peluso (1995) define internal territorialisation as "resource control" strategies of the modern state wherein it divides the territories under its control into economic and political zones, rearranges people and resources within such units, and regulates who can and cannot use the resources. Territorialisation has been an integral part of extending modern states to forested landscapes and opening these areas to processes of resource extraction and control (Sivaramakrishnan,

1999). States have used techno-legal systems such as mapping, declaration of state lands, and surveys and rights settlements to reorganise pre-existing rights into formal rights regimes to generate revenue, facilitate penetration of capital, and increase state control and regulation (Vandergeest and Peluso, 1995). These transformations have occurred in diverse ways, including conversion of large areas of land into state property and grants of private property rights. In these processes, most governments have tended to overlook customary local systems of rights and access (RRI, 2009). Local, multilayered, complex systems of rights and access have been replaced by what states perceive as legible, simplified and universal systems based on individual and state property rights (RRI, 2009; Meinzen-Dick and Mwangi, 2008). Territorialisation processes have been necessarily political as they reconfigured rights relationships, privileging state and private property rights while delegitimising and devaluing communal tenure systems and customary land use.[1] In many colonial states, vast areas of land were appropriated, often forcibly, from original inhabitants and were settled as private property with settlers (Berry, 2002) or converted into state-owned lands (Scott, 1999). In African colonial states, customary communal tenure was allowed to co-exist along with

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[1] A large literature exists arguing that a private property rights regime has advantages over communal land rights regimes. Platteau (1996) provides a good critique of this literature in the context of Africa. Place (2009) presents evidence that superiority of one regime over the other depends on contextual factors.

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appropriated private property and state lands, even though the customary rights administration was modified to meet the purposes of the colonising powers (Chanock, 1985).

Internal territorialisation continues to unfold in countries across the world through diverse processes including land titling (Bruce and Migot-Adholla, 1994; Feder and Nishio, 1998), leasing of "state land" to the corporate sector and foreign governments (Von Braun and Meinzen-Dick, 2009), creation of exclusionary protected areas (Colchester, 1997; Brockington and Igoe, 2006), and recognition of customary rights through formal land laws (Fitzpatrick, 2005). Land titling programs and related land and forest tenure reforms have become central to development and poverty alleviation strategies across the developing world (Feder and Nishio, 1998). The outcomes of such programs tend to be ambiguous, in part because standardised formal systems of territorialisation are superimposed on complex pre-existing forms of tenure and rights (Sjaastad and Cousins, 2009; Meinzen-Dick and Mwangi, 2008; Deininger and Feder, 2009).

India, with its long history of land and forest administration and the large number of poor people living in forested areas, provides an instructive setting to study these processes and their implications for forest dwellers. Officially, India's landscapes have been legally rationalised with every parcel of land legally owned either by a private entity or the state. Until recently, the construction of forested landscapes in India was seen as unproblematic at the policy level, even though millions of people live on and cultivate lands under customary arrangements that diverge from the official rights regime (Sarin, 2005). The consequences of this divergence have been severe and underlie many of the ongoing conflicts in India's forested areas.

For more than a century there have been constant contestations and struggles over land and forest rights in forested areas in India, but they have been fragmented and local. In the last decade, a major nationwide mobilisation demanding rights on forest lands coalesced, catalysed by a decision by the Indian Ministry of Environment and Forests in 2002 requiring eviction of millions of people living on government-owned forest land. Dreze (2005) estimated that almost 300,000 families were forcefully evicted. Media reports estimated that evictions would eventually affect almost 10 million forest dwellers, mainly tribal (Kaur, 2002). The evictions and associated human rights violation led to the emergence of a national campaign for forest rights, representing a coalition of forest dwellers, grassroots organisations activists and academics (Kumar and Kerr, 2012). The campaign was able to push the Indian Parliament to enact the Recognition of Forest Rights Act (2006), which acknowledged the historical injustices of the territorialisation process and aimed to restore certain rights over forest use to forest-dwelling people (Kumar and Kerr, 2012).

