

FROM RHETORIC TO ACTION

SCALING UP COMMUNITY AND INDIGENOUS
PEOPLES' LAND AND RESOURCE RIGHTS

REPORT OF A CONFERENCE HELD ON 30 SEPTEMBER 2015 AND 1 OCTOBER 2015
AT KURSAAL BERN, BERN, SWITZERLAND

SUMMARY

The aim of this conference was to develop strategies and actions for scaling up Indigenous Peoples' and community land and resource rights worldwide. The conference followed a similar meeting held in Interlaken, Switzerland, in 2013.

A new global study released on the eve of the conference showed that Indigenous Peoples and local communities claim customary tenure of up to 65% of the world's lands but lack legal rights to almost three-quarters of those lands.

At the conference, six strategy groups—on community mapping, building legal capacity, leveraging the private sector, engaging conservationists, scaling up women's land rights, and establishing land rights as a global priority—identified actions that can be taken now to increase legal land rights for Indigenous Peoples and local communities.

Putting an end to human rights violations—such as torture, imprisonment, displacement and murder—against Indigenous Peoples is essential for justice and also an urgent prerequisite for ending conflicts over land and dealing with climate change.

Three regional panel sessions and a specific session on Indigenous Peoples land rights, showed how, against the odds, progress is being made in securing the land rights of Indigenous Peoples and local communities in several countries in the tropics, and lessons learned from these efforts can be applied elsewhere.

The conference identified eight action points for moving from rhetoric to action:

- 01 Endorse the Global Call for Action on Indigenous and Community Land Rights.**
- 02 Encourage** donors and governments to support the struggle for community land rights.
- 03 Develop** flexible and responsive instruments for the distribution of funds to support land governance by Indigenous Peoples and local communities.
- 04 Leverage** communication technology and social media to amplify community voices.
- 05 Learn** to speak the “language” of decision-makers in government and corporations.
- 06 Work** with leading, sympathetic corporates to put the land rights agenda into other spaces.
- 07 Demonstrate** the potential of the land rights agenda to address other pressing issues.
- 08 Keep** building alliances, including with those who are not natural allies.

BACKGROUND

The aim of this conference was to take stock of efforts to scale up Indigenous Peoples' and community land and resource rights worldwide and to develop strategies and actions for moving from rhetoric to action. The conference followed a similar meeting in Interlaken, Switzerland, in 2013, which also aimed to strengthen collective action to scale up community land rights.

This second conference was held in Bern, Switzerland, and attended by about 250 representatives of local, national, regional and global Indigenous Peoples' organizations, donors, corporations and advocacy groups¹.

A new global study by the Rights and Resources Initiative (RRI), released on the eve of the conference, showed that

Indigenous Peoples and local communities lack legal rights to almost three-quarters of their traditional lands, despite claiming customary use on up to 65% of the world's lands. Some progressive laws have been put in place and, in some cases, Indigenous Peoples have been afforded rights in national constitutions, but action to implement laws and uphold rights has been slow, uneven and sometimes non-existent.

In organizing the conference, RRI, the International Land Coalition, Oxfam and HELVETAS Swiss Intercooperation agreed the time had come to move from awareness-raising and good words on land rights to actual implementation. The conference was designed to generate momentum for such a move.

¹ The conference program and other materials are available at: <http://communitylandrights.org/conferences/2015-bern-conference/program/>

Opening Plenary

Interest in the power of community land and resource rights to achieve positive social and environmental change is escalating. In opening the Bern conference, **Melchior Lengsfeld**, of HELVETAS Swiss Intercooperation, noted that the conference was oversubscribed and that people had to be turned away.

At the 2013 conference in Interlaken, **Andy White**, RRI coordinator, had reported that the lack of rights to land and resources was a global crisis.

“Two years later,” he said on day 1 of the Bern conference, “it is still a crisis.” The persecution and murder of people trying to protect their lands and resources, and the number of conflicts over land have increased, and land-grabbing persists. On the other hand, said White, there has been much progress in the last two years—new laws and policies, court decisions that respect local land rights, and commitments by companies to do better. These offer hope for closing the gap between the aspirations and realities of local people.

