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The Forests Dialogue

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Scoping Dialogue on Land and Forest Tenure Reform

27–28 February, 2018 | New Haven, CT, USA

Co-Chairs' Summary Report

By Marcus Colchester, Amity Doolittle, Jo Ann Guillao, Ivone Namikawa,
and Christopher Stewart

INTRODUCTION

Despite decades of work on forest policy, The Forests Dialogue's (TFD) initiatives continue to face the question: who should own and control forests? Across the world, insecure tenure to land and forests threatens the economic, social, and environmental well-being of the people who depend on them. Resolving tenure can avert conflict, ensure equity, and sustain ecological integrity.

In partnership with the Forest Peoples Programme, TFD convened a Scoping Dialogue on Land and Forest Tenure Reform, hosted by the Yale School of Forestry & Environmental Studies (F&ES), 27-28 February 2018, to:

- Share understanding of the background of land and forest tenure reform among various stakeholders;
- Examine and learn lessons from concrete situations where land and forest tenure reforms have been, or are being, used;
- Identify key fracture lines within land and forest tenure reform with opportunities for improvement and collaboration across multiple stakeholders.

The Scoping Dialogue brought together 32 participants from around the world representing communities, civil society, companies, academia, and development agencies. Over the course of two days, participants discussed land and forest tenure reform and worked to frame the challenge in a way that future dialogues can build upon.

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Opening plenary session of the scoping dialogue



Miriam Prochnow of Apremavi speaking in a breakout discussion



Skip Krasny from Kimberly-Clark



Gretel Aguilar from IUCN and Yale F&ES

BACKGROUND OF LAND AND FOREST TENURE REFORM

Around the world, research has shown that tenure security alleviates poverty, curbs forest loss, avoids conflicts, strengthens investments, and upholds human rights. In many countries though, tenure rights remain uncertain. Over nearly 20 years of work, all of TFD's 71 dialogues except for three have touched on the need for strong tenure rights. International organizations and laws similarly recognize this need. Many private companies acknowledge that local tenure security helps avoid conflict, can attract risk-averse investors, and positions them favorably in a consumer-driven market.

Despite progress in thought and policy, actual recognition of local rights and transfers of lands has been slow and in some places unsuccessful. A critical hindrance, around the world, has been the “Iron Triangle”—a network of relationships between industry, bureaucracy, and legislature that leads to allocation of lands and forests to companies by the government. This relationship is rooted in long histories of colonialism and other non-democratic forms of rule that fail to recognize preexisting rights of forest-dependent communities. Participants noted that history such as this underlie current challenges and can inhibit conflict resolution.

Therefore, this Scoping Dialogue sought to collectively frame tenure reform in a way that illuminates avenues for solutions. Participants shared considerations for discussions around tenure security:

Title is not the same as tenure security

Participants emphasized that titles should not be thought of as equating to secure tenure. Understanding of and interest in formal title differs by community and culture and should not be conflated with tenure security as the universal goal.

Communities are not homogenous

Participants pointed out that communities are not monolithic. Often mobile peoples, women, and other marginalized groups are neglected, so communities should not be assumed to have one voice. Rather, communities represent a wide range of values, beliefs, and systems.

Consider the components of the ‘bundle of rights’

Dialogue attendees clarified that the right afforded to landholders should include rights to diverse resources and knowledge (not just soil but trees, fruits, etc.) as well as the rights to use and sell those resources. The bundles of rights should also emphasize a combination of collective rights over land, territories, and resources for indigenous

peoples and local communities.

The private sector is diverse

In conversations about and with the private sector, participants should note that companies are diverse in their size, region of operation, and commitment to environmental and social responsibility. The approaches used to involve companies in tenure reform need to differ based on these characteristics.

KEY THEMES

The following themes and fracture lines were highlighted during the dialogue as being particularly important:

Challenges to Tenure Reform

Law is often inadequate

In many countries, national laws and policy neither adequately respect community land nor facilitate tenure reform. While international laws may have been ratified and constitutional guarantees may exist, without statutory laws, little may be implemented. Even when laws are present, they may not be coherent across scales nor sectors, leading to the undermining of local rights. Participants noted that a lack of adequate statutory laws should not preclude recognition of customary governance nor should it allow for violence.

Lack of transparency

A common challenge to reform is a lack of accountability and transparency. Without accountable governments, it can be hard to change rent-seeking or corrupt behaviors. Additionally, companies that are not upfront with communities about their objectives, how they operate, and their expectations for communities can foster distrust and conflict. A major challenge for companies that want to reform tenure is that they do not have access to information on land use nor property rights. A lack of accountability in many places can lead to corruption. Corruption was discussed by multiple participants as an enduring impediment to fair and equitable transfer of rights. Corruption was also highlighted as a threat to effective taxation. Participants noted that taxation can be used to discourage land speculation and ‘land banking’ by companies, thereby encouraging land reforms in favor of communities.

