



MIDCOURSE MANOEUVRES: **An overview of community strategies and remedies for natural resource conflicts in India, Indonesia & Myanmar**

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MIDCOURSE MANOEUVRES:
An overview of community
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natural resource conflicts in
India, Indonesia & Myanmar

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An Overview

A coalmine licensing scam dubbed as “coalgate” by the media shook India’s political and corporate class in 2012. By 2014, the Supreme Court judged the allocation of 214 coal blocks as illegal and arbitrary and 168 mines had to halt operations immediately.¹

Indonesia’s Kapuas regency in Central Kalimantan presents a case of land governance gone out of control. The permits for oil palm plantations exceed the regency’s total area. While permits cover 1.7 million ha, the total area of the district is under 1.5 million ha².

In 2014, jade worth USD 31 billion or nearly half of Myanmar’s GDP was produced in Myanmar from its government-controlled areas of Hpakant Township and Kachin State. Yet, negligible share of it had reached the state treasury.³

Is this what Land intensive development in Asia looks like? Unsustainable, corrupt, illegal and mired in intense conflicts?

Through history, land transformation has played a major role in industrial development and economic growth. However, the relationship between land use change and development has been tenuous. The economic growth project of post-colonial nation states has pulled in more and more land, expanding its influence on areas considered far-flung or distant and underdeveloped. It has demanded the “sacrifice” of lands that protect livelihoods of communities and conserve biodiversity. These lands support communities that chose to or were left out of the economic growth story with little or no future possibilities of being incorporated into the formal, organised economy. Land transitions in such places have also been unjust. Governments have followed the colonial logic of extraction to access these lands. They have applied undemocratic laws and outdated forms of land classification and management to take over lands. This has made the processes of land use change subject to intense conflict and questions of justice.

From the 1990s when many Asian countries and other parts of the world embraced economic liberalisation, speculative business interests in land have replaced state control of land use for developmental purposes. Large-scale land conversions and land grabs have exploded in Asia following economic globalisation and many point to the years of 2005 to 2008, when food prices peaked, as the period of the global land rush. The growing demand for land by corporations and private investors has fuelled several regional land rush waves, bringing them directly in conflict with communities who require these lands to continue their occupations and survival. Land conflicts today are far more intense due to higher land investments that are at stake, the collusion of corporations and government departments in taking control of land under conflict and the urgency of maximising profits from land in this insecure environment.

The following is the overview of a three-year study to scope the nature and extent of land use change in the three postcolonial Asian countries of India, Indonesia and Myanmar. It is organised as a set of three country chapters and detailed case studies from each country. The study analyses primary data on land use approvals for mining, hydropower, industrial estates and plantations over the last three decades in these countries as these sectors have caused large-scale land transformations. The approvals have been analysed for temporal, regional and sectoral trends in land use change. The study also draws from an extensive body of land use studies done by government, academics, international donors, investor coalitions and non-governmental organisations.

¹<http://www.thehindu.com/news/national/coal-scam-chronology-of-events/article6350481.ece>

²The Institute for Ecosoc Rights. Palm oil industry and human rights: A case study on oil palm corporations in Central Kalimantan. Indonesia. 2010.

³Global Witness. (October 2015) “Jade: Myanmar’s Big State Secret” Retrieved from: <https://www.globalwitness.org/jade-story/>

This research hopes to contribute to the understanding of the conditions and consequences of land conflicts arising from land use change. What are the reasons why land conversion proposals escalate into land conflicts, what are the strategies that affected communities adopt to address these and to what outcomes, are some of the questions the study investigates. These have been done with primary data collected from land conflict cases through semi-structured interviews as well as secondary sources such as media reports and published studies. The overall objective of the study is to understand how communities secure land and natural resources that are intrinsic to their basic human survival and livelihoods and to what effect. It aims to generate evidence and knowledge regarding the strategies and remedies extracted by affected communities in the face of project impacts and land conflicts.

For researchers, activists and organisations engaged in supporting communities facing impacts caused by land use change, this project provides a useful baseline of community level strategies and remedies tried out in the three countries. The research also elaborates on the range of laws and institutions that are directly relevant to land and environmental conflicts in each of these countries. This information documented through various primary and secondary sources can provide illustrative examples and strategic viewpoints for groups contemplating or seeking remedies for live conflicts on the ground.

