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Roundtable Report:

Policy Roundtable at the World Bank Conference

'Scaling up strategies to secure indigenous and community land rights'

Session date: *March 25, 2015 (Annual WB Conference March 23-27, 2015)*

Chair: *Ruth Meinzen-Dick*

Speakers: *Samuel Nguiffo, Peter Veit, Richard Smith, Rachael Knight & Jennifer Corpuz*

Executive Summary

The policy roundtable reported in this document is part of a global effort hosted by Oxfam, the International Land Coalition (ILC) and Rights and Resources Initiative (RRI) in securing indigenous and community land rights. Embraced by a broad coalition of non-governmental organizations, the overall goal of this global effort, which is called 'the Global Call to Action on Indigenous and Community Land Rights', is to *double the area of land recognized as owned or controlled by indigenous and local communities by 2020*. Dr. Ruth Meinzen-Dick, a Senior Research Fellow at the International Food Policy Research Institute (IFPRI), chaired the roundtable, the **objectives** of which were to:

1. Raise the profile of indigenous peoples and community land rights at the World Bank Conference and wider discussions;
2. Highlight current challenges and blockers that undermine tenure security for indigenous peoples and community land rights (i.e. processes like land regularization programs, major trends like commercialization of land/tenure or actors like private sector, governments and civil society);
3. Identify concrete example of positive change that should be supported, and up-scaled, and that need policy support (i.e. these again can be processes, major trends, specific technical innovations).

This document summarizes the main issues raised by the five experts – Samuel Nguiffo, Peter Veit, Richard Smith, Rachael Knight and Jennifer Corpuz – concerning the current challenges and positive solutions in relation to securing indigenous and community land rights, and leads up to concluding points in this regard.

Major challenges

○ *Invisibility*

Globally there is a lot of invisibility of indigenous and community lands. There are often no official numbers of registered and titled communities and no cadastral maps of indigenous and local communities. In Peru, for example, after 90 years of the initial recognition of indigenous and community land rights, 40% of the communities are still without any land tenure recognition and there is no agency responsible for carrying out these registrations and numbers.

This problem of invisibility and recognition is a national, and not a local, problem. This is also the biggest challenge to Indigenous Peoples. Governments often do not recognize the presence of Indigenous Peoples' territories. Moreover, there is no clear definition of Indigenous Peoples and no clear recognition of their existence. This problem of invisibility is also a strategy to ignore communal property rights and to grant foreign and national capital and economic incentive to invest. Following the logic: if we don't see them (Indigenous Peoples and local communities), we don't have to worry about them.

- *Vulnerability*

A problem facing tenure security for Indigenous Peoples and local communities is the intensification of investments. These are primarily extractive investments that overlap with community lands (development aggression). The global demand for land and natural resources, on the one hand, and local scarcity, on the other hand, is creating a conjunction. Conflicts are arising between local communities, between communities and companies and between communities and States. The growth of foreign investments is partly driven by a will of African countries to become emerging economies within the existence of the current generation – that is, 10 to 15 years. For that to happen the countries want to attract foreign investors. This has led to impressive growth rates – in some countries more than 10%. The problem is, however, that these investments happen in rural areas (i.e. community lands). It happens in places where communities rely on land and resources for their daily subsistence. This is due to the fact that the resources are located in those areas.

Second-tier investors

There is a lot of hubbub around large-scale land concessions to international investors, but on the ground there is a much bigger problem with second-tier investors. These are national elites who operate with complete impunity in their nations. They bribe the leaders, they use fear and intimidation to ensure consent. Sometimes these second-tier investors portray themselves as children of the community, because, for example, their father was born there. And so the community has no choice but to sell them land. These second-tier investors' takings are small compared to the large-scale land concessions (e.g. 10.000 hectare deals), but there are many of them. And there are very few ways to hold them accountable. These individuals are outside the rule of law and it is hard to create external pressures as a way to hold them accountable. So, using international or national laws or frameworks may not always work.

Occupied & vacant land / resource & land rights

One issue is the distinction that many governments make between land that is used and occupied and land that is considered vacant and idle by the State. It is the latter that is often the common property component of community land. It is that land that is critical to local livelihoods, but is also most under threat. So, this distinction between occupied and vacant/idle land is a real problem in many countries, especially in Africa. Another issue is the separation between land rights and natural resource rights. In many cases rights to natural resources are legally separated from rights to land. It appears that the higher value the natural resource, the more likely it will have legislation separate to the land rights. A lot of local communities focus on a bundle of rights. There is less attention to the bundle of property that comes with land rights. If you look at natural resource laws, you will see that natural resource rights almost always trump land rights.

Police powers

Governments often have extensive powers to either extinguish community land rights or restrict the use of privately held, including community, land. These are the so-called police powers that are in the constitutions of many governments. In many countries (e.g. Tanzania, Zambia and Sri Lanka) the executive branch has a large discretion to establish public purpose justification for compulsory land acquisition. If these restriction powers were executed, local communities would have very little discretion on how they manage and use their lands. Fortunately, these powers are not broadly exercised.

Protected areas / climate change

Frequently governments declare protected area-status over Indigenous Peoples, local communities, and their territories. This often leads to evictions from those areas. Solutions to climate change, such as projects that are aimed to produce clean energy, are also leading to the overruling of indigenous and community land rights. Because they are perceived as solutions to climate change, governments and companies are exempted from the requirement to free, prior and informed consent (FPIC). This has led to resistance from activists (e.g. in Asia). However, many of them have been killed in the process. The number of deaths is steadily climbing.