Systemic reinforcement of current system

Participants noted that breaking the “Iron Triangle” is difficult because it is reinforced by entrenched power imbalances. Government elites maintain colonial laws and forest policies because they benefit from the close connection with private sector. Around the world, land ownership often equals power. This is reinforced by private finance. Additionally, tenure processes can be driven by external donors with



Welcome remarks by Gary Dunning of The Forests Dialogue

their own agendas. All of this exacerbates the alienation of rural peoples.

Lack of political priority

Governments have to play a central role in tenure reform but are often not engaged due to short term policy-making driven by elections and because their priorities may be different from those of communities or companies. A lack of understanding of the benefits of tenure reform and a lack of capacity can also hinder implementation. Participants noted that governments must be consistent in creating spaces for effectively engaging all actors in the land reform process.



Javier Gonzalez from Yale F&ES facilitating a breakout session

Sectoral divisions

Lack of collaboration and trust between sectors is a barrier to tenure solutions. Often there are too many sector-specific approaches to tenure, which slow down and jeopardize the overall process. Additionally, long-standing patterns of mistrust and lack of opportunities to gain trust between communities, governments, and companies can preclude ideas from even being discussed.

Concession model

The current model rewards those who do not do their due diligence on tenure. One participant noted that in Laos, this makes it hard for a company that is trying to do the rights things to compete. This creates disincentives to the recognition of community rights and self-determination.



Amity Doolittle from Yale F&ES speaking in large group discussion

Future Actions

Emphasize and clarify benefits

Participants agreed on the need to clarify the benefits of reform for all stakeholders. The private sector needs to have a stronger business case for investing in tenure reform. Such a case could include the need for stable supply and for fulfilling market and investor demand for secure tenure, and should adapt to a company's intent. Additionally, participants called for shared responsibility for reforms from the whole supply chain not just local producers.

The benefits of reform should be articulated to communities so they, through the process, can be aware of their rights, laws, and the consequences of not securing rights. Furthermore, communities should be informed about the property that they own and be aware of options to invest in their own businesses.



Marcus Colchester from Forest Peoples Programme in plenary

Additionally, it was noted that benefits of tenure reform to governments include over-

coming conflict, abating illegal resource extraction, and progressing toward environmental sustainability.

Invest in community institutions and capacity

Participants stressed that local management of natural resources does not depend solely on land tenure. The potential of land tenure is realized when communities or families trust that they will benefit from the tenure. Therefore, the reform must be combined with the right to organize in producer associations and state administrations must be supportive in local engagement and larger policies.

Investments should be made in equitable decision-making bodies within communities, cross-community organizations, and capacity-building that is sustainable and adaptable to demographics and timescales. Support should be given to link communities to markets, build negotiation skills, and involve communities in land and forest policy-making.

Frequently, communities are not given the time to self-reflect and identify their needs before implementers begin projects. Participants noted that any reforms should allow communities the space and agency to make their own decisions about tenure before implementation begins.

Increase attention to the role of land use planning

Land use planning can be used to address conflicting goals and incorporate local realities, scale, and needs within a broader landscape instead of addressing these separately. Planning can also be used as a tool to engage indigenous groups and communities in sustainable management from the beginning. It was noted that too often national land use planning does not accommodate local land use. Additionally, land use planning must be implemented with an adequate understanding of and expertise in local tenure arrangements.

Prioritize which businesses to work with

Participants identified that not all businesses are equal. Socially and environmentally-progressive business should be engaged first in tenure reform to bring other companies along.

Integrate intermediaries into the process

Participants emphasized the need for negotiators on the side of communities during the tenure reform process. This could be assisted by involving neutral, third-parties. It is also important to include processes that will address the challenges faced by local communities or indigenous peoples when engaging in dialogues or discussions.

Emergent Fracture Lines

These fracture lines were identified as overarching challenges and areas of divergent perspectives.



Ivone Namikawa from Klabin presenting the results from the first day



Intervention from Esther Mwangi of the Center for International Forestry Research



Jo Ann Guillao from Asia Indigenous Peoples Pact in plenary



Christopher Stewart from Olam presenting breakout conclusions

Role of the private sector

Many different perspectives were shared on the role of the private sector. One was that companies should work with civil society to directly advocate for reform. Another was that companies may support communities in certain instances, but it is not their responsibility to seek reform. A third perspective is that companies should lend indirect influence by joining partnerships or associations with civil society groups who would be the ones advocating. Thereby lending their influence indirectly to reform.