The study is a part of a larger three-year project titled “Land conversion, social impacts and legal remedies: Understanding the role of community paralegals in addressing impacts of land use change in Asia.” The other component of this project is the training and support of community based paralegals to assist communities facing social and environmental impacts due to large-scale land use change in India. This action research component of the project is implemented by a collaborative effort of Namati, a legal empowerment organisation implementing paralegal projects in six countries and the Centre for Policy Research, a policy think-tank, based in New Delhi. The project is supported by the IDRC, Canada.

Terms used in the study

Land use transformation caused by changes in ownership by way of sale or leasing between individuals or due to natural calamities is not part of this study. For the purposes of this study, land use change is defined as planned, government policy induced land transformations with anticipated or unanticipated environment and social impacts, undertaken without prior informed consent and/or due compensations, and abetted by failure of administrative or judicial remedies. The study uses the term land use change to describe the several forms in which well organised and ongoing community uses of land are blocked, stopped or rendered unwanted by policies and projects. These policies and projects are deliberated and decided upon by governments in open collaboration with investors or in the interest of promoting investments in land and natural resources. They are justified as regional or local development and a necessity for national economic growth.

These land transformations are also undertaken without due process of law. Several legal regulations require governments and project proponents to follow due approval procedures prior to causing land use change. There are also legal safeguards to mitigate or manage the impacts of land use change, which these projects violate. So these land transformations are also implicated in creating an environment of pervasive legal non-compliance and have therefore attracted the term land grab.

Land use changes caused by decisions described above cause entire communities lose their livelihoods, they may be displaced, and their social and cultural relations to their lands are severed. Even in the few cases where land use changes are undertaken as per law, the affected communities access to administrative and judicial remedies is denied due to a range of factors. The difficult and delayed access to remedies results in land conflicts. For the purpose of this study, land conflict is identified as collective action on or against an existing or an upcoming project. These conflicts play out in different forms ranging from collective bargaining to outright protest. Such a wide-ranging definition of conflict is necessary to understand the conditions in which land dealings take place and what they result in.

Communities choose to engage with projects that have or will cause impacts in very adverse situations. The costs of open protest or dissent can be very high. They are unable to express their dissatisfaction or anger at the project's unfulfilled promises due to risks to their families or themselves, or due to lack of unity among landholding members of the community or because they do not want to be seen to hold views that are against the government. In these situations, communities may choose to negotiate specific terms of agreement rather than openly oppose a project. Negotiating the terms of the project in an overall governance situation where refusal of the project is not acceptable is a form of land conflict. The terms negotiated in such situations rarely last and as soon as communities feel a sense of agency due to changes in the political and governance regime, the situation escalates to an obvious conflict.

This study seeks to understand strategies adopted by communities affected by land conflicts to obtain remedies that are meaningful to them. In many cases strategies and remedies are difficult to identify separately. For example, with respect to community efforts to seek land or forest rights, community members speak about the process of registering for titles as a strategy to prevent future land grabs as well as a remedy for past injustices. But generally it is possible to classify strategies as those actions that help to achieve a change in the status quo with respect to the problem. Remedies are the demands or solutions sought to address the community's grievances against approved projects.

Methodology

There is no readily usable data to understand the scale and extent of land use change resulting from government policy or project decisions. The database of approved projects makes it difficult to compute the scale of conflicts and the number of people affected by them, as this data may be available only in individual project approval letters. In the three countries, data is maintained primarily for numbers of projects approved. Even these lists of approved projects are not easily accessible. In Myanmar, the Central Ministries mostly approve projects. Yet the list of approved projects was accessible only through other organisations that had already procured them. For the purpose of this study we were able to procure the list of approved mining projects only. To this we added known hydropower, coal power projects, industrial and economic zones to prepare a pool of cases that have been approved/executed by the government.

In Indonesia, projects are approved by various levels of government due to a highly decentralised and layered system of land governance. However the national government maintains a list of approvals granted at various levels of administration. This list too was not available on official government websites. The list was procured through other organisations who had already obtained it from the concerned ministries. This list has many gaps and overlaps with the lists of projects approved at other levels of government and this leads to confusion regarding the legality of projects operational on the ground. For the purpose of this study we analysed the oil palm plantations and coal mining projects approved at the national level in Indonesia. In India, projects causing land use change are approved at the Central and state levels. For the purposes of this study we chose to analyse projects approved under the environment clearance process at the central level.