Michael Taylor, from the International Land Coalition, suggested three things to keep in mind in planning how to fill the gap: 1) build on the gains made—governments are more willing than they have ever been to sit down with stakeholders and talk about how land processes can be improved; 2) build alliances—none of us can achieve the necessary changes alone; and 3) build on successes—much is already being done.

Duncan Pruett, from Oxfam, reported that his organization is part of a global call for action aiming to double, by 2020, the land area over which Indigenous Peoples and local communities have rights. Mr. Pruett believed that this call for action will support existing struggles and help persuade those with means and power to take concrete steps in its achievement.

Vicky Tauli-Corpuz, the UN Special Rapporteur on the Rights of Indigenous Peoples, reported that the rights of Indigenous Peoples are still being violated, including through arbitrary arrests, torture, disappearances and land-grabbing. Some countries, she said, are retreating from policies favoring indigenous rights, and this is manifesting in an increase in conflicts.

Ms. Tauli-Corpuz recommended several **actions** to address the situation, including the following:

- Support human rights defenders, rather than criminalizing them and their organizations.

- Call for the demilitarization of the territories of Indigenous Peoples.
- Conduct more research to provide evidence of the contributions of Indigenous Peoples and local communities to biodiversity conservation and climate change mitigation.
- Increase understanding among Indigenous Peoples and local communities of supportive national and international frameworks and instruments (and how these can be used strategically).
- Promote dialogue between Indigenous Peoples, governments, corporations, donors and non-governmental organizations (NGOs).
- Engage in a sustained effort to train the next generation of indigenous leaders.
- Support the efforts of Indigenous Peoples and local communities to operationalize their own visions for sustainable, self-determined development.
- Disaggregate data on how the Sustainable Development Goals are being implemented with respect to Indigenous Peoples.

“If Indigenous Peoples and local communities are empowered, they will be indispensable cogs in the wheels of change.”

Vicky Tauli-Corpuz, UN Special Rapporteur on the Rights of Indigenous Peoples

Strategy groups

Six “strategy groups” met in the morning and afternoon of day 1 to identify challenges, opportunities and strategies for moving forward, and each reported to the plenary at the end of the day.

Strategy Group 1 on Community Land Maps and Tenure Security

Participants in this group noted that community mapping can be an important tool for local governance, but several challenges must be overcome, including: obtaining know-how on gathering, storing, analyzing and using mapping data; retaining local control over information; how best to aggregate data; and obtaining access to

spatial information from governments (e.g. cadastral and census data, and information on concessions). Ingredients for successful community mapping include free, prior and informed consent (FPIC), the active involvement of elders with good facilitation, the use of base maps, good cooperation with government agencies, and collaboration between civil society and community-based organizations.

It is also important to map the historical-cultural “space” of Indigenous Peoples as well as to take into account both traditional and customary concepts and modern concepts of property rights. In some communities, three-dimensional physical maps created using basic technologies have proven to be more effective and popular among local communities than maps produced using more sophisticated technologies.

The group proposed the following **actions**:

- Develop clear protocols on the use of, and the rights and privileges to, information, especially that provided by communities.
- Formulate clear communication strategies for the maps produced and establish clear messages.
- Develop processes for obtaining official recognition of community maps.
- Develop platforms for sharing mapping data while protecting information that communities do not wish to share.
- Standardize data format and overcome mistrust aiming at sharing of map data.
- Create and use of maps for monitoring status of community tenure security and threats to it.

Strategy Group 2 on Building Legal Capacity to Secure Land Rights

Participants in this group agreed that legal systems comprise a plurality of norms—such as national laws, customary laws, codes of conduct for corporations, other sets of standards, and international laws—building legal capacity means strengthening abilities to use and combine diverse sources of laws and articulating national legal frameworks which respect customary laws and international human rights law. Participants also agreed that “land is political and the recognition of land rights is the result of struggle”, but, conversely, that “the implementation of good laws and the reform of bad laws is the result of political will”; the best way to increase political will is to mobilize the will of communities. Case studies were presented from countries worldwide.

