CASE STUDIES AND QUESTIONS FOR OTHER PARTICIPANTS

“South-South” Fellows

1. Martin Brash

Question for other participants:

I am particularly interested in exploring the following ideas, amongst others:

- Understanding the different impacts created by the difference in land tenure arrangements, whereby PNG has managed to keep the vast majority of land in the hands of its citizens (linked to cultural ownership rights) versus other countries where state ownership of the land may be in force – what are the dynamics, outcomes, challenges etc of these different approaches and what are key features of the legislative and policy framework that influence how these different models work.

- When negotiating resource arrangements in other countries, whether communities have a “significant” seat at the table. This will aid me in exploring the benefits and challenges of this scenario in PNG where communities do have a seat but capacity and other factors remain a challenge to them maximising their position.

- Given dutch disease risks, how other countries manage resource windfalls at a state and local level including their strategies and legislative and policy frameworks.

- Do other countries have a clear policy and process around dispute resolution relating to land related disputes and what are the detailed aspects of this that suit cultural considerations.

PNG case study

The case study I will examine is Ok Tedi Community Mine Continuation Agreement (CMCA) process but I will draw from other experiences I have had in the PNG context. I will prepare a detailed paper that covers the following aspects of the case study:

- Project background and basics

- Relevant legislative and policy framework

- How and why the CMCA came about and how it impacted the nation and local communities

- The CMCA negotiation process, including different interesting aspects such as the land owners versus land-users debate, the women’s fund ring-fencing approach and the use of independent parties to bring the process together.
• Operational challenges of the CMCA after the deal was done and implications for future negotiations

• The latest episode – current State and stakeholder re-negotiation process

• Lessons learned and features for application in other settings

2. Maling Gombu

Land Concessions and Forest rights of Tribal people in Tawang, Arunachal Pradesh, India.

Case Example Presentation

1. The issue of Hydropower projects in Arunachal Pradesh by Govt. & Private power developers.

2. How the Govt. violated the people’s right to their Land, Forest and Environment?

3. Violent protest by local stakeholders and Negotiations as part of development.

4. The principles of Statebuilding through Peacebuilding lacking in the Governance process and the role of NGOs and creation of awareness amongst the stakeholders.

5. Statebuilding and Peacebuilding needs to be endogamous based on local knowledge and in country practices and linked to the root issues.

6. How the issues of the local people are being addressed and how the local people are being educated about their rights.

7. How a balance is being struck in bringing sustainable development and not compromising (minimum negative impact) the local people right to their land and forest.

8. How the dialogue process and mediation has played positive role and brought positive impact.

Questions:

1. What types of interventions are crucial and how they influence each other in addressing the problems of postconflict recovery?
2. How have the factions/ethnic groups that fought once upon a time very ruthlessly reconciled to work and live together and how do you ensure that they don’t repeat the past, what safeguards and indicators, because the potential to go back to conflict is always there considering the cultural identity and pride.

3. How do you critically analyze the role of external agencies in building of a country from postconflict recovery?

Note:

What went wrong ………., since the 1980s the world has experienced the dominance of a paradigm of development and societal progress that has been shaped by neoliberal concepts of market self-regulation and an overreliance on economic growth. This paradigm has been oriented on a uniform approach of modernity, has been blind to environmental and human rights concerns, has confused growth of GDP with progress in society, and has regarded poverty as a primarily technical challenge while inequality and social justice have been largely neglected. We are faced with a lack of ethics in the international economy, which has been stimulated by the absence of norms and regulations and in turn, has boosted speculation and the search for easy, short-term profits.

We need to counter uncritical notions of “development”, “progress”, “modernity”, and “growth”, - all concepts defined in a linear mode of thought as normative and absolute paradigms-that reflect the structures of power in society and in turn reinforce the dogma of unlimited economic growth.

Extracts from “development dialogue, report of Civil Society Reflection Group on Global Development Perspectives, June 2012. (For your reflections).

3. Siu Sue Mark

One question I would like the workshop participants to seriously address in collective discussion

As Adrian Leftwich describes in his article “Theorizing the State” (2011), four main issues (responsibilities) confronting the modern state are: a) national security b) promotion of the economy c) democratization and d) provision of welfare. Because the countries represented in this workshop tend to have weak state infrastructural power, it might rely on “local big bosses” to administer. As a result, complex political patronage systems develop around the state, creating great challenges for it to tackle these four issues. How is this reflected in your own country’s state-building efforts?
One question for the Liberian Participant(s)

Apparently, Liberia has one of the highest FDI to GDP ratios in the world, but most of it is by TNCs in primary commodities such as iron ore and palm oil. To what degree has this displaced communities from their land and impacted their livelihoods throughout the country? What measures have been taken by the government to minimize the impact of such FDI on its citizens and to share the revenues back to the communities?

