

Summary of discussions: Round 1 SDC e-discussion on Land Governance, 15<sup>th</sup> - 28<sup>th</sup> March, 2010.

Dear Members,

Welcome to the SDC learning group on Land Governance! To set the discussions rolling, we would like to share with you an excerpt from a recent paper by Liz Alden Wily on the crisis in the governance of natural resources that we face today. She starts by asking: [“What is the best way to start a civil conflict today?”](#)

Well, one way is territorial invasion and respondent resistance. This has a pretty solid history.... There is a simpler way, and one which can produce much more chronic conflict: first, operate in an agrarian state. This is a country where most of the population depends upon land, not jobs, for survival. Then curtail their rights to those resources; land, forests, pastures, rangelands and wetlands. The easiest way to do this is actually to do nothing; just sustain old colonial policies which deny that these rights exist...

Then, add to this the ‘needs’ of the State and its associated elites with their deep pockets. Lease this land to loggers, miners, rubber or other plantation companies, and especially now, commercial food and bio-fuel producers. Best if you can back this up with a contract which will hold under international law, and even better to back in up with a State to State agreement.

But don’t forget to pay the customary land owners a little something for the crops or buildings they lose; this will help keep resentment down. Obviously you don’t have to do this for the forests, pastures or other lands which are not farmed. For is there any physical evidence that these lands are even being used by these people? Look, the trees are still standing, the land is not being cleared for farming. (If you need more excuses to concur with the likely national law of that country, then you have it in two ‘facts’: they hold the unfarmed communally, not as single owners. In addition, by custom the community does not allow shared lands to be sold. And we all know that ‘property’ is only ‘property’ when it is fungible, able to be traded in the market place).”

(Source: Alden Wily, L. Fodder for War: Getting to the Crux of the National Resources Crisis. Washington: Rights and Resources Initiative, 2010)

An FAO policy brief identifies many of these concerns but also highlights the huge unmet need for investments in agriculture in developing countries, which surpasses ODA manifold. FAO calls for an evaluation of international investments in agriculture (other than land acquisition) and a cataloguing of best practices in law and policy to better inform both host and investing countries. (Land Grab or Development Opportunity? FAO, IFAD & IIED, 2009)

We would like to start the first round of discussions by asking you to share your experiences on Land Governance. What does it mean to you? What are the pressing issues in land governance that you currently face in your work, and do you have any specific examples of good practices in tackling them?

Looking forward to the next two weeks of discussions!

A total of 34 responses were received from members in 9 countries and four continents during the two week discussion.

The discussion started with an input from [Bharat Pokhrel](#) on the consequences of lack of recognition of rights of indigenous and local communities over forests in Nepal. Feudal power structures in the 19<sup>th</sup> and early 20<sup>th</sup> centuries chose not to recognize customary property rights that had governed their use in the past. Overtime, most of the forest lands were nationalized while agricultural land remained a private property. This provided perverse incentives for people to convert forest and pasture lands into agricultural land leading to deforestation and land degradation without any significant increase in food production. Similar experiences were shared from Bolivia, Pakistan and Afghanistan.

In this backdrop there are however numerous cases of land being managed in a sustainable manner by communities who have clearly defined usufruct and management rights that are protected by supportive legal frameworks and institutional structures. Examples of such successful collaborative management of land that prevented conflicts, degradation, negative offsite impacts such as flash floods, depletion of water resources etc were shared by [Sanjeev Bhuchar](#) (Afghanistan), [Markus Burli](#), (Mongolia) and [Marylaure Crettaz \(Niger\)](#). They highlighted experiences of supporting multi stakeholder negotiations between herders, traditional authorities (*shuras*, chieftains) and modern local government bodies. Such multi-stakeholder systems are able to deal with multiple and often competing interests.