The group proposed the following **actions**:

- Develop legal capabilities in communities, such as by training community members as paralegals and through participatory mapping processes, as a way of increasing knowledge in communities of their rights and of the laws that affect those rights.
- Write customary laws as bylaws, among other reasons as a way of saying “we are not victims, we are protagonists”.
- Strategically use international standards and human rights laws.
- Support community governance to ensure that decisions are made in an informed, participatory way, that all views are heard, including those of women, and that it’s clear who represents communities in wider negotiations.

“Most donors don’t want to touch human rights conflicts, but it is impossible to continue without solving the conflicts.”

Rukka Sombolnggi, Deputy Secretary General, Indigenous Peoples’ Alliance of the Archipelago (AMAN)

Strategy Group 3 on Leveraging Private-Sector Action to Secure Community Land Rights

The strategy group heard that Nestlé buys commodities grown on a land area 2.5 times the size of Switzerland, with 4–5 million farmers in the supply chain. The company has benefited from the “safe space” provided by the Interlaken Group, and it will retrofit the guidance document and field test it with suppliers in Indonesia. The strategy group agreed that the private sector was an essential part of the solution to land rights. Investors need clarity and simplicity; a business case that demonstrates materiality (i.e. what it will cost if they mismanage a tenure conflict situation); clarity on regulations; and consistent messaging from civil society organizations, companies and governments. A clear message from the session was that better data on issues around land rights was a necessary precursor for better decision-making by investors.

There was considerable discussion (but no resolution) on “legacy” issues – the extent to which companies bear responsibility for problems that existed before they came on the scene (or that persist after they depart). Another important message was that, in most instances, reconciling the interests of the private sector and Indigenous Peoples and local communities wasn’t about “buying” community support—it was more about rights, respect and accountability.

The group proposed the following **actions**:

- Disseminate the guidance document and promote its uptake by companies.
- Generate tools and capacity to help companies and investors interface with local communities and to implement commitments to best practice.
- Incorporate the VGGT in regulations (e.g. those of the OECD and the European Union) to influence supply chains.
- Educate investors, companies and governments about the need to address land rights (and why this might be in their best interests).
- Improve data and databases to encourage community-friendly decision-making by financial institutions and investors.

"We need to unite the language when we are talking about land rights for Indigenous Peoples and communities."

Samuel Nguiffo, Secretary-General, Center for Environment and Development (CED)

Strategy Group 4 on Expanding Engagement of Conservation Actors in Securing Indigenous and Community Land Rights

Participants in this group discussed concrete opportunities and challenges in national contexts (Indonesia, India, Democratic Republic of the Congo, and Brazil) to advance indigenous and community land rights as they relate to conservation.

Points emerging from discussions included the following:

- Despite increasing international commitments to rights-based conservation, and national legislation recognizing indigenous and community land rights, many protected areas continue to take an exclusionary approach that ignores community rights.
- Indigenous lands contributing significantly to conservation are under threat, and require increased support.
- The conservation benefits of secure tenure rights need to be emphasized through evidence-based research.
- When conservation is seen from a landscape perspective, the issue of community tenure rights and governance becomes critical.

- National policy openings provide opportunities for collaboration to advance rights-based conservation.
- Key challenges are to overcome entrenched paradigms and interests, and ensure that emerging global discourses are accepted at the national level.

The group proposed the following **actions**:

- Convene national dialogues on indigenous and community land rights and conservation.
- Engage international human rights mechanisms on conservation and land rights issues. Convene a meeting of the UN Special Rapporteur on the Rights of Indigenous Peoples with heads of major conservation organizations to discuss indigenous rights and protected areas.
- Support indigenous organizations to defend their rights, and build capacities of communities to monitor social safeguards and land policies.
- Produce practical guidance on respect and recognition of community tenure rights in conservation. Increase horizontal learning and dissemination of rights-based approaches.
- Increase communication of examples and evidence showing the effectiveness of community rights-based conservation.
- Influence the forthcoming IUCN World Conservation Congress (September 2016) by organizing high-profile events and promoting adoption of resolutions on respecting land rights, creating land rights indicators to rank protected areas, and researching and documenting best practices.