Myanmar Land Project Aims— to support civil society participation in land reform policy and practice through supporting coalitions working on land adjudication and dispute resolution issues; research and piloting of different land tenure mechanisms; piloting equitable and sustainable models of contract farming; and advocacy that demonstrates the economic, social and environmental benefits of small holder farming.

Background

Since the transition in 2011 from a military government to a (military-dominated) parliamentary system, Myanmar has embarked on its most rapid period of change since the end of British rule, and perhaps in its history. One of the aspects of this change is that in an attempt at rapid modernization, a new parliament, only partially-elected and rather inexperienced, has been passing legislation with alacrity. Two of these new laws include the Farmland Law and the Vacant, Fallow, Virgin Land Law to strengthen the 1991 “Wasteland Instructions” into law to the Parliament. They were passed by the Parliament on 31st March 2012, and came into force on 31st August 2012.

The Land Nationalization Act of 1953 which was consecutively amended in 1954, 1955 and 1957 was still in force until it was recently repealed by the newly promulgated Farmland Law in 2012. The former land law prohibited transfer and resumption of agricultural land stating that no agricultural land shall be mortgaged, sold or otherwise transferred or divided. On the other hand, farmers did have a right to use the land, to obtain benefits from this use, and to transfer land use rights through inheritance. During the socialist planned economy system, the tiller’s access to land was enforced and the Farmer’s Rights Protection Law of 1963 was enacted stating that any Civil court shall not prohibit nor remove or sell, use or dispose the cattle, tractors and equipments of farmers or shall not arrest the farmers in respect of the tiller’s right.

The new Farmland Law stipulates that agricultural lands could be sold, transferred, mortgaged, rented or leased, thus making a land market in agriculture and investment. Tenure of agricultural land in Myanmar is administered by the Central Land Management Committee under the leadership of the Minister of Agriculture and Irrigation, with the implementation of the Settlement and Land Records Department. Contests over land classification, between agricultural, forest and fallow land are common.

The passage of the two land laws against a background of recent political openings set the stage for increased investment in land and economic growth. There are many who also fear that this presents a clear danger for smallholder farmers in Myanmar, whose tenure rights are not secure and whose high debt levels put them at continual risk of stress sales leading to loss of access to land for sustainable
livelihoods. Instead of creating institutions to support these farmers to become more productive in a free-exchange market, where farmers are supported by choice, information and affordable inputs, the new laws place a number of restrictions on farmers so that it will be even harder for them to retain their land. For example, most farmers do not even know how to register their land with the new Land Central Management Committee. Upland farmers that have been governed by customary land tenure, with no knowledge of statutory laws until now are facing the greatest threats of land confiscation.

**Opportunities**

There remain opportunities to influence the contents of further land legislation, as well as the development of regulations for the purpose of its implementation. Pyoe Pin provided technical and financial support to the Land Core Group to develop a plan for influencing these decisions. The plan contains two main objectives:

A. Land Legislation (forest and agricultural) and related instruments provide for and safeguard equitable access by smallholders, women, all ethnic groups, and business by 2014; and
B. Stakeholders will, also by 2014, have demonstrated effective implementation of measures which promote equitable land tenure, including:
   1. Land adjudication, dispute resolution and village-based land use planning and control tested, proven and formalised;
   2. Communities subject to contests over land ownership have access to legal services;
   3. A new tenure mechanism for upland farming that supports multiple land use, collective tenure, and respects customary institutions, has been piloted by upland communities with the participation of relevant government agencies and other stakeholders including businesses;
   4. Equitable and sustainable models of contract farming that provide credit, materials and/or technologies for farmers to invest in their own land, while providing agricultural product in quality and quantity sufficient for investors, have been proven, results disseminated, and guidelines adopted by key private sector stakeholders;
   5. A community forestry mechanism is developed which promotes commercialisation, and contains provisions for increased economic incentive and flexible management of resources.

**Main Components of the Pyoe Pin Project**

The main components of the Land Project can be grouped under two categories:

1. Evidence of workable change mechanisms that would provide credibility to policy advocacy efforts; and

2. Involvement of a variety of interests, therefore demonstrating that incentives for change can be demonstrated in each field of reform, enhancing the potential for powerful coalitions of backing for policy reform and implementation.

It is expected that if testing work through pilots can bring private sector and other non-CSO interests into the exercise and that their interests can be catered for and demonstrated, then the potential for mobilizing broad political support for the proposed changes should be enhanced.
Each of these five outputs under objective B requires field testing through a series of pilot projects implemented with different partners. These are:

**Outputs 1** The Rakhine Fisheries IBP will include activities such as supporting communities in local land use planning, particularly over arbitration of land conflicts between rice and fish farmers. To reduce the potential for corrupt payments that stems from lack of formalization of land use, i.e. where paddy land is used for shrimp farming, there might be efforts to support communities with formal land conversion, which is a long and complicated process.

