

Private Sector Session Report: Expanding and Leveraging Private Sector Interest in Securing Community Land Rights

Scaling-Up Strategies to Secure Community Land and Resource Rights

Interlaken, Switzerland

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Chairs:

Andy White – Rights and Resources Initiative

Mark Constantine – International Finance Corporation

Panel:

Scott Poynton – The Forest Trust

Anne Roulin – Nestlé

Terhi Koipijarvi – Stora Enso

Chris Anderson – Rio Tinto

Chris Jochnick – Oxfam

Megan MacInnes – Global Witness

Lou Munden – The Munden Project

Sunrita Sarkar – International Finance Corporation

Sessions 1 & 2: State of Play and Key Questions

Summary – Current Status and Trends

- New research shows that companies engaging in industrial concessions in developing countries have a significant exposure to the financial risks of insecure tenure.
- There is a greater level of interconnectedness between national operations and domestic firms and global markets and finance than often anticipated: regional investment is often financed by international capital; local level investments are often guided or exposed to safeguards implemented for the deployment of international finance. (Indicated by the experience reported by Global Witness in engaging medium-scale, domestic enterprises involved in rubber plantations in the Mekong region – showing that they too were linked to international capital markets and open to engagement. (It had often been assumed that this type of firm was beyond the influence of international norms or scrutiny from civil society.)
- Companies are increasingly considering investments in the context of how the investment may relate to land rights and land reforms.
- Companies generally lack an understanding of the customary, and often informal, rights of local communities and people.
- There has been an evolution in the roles of NGOs and increasing recognition that they can be engaged in both “naming and shaming” and constructively engaging with private actors;
- There have been major changes in the operational landscape for companies over the recent years: communities are more organized and can expose company actions to national and international media; extractive and agribusiness industries increasingly recognize that communities must be engaged with; international standards are become better known and accepted.

- Room for engagement with private sector has expanded because: (1) organized communities and Indigenous Peoples, (2) private sector recognition of the problem, (3) there are new normative frameworks that require private sector due diligence on this issue.
- Growing awareness and attention to supply and value chains are connecting communities to every part of businesses.

Summary – Key Issues and Questions

- What are the responsibilities and appropriate behaviours of private sector actors in countries where governance is weak?
- There is an expectation that leading, socially responsible, companies should introduce best practices around land use at the landscape level – though again, this can be difficult if the government is not supportive and the company cannot address or redress land rights issues on their own;
- Critical issues for private sector: (1) The idea that companies have an obligation to respect human rights; understanding and knowing their impacts on labour and environment; (2) growing expectations for transparency and open reporting force companies to look across operations; (3) knowing your supply chains/sphere of influence; (4) participation and engagement with communities; the social license; (5) designing grievance mechanisms;
- The issue of land rights is relatively new to many companies, investors, and civil society organizations. Much more attention has been put on environmental performance in the past (e.g. “no deforestation”, or “only legal/sustainable” sources in the supply chains). Need to now add “no exploitation” standards (i.e. land rights, women’s rights, etc.) to standards and monitoring;
- IFC, and others promulgating frameworks and standards, look to clients to operationalize the standards;
- There is increasing recognition of the “social license” for all companies to operate, and vulnerability of that license;
- “Open contracting” was discussed but there were different opinions as to how realistic this is considering company needs for not revealing their intentions to the competition before the deals have been done;
- Challenges include not only “cleaning-up” supply chains to ensure “no exploitation”, but also adjusting business and production models to respect local land rights (and community desires);
- With regards to encouraging small business/outgrower schemes/etc., of course some communities and individuals are better entrepreneurs than others – and this fact makes the adoption of different business models more challenging.

Sessions 3 & 4 – Challenges, Critical Areas and Action Items

To effectively “expand and leverage private sector interests in securing community land rights,” two challenges need to be addressed simultaneously:

1. Develop and expand “responsible business models” that systematically integrate land rights issues into operations, supply chains, and finance.
2. Find ways to close the door for those operators unwilling to change to “responsible business models” - i.e. those ignoring community rights and handling the related risks through corrupt or other illegal/unethical means.

The groups’ work focused on the first challenge with the assumption that the second would be mainly tackled by the other groups, although some of the actions identified help to address both 1 and 2.