The approvals considered for Indonesia chapter date back from 1979 and upto 2014 for oil palm plantations. The mining approvals are between 1992 and 2016. For Myanmar, the mining approvals are for the time period of 1998 to 2015. The projects studied for India received environmental approvals between 2005 and 2016.

To understand strategies and remedies that are involved in land conflicts, we chose 75 conflict cases through random sampling from the database of projects approved in the three countries. Data on the conflicts, strategies and remedies were collected through secondary sources such as media reports, research paper donor reports, government websites and investigative reports by local organisations.

The detailed case studies presented with each of the country chapters are also selected from the short list of 75 conflict cases⁴. They are selected for the geographical areas and sectors they represent as well as the specific strategies and remedies they help to understand closely. In Indonesia, all case studies are chosen from the province of Central Kalimantan as the province presents itself as a good case to understand the country-wide situation of expansion of oil palm and coal mining sectors. These case studies are a granular account of how land use change decisions result in varied set of impacts experienced for years, how these experiences turn into long standing land conflicts, the efforts made by affected communities to seek remedies and the counter efforts they face as governments and projects protect their investments and try to retain control over the narrative of growth and development. Some case studies show that positive outcomes can be expected despite the systemic failure of governments to protect the actual victims of land use change.

Overall, the study relies heavily on the experience and knowledge of local and regional organisations that have worked on land grabs, government and donor reports on land governance and regulations and academic studies in these fields and countries. The study also draws from short research memos prepared specifically on topics like administrative strategies for remedies sought by paralegals and compensations as remedies.

⁴Three case studies in Indonesia were not found on the national list but were found listed in the record maintained at the province level.

Analysis

Land and governance: The country chapters and case studies on land use change, conflicts and remedies in India, Indonesia and Myanmar shows that the backbone of development in the three countries is still tied to a colonial, extractive form of land governance. Land use change through government decisions and policies is still largely non-transparent, undemocratic, and without recourse to remedies for communities who are unwilling to part with the land and natural resources used by them on the stated terms. Large-scale forcible land transfers have been undertaken throughout the independent histories of these countries in the name of “the greater common good”, “in public interest” and for social and economic development. The source of power of the development state still remains the principle of eminent domain. However this principle has been called into question for bringing ruin to numerous communities by forcibly evicting them from their lived habitats and for its misplaced existence in modern, democratic societies.

Earlier forms of state development in the three countries invested public resources in extractive land use projects such as timber felling, mining and industrialisation to generate income, employment and growth opportunities. In all three countries, forest resources were passed on from colonial governments to forest departments to grow and harvest plantations. Revenue or other administrative departments became the masters of all land resources or at least all lands which did not have ownership titles. These colonial style bureaucracies were the largest landowners and between them, all lands could be converted from existing uses into new ones or leased or sold to investors without the informed consent of users of these lands. While in Indonesia, communities are stuck between the forest department, the largest land owner, and corporate plantations and mining projects, in Myanmar, the general administration department (GAD) differentiates legal land uses from illegal ones.

Conflicts over land governance and rights of peasant farmers and indigenous communities have been central to the pro-democracy movements that brought on political and institutional reforms in Myanmar and Indonesia. In India, large several social movements politicised the unfairness of state development practices. Economic liberalisation was accepted as the way forward to overcome the “failure” of state led growth. Land also had to be freed up from a web of competing claims to meet the demands of a globalised economy of which these countries became a part. While Myanmar chose a highly centralised form of land governance, India and Indonesia have shifted towards a decentralised and highly layered system of land governance respectively.

Scholars have pointed about Indonesia that “Decentralisation has often strengthened pre-existing power relations, rather than promoting democratic decision-making processes (Utting 1993).” The regulatory systems adopted in this decentralised land governance framework did have elaborate procedures of decision making built into them but these were with little or no attention to accountability. Just as the centralised system of land governance had encouraged the worst forms of land grabbing and power excesses, decentralisation reproduced similar incentives for those holding political power to engage in corrupt and crony land deals to maintain control. The political economy of land and natural resources replicated itself in local areas through decentralised land governance that was devoid of accountability.

Issues of land governance are also hinged to larger political negotiations and the redressal of old and difficult questions of the rights of indigenous communities, of subnationalism and demands for autonomy in ethnic areas and of federal relations between centre and states. In such areas, remedies to land conflicts can only come through and after the right to self govern. Border territories and ethnically dominated regions in these countries struggle with “exceptional” forms of land governance. This may involve a complex form of partial inclusion in national laws while having exclusionary privileges to customary uses of land, or both secular and customary laws being functional at the same time.