**Output 2** In the Rule of Law IBP, the Land IBP will introduce a legal aid component through the legal network MLAW. There are plans to create a formal case referral mechanism that links community-level land issues to lawyers in the national legal aid networks.

**Output 3 & Output 5:** In the Communal Land Tenure Pilot in the uplands of Chin State, Pyoe Pin plans to set up communal land tenure model that fits with communities’ practice of shifting cultivation. This pilot will also include a community forestry mechanism which promotes commercialisation, and contains provisions for increased economic incentive and flexible management of resources.

Land tenure in Chin State has been regulated by customary law. Although there are statutory laws related to land, customary tenure and customary conflict resolutions are taken into consideration in land disputes up to today. Most of the shifting cultivation land is not formally registered, certified or mapped. In addition, multiple-use of upland ago-ecological systems and customary or collective management institutions are not formally recognized by state. This makes land tenure vulnerable in the face of transition to a market economy and the commercialization of agriculture. In addition, customary tenure systems also face pressure from commercial interests looking to acquire large tracts of land and government administration which does not formally recognize these systems and also government initiatives such as Forest reserves, National Parks etc without proper consultation and consent of local communities.

Alongside the communal land tenure pilot, communities will be assisted to apply for community forestry certificates and will be assisted with increasing their commercial potential with a non-timber forest product that grows prolifically in Chin State, the elephant foot yam. Naturally some of these have some considerable commercial value, so a question is, are there medium sized or even large companies engaged in the exploitation of forest-type products who could see the value to them of harvesting these via the community forestry system? In a series of meetings with the Elephant Foot Yam Association under the UMFCCI, Pyoe Pin ascertained that there are indeed traders who would be interested to work with villagers to secure supply for this NTFP, and by default, also support villagers’ land tenure security, tipping the balance in favour of securing leases for communities.

In addition to the series of land-related pilots described above, Pyoe Pin will continue to use its comparative advantage in political economy to strengthen the work of the LCG, by ensuring that the strategies employed by the LCG are based on a sound analysis of the politics behind land reform.
Progress Made to Date

In late 2011, when the land IBP was being conceived, the government started to develop two new land laws to govern the creation of a land market. At the time, there were already many land grabbing cases which were being reported by the media, but very little legal recourse was available to farmers. The laws that were eventually passed by Parliament came into force in August 2012 were rife with legal gaps in protection for farmers. Given these gaps in institutional protection mechanisms for rural populations, two-thirds of who depend on the land for their livelihoods, many land conflicts started to appear all over the country. At the time that this IBP started, many land struggles are highly localized and there was no national coordination mechanism bringing diverse groups of civil society together.

The Land IBP had contributed to filling the gaps identified among civil society to work together to address this shared problem of land insecurity, particularly in the rural areas.

The IBP started by strengthening a nascent civil society network that was still quite premature. It did so by conducting stakeholder mapping to identify those people who are key to land reform issues. It also supported the development of civil society’s common position towards the need to protect small holder farmers, arguing that they are key to the sustainable development of Myanmar. Next the IBP focused on aligning the network’s strategy by creating a 3-year Program. After that, the Program Framework was revealed at a public workshop to align the interests of people from the private sector and the government.

Beyond this, the dissemination of research and policy briefs has helped to raise the awareness and interest of civil society groups in land issues, and to align a common vision between these groups. The National Land Tenure Symposium held in Naypyidaw in November 2012 was an unprecedented event that brought together a wide range of interests. For the first time in Myanmar, civil society and government officials together directly engaged in a national dialogue on land tenure and land use rights reform. Regional experts shared lessons learned from land tenure reform in their respective countries of relevance to Myanmar. Civil society also raised issues over the new land laws and related policies which continue to provide weak and insufficient tenure protection for smallholder farmers. The seminar achieved a breakthrough in government-civil society relations, which is a first step towards transforming land tenure and the model for national development to be more favorable to the country’s small-holder farmers.

As a result of the IBP, civil society representatives are now able to dialogue with high level ministry officials in MoECAF and MoAI to share and advocate policy messages, which MoECAF in particular has been open to listening to. Even the most localized of civil society actors have been able to express their voices through workshops such as the Land Tenure Workshop in Naypyidaw. Various local and international NGOs have reached out to and organized farmer associations, who have become more skilled at expressing their demands to policy makers.

The media, which was trained to understand issues more comprehensively, helped to amplify the voices of these farmers. For example, the media use to only report on facts without analysis of the causes and impacts of land grabbing and land conflicts. The domestic media is now reporting on these types of
issues nearly every week. In addition, BBC Myanmar has started to discuss with the LCG members on developing a radio program for farmers to be broadcasted on Myanmar Radio. This project is anticipated to raise awareness of farming communities, with an estimated reach of 50% of the country’s total population.