Strategy Group 5 on Scaling Up Women's Land and Resource Rights

Participants in this group held rich discussions informed by case studies from Kenya, Peru, Sri Lanka and elsewhere. Almost everywhere, women have weaker land rights than men, and it's a fact that globally, most private land is owned by men, with women's access to such land usually being through the male line – rendering unmarried, divorced or widowed women particularly vulnerable. In Africa, customary leaders own about 90% of community land, and those leaders therefore play important roles with respect to land rights; women there find it especially difficult to participate in decision-making. Women face other challenges—for example; there is a high level of illiteracy among women in some conservative communities, limiting their access to information on their rights. Also, the private sector needs to understand its suppliers better, be more conscious of social and sustainability issues and – according to Nestlé – work more inclusively with governments and

civil society. These findings were not new, but the discussion provided many practical insights and ideas to build better future synergies.

The group proposed the following **actions**:

- Strengthen the voices of women on land rights.
- Strengthen partnerships among gender advocacy organizations.
- Integrate women's land rights and gender issues in private-sector policies.
- Develop knowledge and capacity on gender issues among government officials.
- Develop voluntary guidelines on gender equity.
- Increase women's knowledge on their rights at local level, and support the development of their leadership capacities to claim these rights.
- Ensure that the rights of women are explicitly included in advocacy activities – such as the call for action on community and indigenous people's land rights.
- For donors and development agencies, empower women within projects.

“The challenge for women's land rights is not always legal reform but enforcing laws already reformed.”

Everlyne Nairesiae, Women's Land Rights Advisor, Oxfam

Strategy Group 6 on Establishing Community and Indigenous Land Rights as a Global Priority

Participants in this group recognized that establishing community and indigenous land rights as a global priority firstly means achieving change in a significant number of countries and, secondly, achieving change in international policy-making. Likewise, participants stressed the need for a new narrative that would allow them to talk in a simple way to policy-makers and wider audiences, including through campaigns and media. Participants shared lessons learned and plans on national-level advocacy strategies, and discussed how international solidarity or pressure can best support these strategies. They also identified some key international processes to focus on, namely the implementation and monitoring of the Sustainable Development Goals (and related monitoring framework) and the climate change negotiations. Participants expressed a clear need to build collective action

and stronger linkages among constituencies. To this end, the Global Call to Action on Indigenous and Community Land Rights was identified as a key opportunity.

The group proposed the following **actions**:

- Keep in touch through a mailing list to continue to share information and identify concrete opportunities for collaboration.
- Use the upcoming Global Call to Action as an opportunity to up-scale national advocacy plans, and boost international solidarity.
- Use the 21st meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21), which will convene in Paris in two months, to make a strong show of force, for example by obtaining recognition by governments, NGOs and the private sector of the importance of the land rights of Indigenous Peoples and local communities in addressing climate change.
- Influence the national-level implementation of the Sustainable Development Goals and the associated indicator-building process, especially those related to land.

Panel 1 on Strategies to Advance Indigenous Land Rights and Governance in Climate Change Initiatives

A clear, urgent message resonated on Day 2. Putting an end to human rights violations—torture, imprisonment, displacement, murder and others—against Indigenous Peoples is not only essential for justice, it is a prerequisite for ending conflicts over land and dealing with climate change. The widespread and apparently growing incidence of such violations, perpetrated by governments and private-sector actors as they grab resources and lands, starkly demonstrates the gulf between the rhetoric of governments and the reality on the ground.

“Climate change is proof of failure of the dominant development model. Let’s do all we can to change that model.”