Customary and common uses of land and natural resources such as forests, wetlands and coastal beaches are practiced through many diverse and long standing arrangements in Asia. They cover a substantial region of these countries and also support family incomes and community wellbeing. Nearly 15-25% of the entire

land in India is under various forms of common property regimes. In Indonesia, 1 million ha out of the total 40 million ha is under CPR. Despite having parliamentary regulations and court made laws, Asian societies have been slow to recognise or allow community control of natural resources as a formal part of mainstream economic policy.

The increasing incidence of land conflicts have raised questions about whether these are due to lack of effective land governance or the existence of multiple claimants due to lack of clear titles to land. However, “deficiencies” in governance are often produced through legal amendments, policy changes and new forms of regulation. All three countries have seen or are in the midst of extensive legal reforms. While some of these are to create new rights on land, forests and the environment and new institutions for grievance redressal, other legal amendments have further exacerbated the conditions causing land conflicts.

Indonesia has been the largest exporter of thermal coal since 2007. The peak year in coal mining was 2009 when Indonesia brought in a new mining law (Law 4/2009) replacing the old contracts of work (COW) with more liberal business permits (IUP). India has been amending several of its laws that govern zoning and environmental protection to open up areas to investments. In Myanmar, the government has enacted on new laws to restore land rights of peasants from whom lands were grabbed in earlier regimes. Under these laws, the decision-making is delegated to committees. The committees use both old and new laws to take decisions leading to a messy legal terrain in transition causing confusion. In this environment, the Myanmar government expects to pass 150 new laws to increase investments and global trade.

Even though laws are enacted to protect rights, for conservation and to mitigate and control the environmental and social impacts of investments, these laws are often ignored or bypassed. In the case of multiple, overlapping sets of laws that govern land use, investors and local or regional governments take advantage of administrative fractures to access lands. Land use change projects not only break promises made to communities, they are also responsible for the pervasive and systemic breakdown of legal compliance. Oil palm production peaked in Central Kalimantan from 2003 to 2013. In the end of 2014, the government of Indonesia made an announcement that all mining and oil palm clearances should be “clean and clear”. This declaration acknowledged clearly that these projects were operating illegally. In India the Comptroller and Auditor General (CAG)’s 2016 report that audited the environment clearance process for the country pointed to serious discrepancies in the way impact assessments were carried out. It also brought out that non-compliance of mandatory environmental safeguards was near 57% in a sample of 216 projects audited.

2500 ha of land under oil palm plantation in Riau was being operated illegally by BGA on forestland until 2014. Following this the Ministry of Forestry changed the designation of these large patches of forest areas to non-forest areas⁵. Similar forms of legalising violations are part of routine governance practices in India and Myanmar too. The scale is so vast that one can conclude that land intensive development or extractionism is mostly an illegal form of development. It is perpetuated by lack of rule of law, systemic injustice and gross withdrawal of state protection to affected people.

Land use change: The extent of land use change for specific sectors over the time period for which data has been obtained gives only some trends rather than the actual extent of land transformation by these sectors. There are also several problems with the data such as missing data, overlapping data and wrong figures of land required or approved.

For Indonesia, as per the data of the national government, between 1979 and 2014, a total area of 1,63,23,739 Ha is under plantation. This constitutes approximately 8.5% of the total land area of Indonesia. According to data from the Ministry of Agriculture, the total land area used for oil palm plantations at the end of 2015 was about eight million hectares and this is double the area that was under oil palm in 2000.

Between 1992 and 2016, the total area approved for mining projects in Indonesia is 41,215,458.5 ha. This makes up for roughly 21.6% of the total land area of Indonesia. The data for approved mining projects in

⁵<http://riauone.com/riau/26-Perusahaan-Sawit-Diduga-Illegal-Investigasi-EOF->

Myanmar shows that between 1998 and 2015, almost 10% of the total land area of Myanmar has been given out for mining.

India has approved land use change for a total of 2523 mining projects from 2005-16. This makes up for a total of over 7,31,787 ha of land as this amount is for 1881 mining projects. The land area for the remaining projects is not available. Out of this total area, 1,77,206 ha was forest land. Some mining projects that were granted environment clearance during this period would use 8984 ha of land that was already in possession of the respective project proponents.