Despite the challenge of bringing together groups that normally do not associate, especially civil society groups and the private sector, some gains have also been made towards aligning common interests between divergent groups. By identifying those individuals—whether private sector actors, state actors, or civil society actors— who fall more along the middle of the political spectrum, the IBP has made gains in forging greater cooperation between these groups. Recently, the Myanmar Farmer’s Association’s chairman Dr. Soe Tun, who is also an executive member of the Myanmar’s Rice Federation (a collection of domestic agribusinesses) requested that the Land Core Group collect feedback from civil society groups on the new Farmer’s Protection Law—thus demonstrating moderate but increasing levels of cooperation between civil society and private sector.

In terms of government relations, the Settlement and Land Records, under MoAI, has started to demonstrate willingness to work with civil society groups. A few months ago, some of the Directors requested assistance to develop training materials to raise its field staff understanding of the new land laws. It has already provided inputs into the training materials development by civil society organizations, and the relationship looks like it will continue to be cooperative.

The MoAI also added another year to the land title registration process, recognizing that the SLRD would need more time to complete this complicated process, which requires improved understanding of the laws in order to better interpret them at the ground level. This could have partially been as a result of the advocacy for civil society groups on the need for titling of all farmers’ land to secure their land tenure.

**Challenges**

A common challenge that is seen across the range of projects is the bringing together of civil society groups with the private sector. For example, in addressing issues around land reform, members of the land core group had to meet with members of Myanmar’s Chamber of Commerce several times before the latter would agree to hold a joint workshop on the impact of recent land reforms and agricultural development. As each side comes with bias against the other— the LCG is seen as potentially too activist, while the private sector is seen as supportive of the status quo— regular exposure and dialogue is needed to build a trusting relationship between these groups to allow for a free exchange of ideas towards the resolution of societal problems. This distrust was also exhibited at the National Land Tenure Workshop. While it was successful on many counts, not many people from the private sector attended. Cognizant of the nature of these relationships, civil society groups are beginning to learn how to modify communications when speaking to private sector in order to cultivate a more trusting relationship.
4. Salai Cung Lian Thwang

Identify and describe at least one specific case example of an engagement you yourself had (or were closely aware of) in which issues of land, concession, management, or sustainable development more generally were negotiated with agents and institutions of the government.

Community Forestry (CF) in Myanmar

Myanmar’s national forest cover is currently estimated at 47% (31.773 m ha according to FAO 2010), of which closed forests are estimated to be 19.9%. However, forests have shown a gradual decline over time, particularly dense “closed” forests. According to the National Forest Master Plan (NFMP) of the Forest Department, the forest cover has decreased from 65.8% of the total area of the country in 1925 to 52.3% in 1999. High rates of deforestation (0.9 per cent per year between 2000 and 2010) contributed to a growing desire to reform that situation. Most rural communities are very much dependent on timber and non-timber forest products for their livelihoods: communities’ wood and non-wood forest needs include fuel, poles, posts and foods. In the absence of alternate fuels, local domestic firewood needs are high and increase every year.

The major shift towards local community participation in managing forest resources formally commenced with the Community Forestry Instructions (CFI), issued by the Forest Department in December 1995 as a policy response to the widespread forest degradation and the increased demand of growing rural communities for forest products and services. However, the CFI is a departmental instruction issued in order to rapidly initiate CF without undergoing the lengthy processes required to develop a law. But Forest Users’ Groups cannot compete for land against other departmental claims as effectively as if the CFI were enshrined in law.

Forestry Master Plan (2001-2030) targets 2.2 million acres to handover forests to communities under community forestry. However, the actual handover till 2013 is just around 5% of the target. There are a number of reasons for this such as:

- a lack of resources and priority placed by the authorities in the potential of community forestry to both protect forests and provide commercial benefits;
- weak and inadequate legislation and competition between forestry and agricultural jurisdictions resulting in a lack of trust and confidence of communities and private sector to invest both human and financial resources in CF; and
- that shared commercial interests between Forestry Department Officials, some politicians, and large companies exploiting the forest resources have been too well aligned.
Thus it requires measures aimed at achieving alterations to the CFI legislation, pursuing better land tenure rights for communities, and allowing the commercial development of community forest areas. Current activities taken by civil society are:

- Strengthening networks on Community Forestry Groups as well as national NGOs advocating for enabling policy and legal framework, appropriate support from government and donors
- Supporting pilot projects at ground level to demonstrate that community forestry is effective in environmental conservation and improving local livelihoods and income for rural citizens
- Strengthening vertical and horizontal linkages as well as involving private sectors actors in community forestry

Now community forestry get much more attention from government. National Community Forestry Working Group (CFNWG) was formed with government officials, civil society representatives and private sector representatives. The forest law is also under revision. Ongoing reforms will hopefully soon open space for local community groups to sell forest and farm products commercially from these landscapes, creating a strong incentive for forest management and restoration.