Vicky Tauli-Corpuz, UN Special Rapporteur on the Rights of Indigenous Peoples

Speaking in a panel discussion on strategies to advance indigenous land rights in climate-change initiatives, Hindou Oumarou Ibrahim, a member of the Indigenous Peoples of Africa Coordinating Committee (IPACC), said it was impossible to talk about climate change without talking about Indigenous Peoples’ rights. Vicky Tauli-Corpuz, UN Special Rapporteur on the Rights of Indigenous Peoples, said that human rights must be at the center of decisions made at COP21.

Other panelists spoke of the need to channel funds for climate change mitigation directly to Indigenous Peoples, who are custodians of a large part of the forest carbon store. Cándido Mezua Salazar, from the Mesoamerican Alliance of Peoples and Forests (AMPB), advocated both strong rights of Indigenous Peoples in their efforts to combat climate change, and adequate funding. Panelists also made the point that human rights organizations and Indigenous Peoples’ organizations need to be present in negotiations on the Green Climate Fund to ensure that the fund works for the benefit of human rights and Indigenous Peoples and, at the very least, “does not make it worse for Indigenous Peoples”.

According to Edwin Vásquez, General Coordinator of Indigenous Organizations of the Amazon River Basin (COICA), Indigenous Peoples have 240 million hectares of legally recognized land in the Amazon, and they are keeping this huge carbon store safe from destruction. Indigenous Peoples claim a further 100 million hectares in the Amazon;

honoring those claims would surely be a cost-effective—and just—way of storing carbon.

“Indigenous Peoples are not poor, but government policies are making us poorer every day... Governments and extractive businesses make disunity serve their interests.”

Edwin Vásquez, General Coordinator of Indigenous Organizations of the Amazon River Basin

Regional Panels

Three regional panel sessions presented developments in key countries in Africa, Asia and Latin America. Presenters showed how, against the odds, progress has been made in securing the tenure rights of Indigenous Peoples and local communities in Cameroon, Colombia, India, Indonesia, Liberia and Peru.

Several common points arose during the regional plenaries:

- Representative Indigenous Peoples’ organizations are strong assets for sustainable development and community rights agendas—nationally, regionally and worldwide.
- In some countries, legal frameworks acknowledging community and Indigenous Peoples’ rights and tenure provided a foothold for bringing forward the community rights agenda.
- Continuous investment in community capacity—legal, governance, technical and advocacy—and the support of governments and international alliances are crucial for the effective devolution of rights to communities.
- By slowing the advance of megaprojects, Indigenous Peoples and local communities can play key roles in defending the integrity of forests against such projects in the absence of adequate government oversight.
- Achieving legislative reform is critical, but, ultimately, implementation is what matters; in almost all countries, however, this lags far behind the rhetoric.
- Intercultural, multilingual education is paramount for ensuring healthy relationships among peoples within nations.

- Land reform is always sensitive and difficult, and takes time. An important strategy is to develop alliances and inform and sensitize political leaders and the public.

Several regional specificities clearly appeared during the second day of the conference.

About challenges and opportunities in the context of Colombia and Peru as new emerging economies, it is important to note that:

- In Peru, four environmental “packages” (laws) introduced since May 2013 have unwound previous gains on land tenure and environmental protection.
- In Colombia, the apparent move towards peace after decades of civil conflict has led to expectations of a development boom, but the risk is that a rush to development will compromise the land rights of communities.
- In Latin America, falling commodity prices have led governments to relax environmental and social safeguards to encourage foreign investment, increasing the risk of land-grabbing.
- In Latin America, Indigenous Peoples and afro-descendant communities are a key to developing resilience, peace and governability—peace cannot be built without communities.

In Africa, we are seeing a watershed moment occurring, that needs to make land rights a reality:

- In Cameroon, an alliance between civil society organizations, women’s network and traditional chiefs and parliamentarians enabled an effective “back-door” approach to lawmakers.
- In Liberia, the importance of passing the Land Rights Act will contribute to reduce land conflicts among communities and between communities and industrial concessions.
- In Democratic Republic of Congo (DRC), the passing of the IPs land law in parliament for over a year will help take into account the specific Indigenous Peoples land tenure issues.
- If the key actors / stakeholders combine their strategies change can be achieved.
- In Africa, many laws are adopted, but poorly implemented. Passing a law is not an end in itself;

the effective implementation of laws, and building the capacities of local communities to understand these laws, is even more critical.