India also approved land use change for 116 river valley projects from 2005-16. These approvals cover a total of more than 3,12,524 ha of land out of this 51,130 ha was forest land. From 2005 to 2016, India approved land use change of more than 1,21,797 ha for 1325 infrastructure and CRZ projects with most of the land use change in non-forest areas. This data of land use is for 694 projects as the remaining projects did not have land area data. Out of this total area for these projects, 6,402 ha was forest land.

From the same period, more than 78,428 ha of land was diverted for 552 thermal power projects. This was both new as well as expansion projects. The data here is for 271 projects only. 2000 ha was forest land for 25 of the total approved projects. This is as per the breakup of land specified in the approval letters for these projects.

Land use change caused by specific sectors is concentrated in specific socio-political and ecological zones. In India and Myanmar, coastal commons, forest lands and ethnic territories in border regions have seen intensive land use change proposals. Oil palm plantations in Indonesia are mainly concentrated in Sumatra and Kalimantan with data showing that nearly 30% of the total oil palm concessions lie in Kalimantan. The province of Central Kalimantan is one of the mostly intensively extracted regions as oil palm and mining occupy over 50% of the total area of the province (WALHI, 2016). This is a cause of immense concern because nearly 60% of total peatlands of Kalimantan or about 3 million hectares lie in Central Kalimantan and these lands are crucial for environmental sustainability of that region of Asia. 66% of mining concessions in Central Kalimantan lie in the Barito river basin, including 80% of current production licenses and the remaining are in the basin of Kahayan and Kapuas river. This shows the overlap between land use change and ecologically sensitive areas such as critical watersheds.

Impacts of land use change

For the purpose of the study we classified the impacts of land use change caused by sectoral expansion in mining, oil palm, energy projects and industrial development into three kinds: displacement, livelihood loss and environmental degradation. These are classified separately only for the purpose of understanding if there are major differences in how impacts occur across regions or sectors. In reality, most cases of land conflict may involve one or more such impacts and communities usually do not describe the impacts as separate problems.

Based on the countrywide data on project impacts from a sampling of cases on land conflicts, we see that in Indonesia, environmental degradation has been cited as the sole major impact by the communities in all the 25 mining projects in the sample. For oil palm plantation projects, affected communities cited land loss as the only leading impact in 25 out of 50 projects followed by livelihood loss and environmental degradation across 14 and 6 plantation projects respectively. For the remaining plantation projects, communities have reported facing multiple impacts, including environmental degradation, land loss or livelihood loss in varying combinations.

Our analysis of 75 projects that have caused land conflicts in Myanmar highlights that affected communities reported multiple impacts of livelihood loss, land loss and environmental degradation, arising out of various sectoral projects in the country. Across 53 power projects, land loss has been cited as the leading impact followed by livelihood loss and environmental degradation. Whereas for 16 mining projects, environmental degradation is the prominent impact followed by livelihood loss and land loss as per the reports of land conflicts. In other sectors such as infrastructure and industry, impacts such as land loss, livelihood loss and environmental degradation have been cited evenly across sectors.

In the cases of land conflicts in India, communities have reported multiple impacts across 85% of the conflict cases analysed for the study. Out of these, livelihood loss and land loss are cited to be the pervasive impacts in 43 projects across power, mining and infrastructure sector. This is followed by environmental degradation and livelihood loss for 17 projects across the same sectors. In most of the remaining projects, communities have cited livelihood loss or land loss as a major impact of the project on their lives.

The issues related to these impacts are explained with the help of some examples.

Displacement: “We had to destroy our houses with our own hands.” Displacement is one of the greatest trauma of land use change and it is rarely ever healed by efforts to relocate evicted communities. In Myanmar, the Tigyit mine and Paunglaung dam displaced villages were relocated poorly. But in such cases where land was under communal use and clearly defined ownership was difficult to establish, they found it challenging to seek remedies to improve their relocation. Some families were relocated so far away that they had to stay on their farm plots for days to be able to continue their work. Relocated families can be at risk from local settlements if the relocation causes a strain on existing resources in the new site. In addition to the actual displacement caused officially by project, mismanagement, poor design and other factors put communities at risk of being displaced. The Paunglaung reservoir flooded 12 villages and 5000 acres of fertile land in 2013-14.