Identify at least one specific question you would like the workshop participants to seriously address in collective discussion

At present, Myanmar transition can be seen as personal-led changes. All the changes are brought forward by a few individuals like President U Thein Sein, Opposition leader Daw Aung San Su Kyi, or Speaker U Thura Shwe Mann. No one really knows what motivation has driven them, especially for those ex-military change-makers for introducing the changes. But one thing for sure is that these changes are happened due to individual personality, interest and commitment rather than structurally bound process for change. Therefore, the risk is the scenario of reversing the situation if those individuals are removed from political landscape. This risk need to be addressed urgently if the change presently made in Myanmar is to be sustained for the benefit of entire population.

How can this personal-led change be institutionalized/formalized (institutional changes)?

Third, provide us at least one question you have for a conference participant from another developing country and/or about issues in a country represented other than your own.

At any transition, there are many important reforms that need to be done, but usually countries have limited capacity. External support (donors, international organizations) sometimes help filling gaps, but they themselves also strain the limited capacity with their competing reform agendas and isolated support programmes.

How can a country prioritize and sequence reforms, and best use external support? What are the experiences from other transition countries.
WEST AFRICAN PARTICIPANTS

1. Oscar Bloh

2. Ali Kaba

Point I: The Land Rights Policy (LRP) grants customary ownership rights to communities. However, questions still remain about how all community members will be able to actualize these rights. Shifting administrative and customary boundaries of communities, partially due to new-sociopolitical realities, accompanied by massive migration of the country’s population over the last 30 years, make the process of identifying a community contentious. In this regard, in remains to be answer: what will constitute a community? How will the law ensure that membership of a community is fair and equitable? What process will be in place for communities to self-define? How will the rights of minorities, women and other marginalized groups be protected within a community?

Point II: Given the progressive nature of the LRP, and the new legal conceptions of land ownership it puts forward, there is a risk that without proper governance structures and sustainable community resource management regimes, communities may mismanage their customary lands and natural resources. In the process of drafting the policy, a key concern discussed with policymakers was a potential of mismanagement of customary lands. In other words, we asked: should a customary community have the right to sell their customary land? If so, what should be the requirements, governance system? We proposed a moratorium on the selling of customary land, and a clear guideline that is inclusive of proper consultation and the consent of a significant amount of community members and their leaders. This proposal however remains sensitive as policymakers insisted communities’ rights to sell their customary. A balance was met in such that a community has to go through a series of hoops, including establishing a legal entity before conducting any long term land based transaction.

3. Pewee Flomoku

4. Djomba Mara

Question for a conference participant from another developing country and/or about issues in a country represented other than your own:

What are key issues in terms of access to land (tenure, natural resources), property rights and what are some key solutions state and communities are trying to find to solve it in your country?
one specific case example of an engagement you yourself had (or were closely aware of) in which issues of political concession, management, or sustainable development were negotiated with agents and institutions of the government.

This case example took place in the south eastern region of Guinea, the richest region because of its agricultural and mining potentialities. Working at that time for PEGG (Program in Environmental Governance in Guinea, USAID funded Program); I was really interested in and concerned by this case because of its sensitivity and impacts on the local communities.

Case Example

What happens?

The villagers of Saoro, located at 15 km from Yomou prefecture (Southwest Region of Guinea), were expropriated from their land by SOGUPAH (Guinean Company of palm trees and rubber trees, a mixed company, of the Guinean Government), with the support of N’zérékoré regional authorities according to Avocats sans Frontières (Lawyers without Borders)’ head of mission in Guinea. Clashes between local residents and police are recurrent in recent times. The most recent ones date from last July. At least 109 people had sought refuge in N’zérékoré’s cathedral under the protection and assistance of the International Red Cross and Christian Organization for human protection, Attorney Labila Michel Sonomou said, head of mission of Avocats sans Frontières’. This information was given last Wednesday in a press conference that the NGO has led to Conakry.

We must notice that a decree signed by the late General Lansana Conté on the 3rd February 2003 awarded 22,830 hectares of agricultural land to SOGUIPAH for industrial and commercial purpose. In this regard, Avocats Sans Frontières deplores the fact that the ordinance to which it refers to in its Article 22 stated more than 13 000 hectares, that is to say an exceeding of 9830 hectares. Avocats Sans Frontières Guinea and the NGO Même Droit Pour Tous (MDT) (Same Rights for All), also regretted the signing of this decree that was taken without any investigation and declaration of public utility, and that 16 years after the occupation and effective land development in the sub-prefectures of Djiéké and Bignamou, which also abounds enormous
contradictions," says the two NGOs. "Does the date of publication of the decree awarding the company the acres of lands correspond to the period foresee for the implementation of plantations in the promulgation ordinance of SOGUIPAH statutes?" Both NGOs ask themselves. While justifying himself, Mr. Mohamed Lamine Sow, Attorney at the higher Court, said that "the decree did not specify the timing of expropriation or properties that will be affected, or the compensation plan of families to be expropriated"

To return to the context, it should be noted that the implementation of agro-industrial companies with commercial characters and mining companies in the region which consequence is “grabbing farmland, often without any real impact on the expropriated 'populations 'has exacerbated tensions over land.