The group identified the following **four key critical areas for action**:

1. Make the business case for companies to respect and invest in systematically addressing local/community land rights' issues;
2. Mobilize business "leaders" and companies engaged and developing best practices to influence other key players, including other companies and governments at different levels;
3. Build transparency regarding land rights into land deals and supply chains;
4. Leverage change in both respecting and advancing land rights through supply chains.

Under the **first critical area** the group identified the following concrete actions (without order or priority):

1. Build local/community land rights into a risk assessment tool that quantifies the cost implications of land tenure issues - to make them understandable to investors and company directors (i.e. translating the issues into a language and methodology they are familiar with);
2. Clarify and explain what actions are needed to avoid or mitigate land tenure risk (consultations, mapping, EIA/SIA) and quantify their cost;
3. Develop case studies demonstrating best practices with regard to land tenure risk.

Under the **second critical area** the following actions were identified:

1. Use the political influence of industry "leaders" to influence other companies and sector(s) – mining, agriculture, forestry etc. to do more on land rights at the national and international levels. Make use of multi-stakeholder platforms, trade associations, roundtables etc., to engage those who have not yet adequately dealt with this issue;
2. Share experience from sectors that are further ahead on these issues (e.g. forestry) to inform and raise awareness in other sectors (e.g. agriculture);
3. Work with the investment community to frame land rights as "property rights" which is more understandable to the investment community and risk analysts. Work with the Equator Banks to develop more compelling "stories" and approaches to influence investors on this issue;
4. Promote lessons learning and information/best practice sharing within big international companies where one part of the company may be well ahead of others in this respect;
5. Develop targeted action towards key individuals (e.g. CEOs and Chairs of Boards) who can bring a broader perspective on these issues and make changes happen quickly in company policies and operations;
6. Expand the level of effort to monitor and engage medium and domestic-focused enterprises on land rights issues – and invest more in developing methods to influence regional firms – especially bad actors - who do not rely upon international capital markets, and generate sales locally and regionally.

Under the **third area** the following actions were identified:

1. Make maps of concessions, boundaries and supply chains publicly available, and easily accessible: a key step towards transparency and product traceability. This requires cooperation between companies and governments;
2. Mobilize industry leaders and civil society to promote greater transparency - a powerful tool for marketing by the industry "leaders" - e.g. related to issues such as food safety and brand image. There could be partnerships between companies and NGOs to promote transparency;

3. During investment planning processes (i.e. before the concession is assigned or the business model is decided), make information available to communities in a way they can use for their internal consultations and discussions. The capacity of communities to use and disseminate such information needs also be strengthened. These are preconditions for FPIC. NGOs can have a major role in this;
4. Strengthen community level monitoring of implementation, with support from the private sector and NGOs.

Under the **fourth area** the following actions were identified:

1. Put land rights issues visibly into supplier codes, commitments, and policies;
2. Follow up implementation with impact assessments and make the results of such assessments publicly available;
3. Work with export credit agencies to put these issues visibly in their agendas;
4. Use the power of big brands to put pressure on their more “invisible” (to the consumer) big intermediaries and suppliers (e.g. Cargill, ADM);
5. Expand the use of scorecards (e.g. Oxfam, Behind the Brands initiative) to encourage a “race to the top” and extend these to all critical sectors. Build the business case for integrating land rights issues in supply chain management with companies from less transparent but important countries dependent on external supply of commodities (China, Korea) through: (i) the sustainability of supply argument, and (ii) the “country brand” argument. Use the Embassies and other politically important “entry points” for influence.

Regarding how to take these forward, the group suggested in general:

1. Sharing these ideas widely with colleagues;
2. Building/strengthening networks between the different constituencies;
3. Helping all actors in these constituencies to identify where their input would be critical.

More specifically the group agreed that this good start should be immediately followed by actions to:

1. Develop a summary of the groups’ recommendations for action, and review and comments from the panel and the participants;
2. Further develop action items and agree on responsibilities;
3. Define how the each of the participating organizations can be most useful in moving these conclusions forward;
4. Develop a website and list-serve for sharing information on this topic - RRI will lead;
5. Identify useful areas of research;
6. Identify case studies for use by different interest groups; and
7. Schedule another face-to-face meeting of the panel after assignments and responsibilities are identified.