Compensations are offered in some cases with or without relocation, but in almost all cases, they are less than what is understood as the monetary value of the land. Moreover, affected people are kept in the dark about how it is calculated. This leaves them feeling a sense of arbitrariness and injustice in the exchange. Farmers in Myanmar said that some were paid less because their lands looked barren when in fact they had been recently harvested. Compensations are also given for certain kinds of harms but this is not stated clearly. This adds to the arbitrariness felt by the families who receive these payments.

Livelihood loss: Displacement itself causes livelihood loss if farming families are not given access to usable lands in the relocation site. But this loss is also acute in projects where there has been no direct displacement but project operations have caused land loss. In mining areas, projects invariably dump mine waste as there

is not enough space within the project premises to contain it. Toxic mine waste is spread on nearby farmlands or common areas used by communities. In these areas the problem is so routine that farmers stop investing in their lands for fear of losses.

The Parsa East Kete Besan mining project in Chhattisgarh, India involves land use change of over 2700 ha. Of this, nearly 1900 ha is forestland and 700 ha is agricultural land. The mine is located in the Hasdeo Arand region. The large population of tribal and other traditional forest dwellers who reside here are dependent on all these lands for both farm and non-farm livelihoods like non timber forest produce (NTFP) collection and grazing.

Loss of livelihoods force men and women to seek poorly paid jobs in the projects. They face exploitation and poor working conditions yet have to continue work. Labour relations with the projects makes communities doubly vulnerable to impacts. If they speak out against the impacts caused by the project, they would likely lose their jobs. Labour employed in the projects are forced to restrain their families and neighbours from taking action against impacts for fear of loss of jobs. In case men are employed as labour, women are forced to take on the role of farming on the available land in addition to their other duties.

Environmental degradation: In a project in East Barito, mud displaced from the riverbed due to dumping of mine waste destroys rice crops four times a year! The communities have been forced to shift from rice to rubber plantations causing them to have less food and wait longer for income from mature rubber plantations. No fishing in the rivers is possible. The communities face these impacts even though as per the mining rules, mining is not permitted within 1000 meters of river banks.⁶ In many cases of land conflicts, affected communities face the unenviable choice of being relocated or living with severe pollution and risk to life and property. Communities surrounded by coal mines suffer the everyday consequences of coal dust and fly ash. Mining projects and industries divert huge quantities of freshwater to themselves. Oil palm plantations drain peatlands of water making them dry and susceptible to lethal seasonal fires. Production processes of projects can cause large-scale problem of effluents and discharge of waste into water sources. Soil and water degradation affects their crops. The falling produce and prices force communities to look for employment with the company even if they do not prefer that.

Several community members affected by all these impacts of projects stated that getting remedies for environmental problems are easier as the impacts are visible and the violations of the project in degrading the environment are obvious to the regulators. Besides, if water sources are contaminated, some provision can be made to bring water from other places and provided to communities. However livelihood impacts and loss of land are not easy to solve and they have to be fought for because it is not visible unless communities articulate it with adequate proof.

⁶<https://kalteng.antaranews.com/berita/264447/soal-penambangan-dprd-barito-timur-akan-panggil-kembali-pt-wings-sejati>

Conflicts

Through a sample of land conflicts the study tried to understand the different conditions that cause land conflicts. As stated earlier, it was not possible to get any reliable estimates of how many people are affected by these land conflicts and how long they last. We have made some estimates of how long some land conflicts go on for and the time lag between impacts and conflicts based on the data available for these through media reports. For example, the sample from India shows that out of 75 cases, 35 conflicts have been on for 5 to 10 years and 14 cases have more conflicts that last more than a decade. An interesting observation from the India sample is that in almost 50 % of the cases conflicts existed at the time of grant of environmental approval to projects.

Conflicts are not always actively vocalised but the conditions for land conflicts last out several decades. This is particularly true of land conflicts such as the Thilawa port in Myanmar that started under a repressive political regime. Land confiscations for the project started in 1983 through to 2007. In 2014 it was granted the status of an SEZ to grant tax rebates to the foreign companies set up here. Even in the case of the Tigyit mine, during the years when the project was initiated, the locals were too afraid to raise their voice. During these years, law was seen as a state tool of suppression and so people feared the law. It is only in the last few years since the setting up of a democratic government that many old cases of conflict are being vocalised. Communities are also known to remain silent or not react to injustices for fear of loss of jobs and other consequences. In the BGA case in Central Kalimantan, villagers did not react for at least ten years since the company cleared their land and reneged on its commitments under the benefit sharing Plasma scheme. Even though at least 1000 families did not receive any money promised under the scheme, they did not ask questions to the company.