What are the obligations of SOGUIPAH? In its Article 22, the ordinance of enactment of this company granted the company with 7,000 hectares of industrial plantations of rubber trees and 3,000 ha of industrial plantations of palm trees. The company will also create and operate on the account of the government 1000 ha of village rubber trees plantations and 2000 ha of village palm trees plantations, a total of 13,000 ha within the period from 1988 to 1996.

The decree of February 3, 2003 D/203/0011/PRG/SGG focused allocation of agricultural land for industrial and commercial use to SOGUIPAH. Under this decree, 655.94 ha (palms) and 881.49 ha (rubber trees) are occupied under the extension.

Under the same decree, we note an attempt of occupying 620 acres of land in Saoro. Decree is not applicable because old for 8 years under Article 57 of the State land code.

**The legislation**

Guinean constitution: the Land Tenure Code and the Civil Code governing the ownership and expropriation of land in the Republic of Guinea. Here are some excerpts:

**WHO CAN BE OWNER OF THE LAND?**

**Article 1 of the Land Tenure Code of Guinea**

The State, as well as other physical and juridical person, may hold the ownership of the land and buildings which are on this land, and benefit from this right according to the rules of the Civil Code and the current Code.
5. Johnny Ndebe

Question or issue of concern for a conference participant:

My first issue that I would like to discuss with a conference participant is; the role of indigenous citizens and their leaders in land use and land management policy making process with reference to concession;

And my second is a question. How does the legal system in a conference participant’s country accommodate the indigenous and customary cultural and traditional norms and value in relation to land?

On the issue of my engagement in a negotiation between government and concessionaire, I would like to inform you that I have not personally been involve with any situation of such. However, I have provided mentoring to some local chiefs who had concern about the operations of concessionaires’ within their chiefdom. The chief and his people were interested in knowing the content of the agreement that allow the concessionaire to explore their land.

This situation turned violent when the citizens observed the company removing equipment from their community with no information about what was happening.

This situation was resolved by the senior chief of the region who intervened with the support of The Carter Center by and through me.

Additionally, The Carter Center is providing information relative to legal provisions that call for the citizens’ participation and engagement with government and concessionaire. The center explains the Liberian laws that have to do with concessions and role of local dwellers of the prospective concession area. The citizens are informed about the legal provisions that obligate the government and concessionaire to them. We also inform the local leaders about the method of seeking redress to disagreement with government and concessionaire. These activities are done under my supervision.

An example of land grant dispute occurred in a rural community between the leaders and citizens of the community over the procedure of granting a portion of their land to a concessionaire. This dispute was discussed in a forum created by The Carter Center that brought the aggrieved citizens and chiefs to come to one term of granting the land to the concessionaire. At this meeting we promised to provide legal support to the community.
Land Issues in Liberia today have become a sticky and rather keen issue in every community across the length and breadth of Liberia. Over the years due to vast internal displacements and the refugee situation caused by the civil unrest, many inhabitants lost their property(s).

Statistics from an international NGO, the Norwegian Refugee Council NRC, under their project on Land, Information Counseling and Legal Assistance program, has documented over 7,000 land and boundary dispute cases and resolved at least 3,000 of these cases using mediation and facilitated negotiation in some cases as their method of solving land conflict in Liberia. It can be recorded that the Kpelleh tribe followed by the Manos, Gios and Mandingos are in the majority in land dispute conflicts in Liberia.

However, let’s look at a more strategic case study of land dispute in the western part of Liberia. This case study provides facts about Sime Darby rubber plantation where the company plans to reclaim land that was demarcated by their predecessor BF Goodrich/Guthrie since 1953.

In 1953 B. F. Goodrich came to this western part of Liberia and was successfully able to acquire hectares of land from the locals with the consent of all three counties Bomi, Grand Cape Mount and parts of Gbarpolu. B. F. Goodrich managed to operate smoothly, working hand – in – hand with the locals until they sold out to their successors, Guthrie, a few decades past. Again, under the Guthrie regime they won the support of the locals with full involvement of the locals providing employment for them and their children.

The prosperous dream and rather flourishing life soon came to an end when the civil conflict erupted in 1990, leaving the company to abandon their plans and operations of rubber production. Before the civil conflict, land was not an issue since most of the inhabitants within this concession area were only subsistence farmers. The locals did not realize that their population would experience rapid growth over the years.