In this paper we examine the history of the territorialisation process in forested areas in the state of Orissa, and use archival research and case studies to examine how imposition of formal land tenure in forested areas failed to recognise rights and led to exclusion, contestation and conflict. Archival research included study of survey and settlement records, forest reservation proceedings, correspondence, forest plans, census data, program documents and reports. The archival research was supplemented with discussions and interviews with officials and other knowledgeable people to understand the territorialisation process in forested landscapes in Orissa. Through this research we discuss the intensive and complex processes of rights formalisation using cadastral mapping and surveys, which led to non-recognition of certain categories of rights and claims.

In two microwatershed case studies, legal rights data were compiled using the official "Record of Rights" and cadastral maps, and actual land use and customary tenure rights were compiled through a plot-by-plot survey. Additional case studies from nearby areas

demonstrate the severe impacts on local livelihoods of the mismatch between the formal and customary rights regimes. All of these case studies used interviews and focus group discussions to provide local perspectives on the implications of the mismatch between customary and formal rights. The case studies show that non-recognition of customary rights led to the criminalisation of subsistence livelihood practices that people undertake on their ancestral lands. This, in turn, led to greater political marginalisation, harassment by petty officials, evictions and conflict. These case studies were among many that helped document of the situation on the ground in the debates that led to passage of the 2006 law. They were submitted as evidence to a Joint Parliamentary Committee of the Indian Parliament; and they helped activists and policymakers understand the injustices done to forest dwellers and generated support for the proposed law.

Internal territorialisation in India

India's forested landscapes provide a particularly interesting location for examining the issues arising out of internal territorialisation. Sophisticated systems of cadastral mapping, surveys and forest notifications have been used to formalise rights in forested areas of India since the 19th century,[2] converting erstwhile agro-forestry landscapes into discrete legal categories of legal forests and non-forest lands (Sivaramakrishnan, 2000). As in other countries, extension of state regulation over land and forests was driven by the need for state income from land revenue and forest exploitation, as well as the strategic imperative to bring these areas within the control of the government (Sivaramakrishnan, 2000). Large areas of forested landscapes were enclosed as state-owned forests, while pockets of cultivation were demarcated as villages. A common feature of this process was the non-recognition of many customary land uses and the delegitimisation of many activities critical to the livelihoods and subsistence of forest dwelling people (Gadgil and Guha, 1997).

Limited state capacity to enforce the formal regime and resistance by local actors has led to persistence of elements of customary rights alongside formal rights in many of India's forested areas. As illustrated below, formal rights, customary rights and actual land use intersect and overlap in complex dynamics. Divergences between formal rights and actual practices set the stage for conflicts, instability and insecurity. The postcolonial Indian state has positioned itself as a welfare state, with an avowed objective of improving the life of its people, including poverty alleviation and empowerment (Jayal, 1999). The inhabitants of India's forested landscapes have remained the poorest and the most marginalised, and therefore the subject of a multiplicity of welfare programs focussing on livelihoods protection and poverty alleviation (Shah and Guru, 2005). The state apparatus, at least in policy, makes all-out efforts to improve the lives of its subjects. Yet one of the biggest problems underlying poverty, that of land and forest access, has often remained invisible and unaddressed.

Territorialisation in forested landscapes of Orissa

Orissa covers 155,000 sq.km. with a population of 32 million. 62 scheduled tribes, residing mainly in the forested part of the state, form 22 percent of its population. Orissa is also one of India's poorest states, with an estimated 47 percent of its population living on less than a dollar a day (De Haan and Dubey, 2003). Poverty and marginalisation are concentrated in forested areas and within

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[2] The Mughals and Marathas used cadastral surveys to establish land rights and systematize land revenue in the agricultural plains prior to colonialism, but the British expanded the process greatly in the 19th century, including in forested areas.