The panel on Asia focused more on how to accelerate community land tenure recognition in two of the World’s largest democracies, India and Indonesia, in order to realize an unmet potential:

- In India, the remarkable Forest Rights Act, 2006 not only accepts that historical injustices were done to forest dependent communities in the creation of India’s legal forests, but provides for multiple rights, including community rights to govern forests to redress these historical injustices. Yet, at this point, the potential remains far from realized, and there seems to be little political will for seriously implementing the law, with major resistance from the forest bureaucracy.
- India and Indonesia could both be on the cusp of major transformations on land rights, but powerful interests—including in bureaucracies, where there is often corruption and vested interests—hold them back.
- The situation for Indigenous Peoples is challenging, because of the gap between recognition of Indigenous People’ territory and what Indigenous Peoples claim as their territory, but also because of all the risks they face in the process of defending their rights.
- In addition, the criminalization of Indigenous Peoples and local communities and the harsh sentences imposed on them for crimes they allegedly commit in the context of land struggles.
- More and more Indigenous Peoples are entering parliaments or decision-making positions: in Indonesia, there are 28 politicians elected at national and local levels who are Indigenous Peoples.

“Many years ago it was difficult for rural, pastoral and indigenous communities to come together. Over time, however, we have realized that all forest-dependent communities are our friends and allies; we must co-exist.”

Cándido Mezua Salazar, Delegate, Alianza Mesoamericana de Pueblos y Bosques (AMPB)

“Together we have built synergy. NGOs are the technicians who prepare the groundwork, and we, the traditional chiefs, bring it to the table and articulate it to lawmakers in a subtle but ethical matter.”

Chief Robinson Tanyi, Traditional Chief and Country Coordinator, Réseau des Chefs pour la gestion durable et participative des ressources naturelles (RECTRAD)

Final Plenary

Arvind Khare commented on how the gap between the area on which communities have recognized rights to land (18% of the world’s land area) and the area to which they lay claim (up to 65% of the world’s lands) might get filled. By his assessment, 150 million to 175 million hectares of additional land could be brought under community control through initiatives mentioned during the conference. The actors driving these processes are Indigenous Peoples’ organizations, which are building alliances and implementing strategies and hence bringing about change. A greater number of organizations, Indigenous Peoples and local communities are involved today than ever before, said Khare, and even people in governments and judiciaries and among donors are increasingly willing to join the cause.

Joan Carling from the United Nations Permanent Forum on Indigenous Issues reported that she too was inspired by the growing number of organizations and networks, evidence-based research efforts, community mapping projects and success stories. However, there also appeared to be a growing trend of human rights defenders being persecuted and killed, she said, and we need to express our serious concern about this and to take action against land-grabbing.

In the final segment of the conference, five speakers were asked to identify key action points for moving from rhetoric to action. These are summarized as follows:

- **Endorse and take part in the Global Call for Action on Indigenous and Community Land Rights.** This will generate momentum for the protection of the rights and safety of Indigenous Peoples and other vulnerable communities.
- **Encourage donors and governments** to support the struggle for community tenure, including by meeting the upfront costs of tenure security and for long-term support for the management and monitoring of resources.

- **Develop new instruments** for the distribution of funds to support land governance by Indigenous Peoples and local communities that are flexible and responsive and which will ensure that funds reach those on the ground who can use them to best effect.
- **Leverage communication technology and social media** to make the voices of Indigenous Peoples and local communities heard and to reach beyond the “converted” to other actors.
- **Learn the “language” of decision-makers** in government and corporations as a way of better communicating the potential for win-win outcomes.
- **Work with leading, sympathetic corporates** to put the land rights agenda into other spaces, to build trust, and, ultimately, to scale up supply-chain influence.
- **Demonstrate the potential of the land rights agenda** to address other pressing issues, such as employment and poverty.
- **Keep building alliances**, including with those who are not natural allies, and inspiring others with successes.