Today the wrath between Sime Darby and the locals for land is becoming a pressing issue which will require the attention of experts in mediation and negotiation and the involvement of the Land Commission of Liberia to resolve this stalemate around land grabbing. The Oil Palm Company has decided to take much of the locals' land by boundary encroachment. The facts remains that despite the locals having protested several times and complained to the government and their representatives (local government) their plight seems to fall on deaf ears. Since the locals have now seen the need and value of land not only for farming purposes but as something they can possess for their children’s future; it is only prudent that the company and the locals have a conference or dialogue bringing options to the table with the help of skilled mediators who will help guide the process to a possible resolution.

I will like to bring to you a specific case study of one of the graduates of the TATPs project. How the boundary encroachment by the company has caused a challenge and an impediment to implementing the skills he had acquired.

‘Paul one of the graduates (not his real name) of the TATP Agriculture project run by Action on Armed Violence was selected from among other youths within the Grand Cape Mount area. Before leaving his community, Paul and his father had been farming on a plot of land for several years. Because of the fertile land they occupied, he was encourage by his father to attend the TATP Agriculture project where
he earned a certificate in growing vegetables. When Paul was finally reintegrated to his community with the necessary agriculture skills, he had nearly begun farming on his father’s plot of land producing crops and earnings when he was approached by the authorities of the plantation, who ordered him to stop farming. Since then Paul has stopped farming.

The story of Paul may have been just one of the many directly affecting the former farming population within the plantation since land tenure started to pose a serious problem for the locals and their children.

However, quite recently the president of Liberia, Madam Ellen Johnson Sirleaf, has admitted that there were several mistakes made along the way in the negotiation with the locals when it comes to the issue of the boundary demarcation at the plantation. Vividly, the Sime Darby Company and the government did not do much to involve the locals on these negotiations in acquiring additional land within the Bomi and Cape Mount areas. Due to error, the government is now negotiating with other International NGOs like Action On Armed Violence AOAV an organization that is providing agriculture skills for youths; to work with the Sime Darby authorities to bring on board some of the graduates who have acquired agriculture skills from the TATP project. This initiative has eased some of the many tensions erupting from the locals as they see it as something inclusive for their children to gain some sort of employment on their own soil.

Furthermore, the Malaysian company has also promised to provide farmers potions of swamp lands within their boundary for the cultivation of rice and other vegetables. The venture by the company has also paved the way for many skilled farmers like Paul and his father to be able to feed themselves and care for their family.

As the struggle for land and the maximization of future profit between the locals and the company continue to exist in tension, much is expected from the company to get the willingness of the locals to reenter into more land deals. If nothing is done to address this issue in Liberia in a more standard and appropriate way, I am afraid the effort of the Land Commission and other stakeholders may fail in addressing land tenure in Liberia thereby leading to the loss of lives and property damage as well; Liberia could slide back into another civil conflict again.

Questions for the workshop
1. What happened in this case?
   The major happening in this case was the struggle for land between the locals and the Oil Palm Company.
2. What were the results, what lessons learned, and what positive potential, if any, did this have for the future?
   The locals protested the taking of their land without their consent which opens discussion on the table for dialogue on new ways of involving them in the decisions of the company. The lesson learned was that the company needed to negotiate properly with the locals before taking up their land. The potentials are; that the oil palm company recognizes the interest of the locals and creates opportunities so as to prevent conflict from happening.

For the conference I will like to know some of the methodologies for addressing or solving issues of land conflict with respect to litigation and mediation by stakeholders?
7. Martins Sopp

To illustrate my understanding of the background and goal of the workshop, permit me to say a few things:

- This workshop is a kind of think-tank for the brokering of remedy options for the chaotic situation of management of natural resources by governments of developing countries and the lack of return to the citizens. In essence natural resources in developing countries have remained a curse rather than a blessing.

- This workshop is also an early warning & early response instrument by concerned and well-meaning academicians and professionals who seek to alert world attention on potential future conflicts between the govern ants and the governed in developing countries.

- To me, this initiative is an ideal and a cause worth subscribing to. It is at this point that I see it as a highly providential privilege for me to be invited to participate and God willing, I want to assure you of my participation.

Here then is my modest input for the workshop.

**Asking one question to my fellow participants from other countries:**

*What do you understand by added value to your national economy, bearing in mind that revenues from the exploitation of natural resources should be a major factor of a nation’s economic growth and development? How do civil societies in your countries engage the state in ensuring that Natural resources serve as the basis for economic growth and development?*

**The Mount Bele stand off**

Mount Bele is located in the vicinity of the town of Gbobayee 14 km south of Sanniquellie, Nimba County in north-eastern Liberia.

Between 2010 and 2011, a forest of about 60 km in radius along the Ivorian border was declared the Eastern Nimba Reserve by the Forestry Development Agency of Liberia with facilitation from the Tetra Tech ARD under its Community Land Rights project. Following this, a local body made up of indigenous people, the Zor & Gbar Forest Management Team was established with the mandate to preserve, protect and manage the forest resources. Quite naturally, Mt Bele is located in this forest.
In 2012, a mining exploitation company by the name Mt Bele Mining Company surfaced in the area and with neither formal consultation with the local authority nor the tribal people penetrated the forest and began exploration for minerals.

