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New Data Reveals Investors Cannot Buy Their Way Out of Direct Engagement with Local Peoples; Lack of Government Action to Recognize and Clarify Land Rights Poses Huge Risk to Investors

Failure to recognize customary rights in tropical forests found to drive deforestation, climate change, and even armed conflict; new evidence released in London makes clear strong rights can reduce investment risk and outperform parks in conservation

LONDON (3 February, 2016)—Six weeks after negotiators in Paris placed tropical forests at the centre of the global battle against climate change, experts at a London event said government resistance to recognition of local land rights threatens global prospects to stop deforestation and fuels conflict costly enough to repel investors.

Citing cases in Africa, Asia and Latin America, experts meeting today in London released a series of research papers that demonstrate how resistance by governments to recognizing land tenure for Indigenous Peoples and local communities is causing major financial risks to private sector actors engaged in extraction and production of commodities for export in developing countries.

Presented at a panel organized by the Rights and Resources Initiative (RRI), the new data could well encourage investors and commodity-driven companies to push for recognition of local property rights in emerging market countries.

“This analysis delivers quantitative evidence that disputes between local peoples and project developers/operators inflict significant financial harm on investors,” said panellist Lou Munden, founder of TMP Systems. “We found this to be true in more than half the 360 cases we studied, and almost all of the conflicts we reviewed were linked to insecure land tenure.”

TMP and RRI’s analysis of conflicts in mining, energy, agriculture, transportation infrastructure and forestry concluded that more than 60 percent of the cases involved conflicts with minorities and Indigenous Peoples; in the forestry sector, that number shot up to 90 percent.

“Insecure rights also threaten efforts to mitigate climate change,” said RRI Coordinator Andy White. “Despite international consensus that the world’s tropical forests are crucial to keeping warming below two degrees, and growing recognition of the vital role that forest peoples play in protecting those forests, the pace of recognition of their rights continues to lag. Some large forest countries are now positioned to recognize rights on a massive scale—including Indonesia and India—but strong resistance by government agencies, conventional companies and conservation organizations block progress.”

Evidence that strong rights could protect investments in emerging market countries may help counteract unwillingness on the part of many governments to recognize the full ownership rights of forest peoples, the panellists suggested. A firm signal of support for tenure reform from international investors would serve to bolster government resolve to clarify and secure local land

tenure—a necessary precursor for success of even the most well-meaning development projects.

“We’re now in a moment where private investors have to decide how to invest their money to best achieve their commitments to stop deforestation and respect rights. Governments that want to attract these investors have to ensure that local peoples’ rights are legally defined and respected in order to ensure that companies do not incur financially painful and reputation-damaging tenure related risks,” said White. “It benefits governments too. Efforts to mitigate risk and meet deforestation commitments can only succeed if customary land rights are taken into account.”

The Intersection of Limited Rights Recognition and Risk

New analysis released by RRI estimates that governments formally recognize Indigenous Peoples and local communities’ legal ownership rights to an area equal to more than five times the size of Chile,¹ or 388 million hectares of forestland, up from 300 million in 2002, though this is just one fifth of the land Indigenous Peoples and local communities customarily own and use. But White noted with concern that governments have focused recently on “designating” land, rather than recognizing local peoples’ ownership rights; since 2002, governments doubled the amount of land over which local peoples had only limited control.

“Our analysis shows that a significant number of governments have begun to designate forest lands that impose limits on local people’s ability to manage the land, or control how it is used,” he added. “This is a half-measure that poses a significant risk to the lives and livelihoods of forest peoples and the health of our planet. It undermines commitments made by governments at the UN climate summit in Paris, and by companies that signed on to the New York Declaration on Forests. The rights of local peoples must come first if we hope to achieve any of these global development goals.”

Last year, RRI and TMP systems released an [analysis](#) of almost 73,000 commercial natural resource developments in eight emerging/frontier market economies, concluding that 93 to 99 percent of the projects were on land inhabited by local communities or Indigenous Peoples.

If investors are not yet looking for ways to reduce their exposure to social conflict, they should be doing so now. “Our research shows that financial damage to the bottom line can range from massively higher operating costs, to outright abandonment of an existing operation,” Munden added. “And these risks are significant enough to change the calculus of investing in emerging markets. And they suggest investors are confronting a substantial problem.”

Money Not the Answer to Avoid Conflict Between Investors and Communities

An exhaustive analysis of almost 400 conflicts in mining, agriculture, infrastructure, energy and forestry projects showed that the vast majority of cases (93 percent) were not disputes over compensation paid to local populations, but rather, a range of other issues from environmental degradation to curtailed access to local resources.

“These results were really unexpected. Investors and companies typically assume that disagreements can be resolved with money, because that’s often how business issues over

¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/ci.html> (756,102 sq. miles equals 75,610,200 hectares; multiplied by five, this comes to 378,051,000 hectares)

things like intellectual property or employment disputes are resolved. But when you see that only one mining conflict out of fifty is driven by money, it makes you think differently about managing the risk,” said Munden. “It means the primary goal is not for an operator to figure out what the local population needs to be paid, but instead, how to determine what factors drive their opposition to the project, and make a calculated assessment about whether those issues can be addressed.”