World Bank Safeguard Policies

Although there has been some progress in relation to the shift from consultation to the embracing of FPIC, the present Safeguard Policies of the World Bank still represent a significant delusion. This is due to the fact that it now contains an alternative approach, which allows governments to opt-out of their obligation to ascribe to Indigenous Peoples' policy. The 'opt-out clause' says that if identifying Indigenous Peoples could cause ethnic tensions or could run counter to the constitution of the country, then they can opt-out of following the Indigenous Peoples' policy.

○ *Exclusion*

Where growth is located, frequently there is no proper wealth distribution. Income generated by the investments will stay in the capital city and problems will be left in the rural areas. So the communities will be losing twice. They lose their land and resources to the investor and they don't have a share of the revenue generated. This leads to the situation where their lives are worse than when there were no investments. This is creating conflicts. One of the major problems is that the local production systems (how the land and the local management systems for the resources work) are not taken into account.

Solutions / strategies

The conflict generated by the presence of foreign investors is also an opportunity, because at least it is putting the issue of community rights on the table. Due to this conflict we have the opportunity to discuss the issue and try to come up with a solution.

○ *Documentation*

Even if your land is not legally recognized, it helps to map it. Mapping is a very powerful approach to making visible the issues of Indigenous Peoples and local communities. In Indonesia, for example, mapping exercises have led to a national enquiry into 140 simultaneous land right cases and in Malaysia it has led to the simultaneous filing of more than 2000 cases.

Moreover, communities that have a map can sometimes use it when a company or government arrives at the front door. Mapping is very much reactive. Communities need to get upfront and need to be much more pro-active in protecting their land. It is valuable that a community doesn't just hold a map, but that there is a platform of indigenous and community lands. There has to be an international registry of indigenous and community lands that speak not to national law, but to international standards around land rights. In such a registry legitimately held land should be recognized, including all customary land.

Specific strategies for documentation can be divided in three points:

- 1) *Challenging discrimination in the land titling sphere by educating the public through a variety of communication strategies.* This, for example, contains the implementation of a series of panels for public places and videos and reports about the situation of indigenous communities.
- 2) *Monitoring and reacting to legal and policy attempts to roll back community land security.* Monitoring and responding to the attempts that try to close the window on land titling, which eventually leads to opening the window for selling off community land.
- 3) *Mapping and making visible the indigenous communities and the overlapping concessions given out to mining, petroleum, forestry and agro-industry investments.* This contains mapping the existence of community lands and their boundaries, mapping the overlapping investment projects with community lands, mapping legal invasion of community lands and mapping new areas of de-forestation in and around community lands.

- *Create policy space at various levels*

There is a need to give stronger legal authority to Indigenous Peoples and local communities. This implies that whenever we hand out legal rights to communities we need to expand the bundle of rights, but also expand the bundle of property rights. We need to democratize the process by which police powers are exercised, particularly around land use restrictions. Another point of attention is inclusiveness of land law systems. There have to be land law systems that work for everybody. That would mean designing tools to assess the land laws to see if they are inclusive to all parties. By having such an assessment inclusive- and exclusiveness will become visible. It is these tools that should guide future reforms. This also means that when there are land law reforms, not only experts should help guide the process, but also local communities should be consulted. This is necessary to better understand what can work at the local level. This helps to find a solution that works both for the State as well as for the communities.

- *Pressure from below and above*

There needs to be downward pressure from above (a Pacman-solution).

From below

There are a lot of good efforts from below, but it is hardly extensive enough. It is necessary to have hundreds of NGOs working with thousands of communities to pro-actively safeguard their land rights. We need to create a global movement that is coordinated. We have all the right solutions and all the right ideas, but we are all in our own silos. We are not coordinating and not really sharing our strategies in an open-source way. It is necessary that all NGOs make How-To Guides and share their strategies to the world in order to move forward in a global and cohesive way.

From above

From above a lot of good work is happening already, such as international laws, investor pledges, bilateral pressure and emphasis on corporate social responsibility. But we need more multilateral pressure from lending agencies. The World Bank should be a leader in this, but is failing to do so. An important issue that the World Bank should work on in securing Indigenous Peoples' land rights is to improve the World Bank Safeguard Policies. Firstly, get rid of the aforementioned opt-out clause. And, secondly, since projects overspill the boundaries and affect downstream areas (e.g. in mining and dam projects) of Indigenous Peoples, the World Bank should change the use of 'project area' to 'impact area'.

Conclusions

<i>Major challenges</i>	
<u>Invisibility</u>	<ul style="list-style-type: none"> ○ No maps ○ Identity not recognized (Asia) ○ Often no legal definition ○ Most community land is considered vacant/idle ○ Resource rights not considered
<u>Vulnerability</u>	<ul style="list-style-type: none"> ○ From local power forces ○ National elites ○ States (using public purpose to justify seizing of common lands) ○ Private sector ○ 'Development aggression' (i.e. extractives, dams)
<u>Exclusion</u>	<ul style="list-style-type: none"> ○ Exclusionary growth: taking away of resources ○ Fragile land framework: land laws that do not work for everybody

<i>Solutions / strategies</i> (Replication and application of these scaling-up strategies by other actors; at scale)	
<u>Documentation</u>	<ul style="list-style-type: none"> ○ E.g. boundaries, land evaluations, land management uses and maps ○ Replicate through open-source tools that can be used
<u>Creating policy space</u> (at various levels)	<ul style="list-style-type: none"> ○ Land reforms that recognize and protect community land rights, working for local solutions ○ Creating space for dialogue between communities and other actors (i.e. States and private sector); maps can

	facilitate such engagement) ○ Working towards recognition of maps by governments.
<u>Pressure from above and below</u>	○ WB safeguards aligned to international standards Post-2015 Agenda ○ Movement building from below: the Global Call to Action offers a platform for this