[Simon Zbinden](#) then posed an interesting question, “In the backdrop of such overwhelming evidence showing the value of less rigid definitions of tenure rights, why are states still unwilling to recognize customary ownership and usufruct rights?” [Andrew Bartlett](#) using the phrase “Seeing like a State”, borrowed from James C Scott, helped us analyse the situation in Laos, Nepal and many other parts of the world. For a state concerned with economic growth and poverty alleviation in a landlocked and poor country, the first step is often to turn ‘land into capital’. It is easier to tax and earn revenues from lands that are organised into large parcels and support highly remunerative economic activities such as cash crop plantations, mines, hydel projects etc. The small financial returns from small pieces of land cultivated as family holdings offer little revenue potential to the State and the collection is not cost effective. It is therefore seen that States supports policies such as conversion of large tracts of land into Special Economic Zones citing ‘public interest’ – a term open to many interpretation, as shared by [Dr. K.R. Vishwanathan](#) from experiences in India. There are many arguments for consolidation of land from an economic perspective which do not give the necessary importance to the other five dimensions of land tenure shared with the group by [Bishnu Raj Upreti](#).

In her input [Jane Carter](#) said current trends indicate that while 75% of the world’s forests are state owned, there is a growing world-wide trend towards local communities either gaining usufruct rights or tenure rights over previously state controlled forests. These are particularly true in Latin America as also parts of Eastern Europe. While she cautions against relying on global figures that may lump together the great diversity seen in tenure regimes governing the forests of the world, the trend overall is interesting and is substantiated by recent actions of the Government of India in the form of the Forests Rights Act shared by [Dr. Vishwanathan](#). It confers four kinds of rights to communities living in or relying on protected and reserved forests.

[Carlos Saavedra](#) provided links to interesting research which indicates that while new tenure rights for forest based communities have been given on a large scale in Latin America and in themselves they signify an important achievement for many communities, tenure rights do not automatically turn into rights in practice. The bundle of rights granted can be overwhelmed by accompanying responsibilities and there can be restrictions on their use by state authorities. In many parts of the world new institutions are emerging due to changes in the nature of the State, forces of decentralization and devolution. However, while such new bodies have substantial powers, they may lack experience and clear accountability relations. The experience in Latin America shows that policy framework has generally failed to establish an enabling environment for indigenous community based management systems to flourish in such an evolving and complex institutional setting. While significant gains have been made, the full potential of recognizing tenure rights, of forest based communities, to improve livelihoods is yet to be realized.

This brings us to the third stream of discussion which focused on the roles and relationship between elected local bodies and user groups organized around a particular resource (CFUGs, Watershed Groups, Pasture User Groups etc.). [Bharat](#) pointed us to the work of Ribot (2005) who suggests a dual strategy of constituting local/user groups as also empowering local governments with the mandate to allocate the right to management and use of resources to these groups. This would lead to strengthening decentralized democratic processes as well as safeguarding the rights of specific interest groups. [Celestin Dembele](#) too strongly argues of this saying that the law is impersonal and is unable to deal with local variations in customary rights and their interpretations. It is therefore important that decentralized local authorities have the power to establish rules through local negotiations which may then be validated by the central administration.

Most SDC projects appear to work in this space of seeking to use the opportunities created by decentralization and devolution of powers to local bodies to support and legitimize the role and functions of various community/user groups. [Zahid Hasan](#) from Bangladesh shared with us that recognizing the important role of local bodies in land governance, SDC's local governance programme - SHARIQUE has developed a compendium of laws pertaining to land tenure which are relevant at the level of the Union Parishad.

While such processes of collaborative management with the participation of multiple stakeholders have yielded good results in many parts of the world (Niger, Afghanistan, Mongolia etc.) the challenge is to garner adequate state support and stakes around them such that they can withstand the pressures of privatization of land and its diversion to uses that are much more lucrative. This brings us to the initial quotation from Liz Wily on the highly volatile force insecure tenure can prove to be in largely agrarian countries.

Recent developments in Pakistan ([Nadeem Bhukari](#)), India ([K R Vishwanathan](#)), Nepal ([Bishnu Upreti](#)) and Mali ([Célestin Dembélé](#)) highlight the conflicts, social unrest and radical changes in power structures that can be triggered by alienation of people's rights to land. Perhaps this adds new weight to the unequal balance of power between poverty reduction, equity and development imperatives and the economic pressures that seek to commodify an increasingly scarce and contested resource.