New Tools for Assessing Investment Risk and Respecting Local Land Rights

To address some of the obstacles reported by investors and companies working in developing countries, the RRI panel discussed a number of new tools and initiatives that were established in 2015. TMP has produced two free and open source tools—[IAN: Risk](#) and [IAN: Diligence](#). IAN products marshal available technology and expertise to provide investors and risk analysts with reliable, easy-to-use and cost-effective means of identifying (IAN: Risk) and responding to (IAN: Diligence) the risk of tenure-related disputes with local people.

Another of these tools is [The Interlaken Group's](#) new due diligence [guide](#) to help companies respect local peoples' land rights consistent with the United Nation's Voluntary Guidelines on the Governance of Tenure. The Interlaken Group—a multi-stakeholder forum of representatives from companies, investors, international organizations and civil society groups working together to identify practical ways that companies can support improved land governance and respect the rights of local peoples—promises this to be the first of many new products aimed at helping companies implement commitments on tenure and deforestation.

“These new tools, combined with the many new initiatives brought forth by Indigenous Peoples, local communities, and their allies in 2015, highlight the need for investors and governments to respect the rights of local peoples from the outset,” White said. “If they heed the evidence, and take advantage of these new tools, governments and industry could partner with forest peoples to transform the reality on the ground, saving lives and the environment, while protecting the bottom line.”

Parks or People: New Analyses Argue for Rights as Solution to Saving Forests

This same data-driven approach is also being applied to proposed public investments in forest conservation, which took on increased importance in the wake of December's landmark approval of the Paris climate change agreement. A commitment to ending deforestation figures prominently in the agreement, leading RRI and TMP Systems to seek a way to examine the human and financial costs of establishing new public protected areas in two African countries. One project, funded by the GEF and Germany, would set aside 12 to 15 percent of the DRC as protected areas, and the other, involving funding from Norway, would set aside 30 percent of the forests of Liberia by 2020.

The new analyses show that expansion of the protected areas could either displace or damage the economic wellbeing of as many as 1.3 million people in the forests of Liberia and DRC. The costs of establishing these expanded “protected areas” in both countries would range from \$200 million to over a billion dollars, excluding the annual cost of maintaining the parks, estimated at \$36 million.

“This is a first step,” said Munden, “and we're still refining our analytical approach. But so far, it suggests that the costs of compensation for displacing or impeding local peoples' customary forest use are significant. We're not saying that the protected area approach should be

abandoned, but suggests the need for lower-cost approaches that achieve the intended outcomes--healthy forests and reduced greenhouse gas emissions.”

White noted that the information will be vital to public policymakers in helping them to make evidence-based decisions.

“It has become increasingly clear to the private sector that people cannot be pushed aside with impunity—the conflicts that result have long-reaching and very costly impacts,” White said. “And the same lessons apply to government; public investors need better tools to inform their decisions. The long history of underestimating the costs of establishing and maintaining protected areas has cost developing country governments dearly, and led to the creation of ineffective ‘paper parks’.”

He pointed to Liberia’s uphill battle for rights as emblematic of the wider struggle happening across Africa, Latin America and Asia. Liberian leaders are confronting a decision that will determine the fate of the country, and yet they seem unable to take action on a piece of legislation that would guarantee the land rights of rural communities, according to Constance Teage of Liberia’s Sustainable Development Institute. In fact, Teage said, Liberia’s groundbreaking Land Rights Act (LRA) is currently at great risk.

She cited a recent press release issued by 18 civil society groups in Liberia that alleges: “Changes have been made to core principles of the LRA that would erode rural communities’ land rights, exacerbate poverty, and potentially set up the country for further unrest.”

Teage said that civil society groups were calling on her nation’s leaders “to uphold, support and defend the integrity of customary land rights in the LRA by asking the Legislature to pass the July 2014 draft and to submit the final bill for public scrutiny before it is passed into law.”

But if the government fails to act, White said, Liberia’s leaders may find the world is changing without them, as companies and investors begin to demand strong rights as a means of mitigating the risks of social conflict.

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The Rights and Resources Initiative is a coalition of 13 core Partners who conduct work in specific areas of their regional and thematic expertise. Their mission is to support local communities’ and Indigenous Peoples’ struggles against poverty and marginalization by promoting greater global commitment and action towards policy, market and legal reforms that secure their rights to own, control and benefit from natural resources, especially land and forests. For more, visit the RRI website at www.rightsandresources.org.

TMP Systems is a boutique consultancy based in the United Kingdom, with staff in the United States and the Philippines. Please visit www.tmpsystems.net/where-weve-worked/ to find out more about their work on problems in asset management, economic development and climate change.