When the management team got alerted, they convened a stakeholders’ meeting to discuss the presence of the company in the reserve forest. I was invited to attend this meeting given my position as Chair of the civil societies in Nimba.

During the meeting Mt Bele was asked to answer just a few questions in a very unambiguous manner.

Q1. Who are you?
A1. We are Mt Bele, a mining company with funding from the UK.

Q2. What are you doing in our forest?
A2. We are exploring the Mt Bele for minerals.

Q3. Who authorized you to penetrate our forest?
A3. the government of Liberia, through the Ministry of Land, Mines and Energy.

Q4. Are you aware that beside the government of Liberia based in Monrovia, there are people who live around this mountain for centuries and whose livelihood depends on the forest products around Mt Bele?
A4. Yes, anyway we were given the license to explore Mt Bele by your government which has authority over Mt Bele.

Speaking further and without ambiguity, Mr. Saye Thompson, the chairman for the Eastern Nimba Reserve reminded the audience that by virtue of his position as chairman of the Management Team of Zor & Gbar forest under which Mt Bele is situated and by the authority vested in him by the Forest Development Authority under “Community Land Rights”, he was asking the explorers of Mt Bele to leave the area immediately and he was not willing to compromise the right of his people on that day or under any pressure from above. “Go back to your Ministry and they should know better”.

The decision by Saye Thompson was unanimously endorsed by all his people including us as invitees amongst were an official of the Community Land Rights Project of TETRA TECH ARD, the Paramount Chiefs of Zor and Gbar Chiefdoms and 2 districts commissioners under whose territorial jurisdiction Mt Bele is situated.

What happened in this case?

Two things were obvious in this case:

1. The Ministry of Lands, Mines and Energy in Monrovia under very dubious circumstances issued an exploration and mining license to the Mt Bele Company without prior consultations with the
indigenous people and the recipient of the license took the people for granted, certainly they were to oblige after seeing or hearing of the name of the Ministry.

2. The serious gaps in communication among various government agencies. Whereas the Forestry Development Authority has declared this forest a national reserve, it was very unbelievable to have a license issued by the Ministry of Lands and Mines within the same period authorizing a third party to do exploration in said area.

3. In the event that the Ministry of Lands was aware of the forest having been declared a national reserve, the license credibility was bordering on a fake deal, a behavior which is common only with failed state.

Lessons learned

The training of the Zor and Gbar people on Community Land and Forest Rights by TETRA TECH ARD and the establishment thereafter of a Management Team have been very providential for the awakening of the indigenous people who should be consulted in any such deal where their interest and benefit will be taken into consideration. Without this training there couldn’t have been any awakening of the people and Mt Bele exploitation would have been a foregone conclusion. In that case the people of Zor and Gbar would have seen their resources being looted leaving them deprived of a major source of livelihood for now and for future generations.

The ultimate lesson is: that citizens should be taught their rights and empower to defend them through institutional means and channels of government.

The next lesson is that the notion or concept of “government” by both the govern’ ants and the governed has remained very empirical in the sense that Government was conceived or known as the precept of Power and Authority that is untouchable, a seeming of Almighty and that the only duty of the citizens was allegiance to it. Unfortunately, political events such as coup d’etats, rebellions and uprisings, around the world seem to have diluted this notion and have made it questionable and the Government itself becoming more accountable to the people who otherwise give it authority. With the realization that Government is not and was never meant to be an Almighty idol, it is only normal that the citizens be and remain in the driving seat of natural resources bestowed them by the providence of natural habitat.

The decision taken by Saye Thompson and his people was appropriate and justified because since that pronouncement neither the Ministry nor the Mt Bele group had returned to the community of Zor and Gbar.

In most cases, governments negotiate or enter into agreements with third parties without the knowledge of the people who will be affected by activities in relations to those agreements and when that happens, the affected people do simply not benefit from their natural wealth.
Civil societies have a greater responsibility in creating awareness among citizens to know their rights, defend them and protect them.

**Positive potentials for the future**

The greater potential is the maintenance of social stability and peace. If the government was to force her fake deal by suppressing the people in the mere name of “the Government that be”, it is not wrong to say that the ensuing situation would have led this indigenous people to gang up against the government and to stage a fierce resistance like in the case of the Niger Delta of Nigeria.

Investors ought to do their homework by getting to the people who will be affected, listen to them learn about their needs and obtain their authorization from them before meeting the government for any agreement. In essence, the honest commitment to corporate social responsibility by investors mostly in the area of natural resources exploitation is the best practice and approach of a win-win investment that guarantees social stability and peace.