Also, companies cannot change laws by themselves and some participants questioned if they can actively engage to reform tenure. Other participants responded that companies should not underplay the extent which they already influence law-making, although, as another participant stated, some companies can do more while others can't afford it. There was an expectation that companies should be accountable and responsive to the impact of their operations at varying scales.

Disconnect between national priorities and local communities

Governments, who often own or control much of the land or forest in question, have different national priorities than those of local communities. This fundamental disagreement of goals can derail equitable outcomes.

Power and knowledge imbalances

Power and knowledge is imbalanced between communities and companies. Even if communities are engaged with companies, they are rarely equal in terms of knowledge, language, and/or resources. Companies and communities have different access to resources to go through the tenure permitting paperwork.

Different timescales

There are major differences of operating and decision-making timescales between stakeholders. Communities say that they need time to craft outcomes, get support, come together, and build trust. Meanwhile, participants noted that investors and permitting processes often force companies to make decisions much more quickly than suits community processes.

THE ROLE OF THE DIALOGUE PROCESS

Include government

Participants highlighted ways in which TFD's process can be used to aid in reforming

tenure. A key piece of the process, as reiterated by many participants at the dialogue, will be to include and integrate the most relevant government agencies into conversations around tenure reform. Since governments are the key decision-makers around land rights, dialogue can play a critical role in engaging their voices.

Learn from past successes

One benefit would be to document and disseminate best practices for tenure reform so that other interested parties could learn from those experiences.

Build trust and resolve conflicts

The TFD process can improve trust between stakeholders, which can reduce conflict and lead to better negotiations. Conflicts can also be reduced through the TFD process by building an understanding of the tensions that exist between sectors.

Engage with other dialogues

Participants noted that the issue of land tenure reform overlaps with other current TFD initiatives, especially the Land Use Dialogue. As such, the TFD process could be used to build on and understand land tenure in these other contexts.

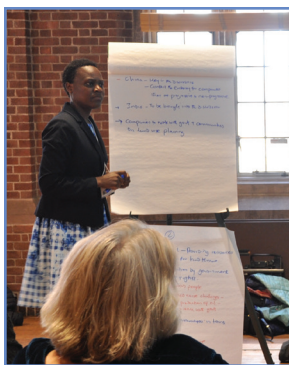
Vision dynamism of land rights

One challenge of achieving sustainable tenure reform, as noted by a participant, is that community members and relations can change across demographic and generational spectrums. Land rights and security are dynamic over time and the TFD process can be used to better understand the way in which tenure security may evolve as social variables change.

NEXT STEPS

At the close of the Scoping Dialogue, participants affirmed their support of continuing the initiative and moving forward with dialogues in-country. The items below were identified as things that should be done before a widespread implementation of the process.

- ➔ **Location.** The sites for the field dialogues need to be chosen carefully. The potential countries that were suggested were Indonesia, Guyana, Cameroon, Laos, Cote d'Ivoire and Ghana, and Canada. In Indonesia, the proposed context would be with the Toba Pulp Lestari concessions and Batak peoples, whose land has been taken from them. In Guyana, the government is revising the Amerindian Act and is seeking to strengthen indigenous land rights as logging concessions often ignore these land claims. In Cameroon, rapid expansion of oil palm plantations has threatened customary rights to resources while the government has



Student facilitator Beryl Ajwang leads a breakout discussion



Antti Marjokorpi from Stora Enso



Pamela Perreault from the Forest Stewardship Council



Milagre Nuvunga of Micaia Foundation

announced a tenure reform initiative. In Laos, a new forestry law is expanding village forestry and there is opportunity to connect with Stora Enso. In Cote d'Ivoire and Ghana, a burgeoning cocoa industry, led by the World Cocoa Foundation, is leading to deforestation, while curbing deforestation threatens the social welfare of many people. In Canada, local discontent at the way indigenous lands are being titled and a forthcoming review of legal frameworks for land rights make this a potential option as well.

It was noted though, that whichever sites are chosen, it will be critical to closely examine and understand the local contexts before beginning. The fundamental principle should be to do no harm given current power structures, decision-making bodies, and interests of communities.

- ➔ **Map initiatives.** Other land tenure reform initiatives should be identified to better understand TFD's niche, ensure TFD is complementing existing initiatives rather than duplicating them, and identify initiatives that may be faltering.
- ➔ **Decide format.** Participants discussed the possibilities of either doing this dialogue in different places around the world or in a single place repeatedly.
- ➔ **Generate business case.** A fundamental need for active private sector engagement, as illuminated through discussions, is a strong business case for tenure reform. Articulating a clear business case for companies will entice private sector to engage with the dialogue process.

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