What causes land conflicts? As stated earlier, private investments in land have changed the way land is managed. Highly capitalised land use change brings together powerful investors, governments and local communities in unequal and precarious arrangements of negotiation and confrontation. These investments force private claims over land at an unprecedented rate. In Indonesia's East Barito, once a coal mining company began to buy land, local farmers started to claim individual ownership that created a situation for conflicts among local farmers. When projects are given huge areas of land as seen in Indonesia or given productive and fertile lands in active use by communities, affected farmer are pushed closer together into smaller plots of land due to land loss in other areas. They may also lose access to forests from which they collect forest produce. In the RAS project area in Kapuas, the company was offered 24,000 hectares of land that did not have any community claims for its plantation purpose. However it started using nearly 7000 hectares that belonged to the community of four villages.

The stakes are so high in these investments that acquisition of land is done through coercion and threat. Community leaders may be involved in the process causing internal rifts in the community. In Indonesia, land acquisition is done by private agencies with no requirement of consent or options of return of land. In India, repatriation of land was not an option no matter how faulty the land acquisition process, until the new law for acquisition was passed in 2013. In cases of state development projects, unused land was available to the communities for informal access and use. As seen in the cases from Myanmar, state institutions that operated mines and industry were less concerned about land that was under informal use. In some cases it was even officially allowed and they collected taxes from such lands. But as soon as these institutions formed partnerships with foreign companies, more lands were brought under projects. In addition, land also became completely inaccessible after such foreign investment. The joint arrangements between local people and the state for use of excess land taken for the project were no longer possible under the new public-private partnership (PPP) arrangements between government and private investors. This securitisation of land has been responsible for more conflict.

Conflicts also arise due to lack of redressal of grievances and not necessarily due to opposition to development per se. In several of the conflict cases, communities had agreed to projects. For example, the communities along the Katingan river basin have worked as loggers with the forestry sector or timber companies spread along the river. They viewed oil palm as an opportunity to bring back a booming business to the region. Its only after ten years of not receiving any share of the benefits of oil palm that people have started pursuing their grievances for land and livelihood loss. Their experience of facing the tremendous impacts due to project operations for long periods is what pushes them towards conflicts. Their efforts to have these impacts addressed fail or go nowhere. Communities find it hard to recognise who is responsible for these impacts or who is responsible to mitigate them because of layered government approvals. They also feel that their efforts are in vain because they are faced by an overall corrupt system that is unresponsive to their grievances.

Strategies

The first detailed report on river pollution by a coal mining project in East Barito was made after nearly 10 years of the project's impacts. A journalist and an NGO collaborated with the locals to draft it. The affected communities approached the Environment Ministry in 2016 for the first time after suffering the project for nearly 15 years.

It is very difficult to say something comprehensive about the varied strategies used by affected communities to get remedies for their problems. The local contexts are very different in these three countries and the perceptions of strengths and weaknesses of communities and advantages and disadvantages on the basis of which strategies are planned is difficult to comprehend by those outside the community. One basic purpose of documenting the strategies used in the land conflict cases in these countries is to show how much people try to get their grievances addressed. The strategies deployed show the community's sense of knowledge and critical thinking, their collective agency and pragmatism regarding how to go about seeking remedies.

Some observations can be made based on the data on conflicts from the three countries. Communities affected by projects prefer using multiple strategies over single strategies to get their grievances addressed. The most commonly used strategies in the three countries are protests, litigation and administrative complaints and negotiations. These are deployed alongside or as a follow up to earlier strategies. The latter is to be expected when there is a small group pursuing remedies for a larger group of affected people under conditions of limited resources or constrained legal spaces. In long periods of conflict, under strain from government intimidation or corporate counter actions, the choice of strategies may change over time. In some cases this change of stance or strategy is obvious when the names taken up by organised affected communities change from being pro project (for eg; vikas samiti) to anti project (for eg; virodhi samiti) or vice versa. Irrespective of the positions taken by the affected communities as pro or anti project that has caused land conflicts, they organise themselves into groups to seek remedies as a collective. This is a hindrance to projects as they prefer speaking to affected people as individual families or small groups. The counter actions by the project or government usually aim to break these organised groups.

Protests are common to all three countries as a strategy in seeking remedies to land conflicts. Protest was used as one of several strategies in 61 out of 75 cases in India. It is used in conflict cases that affect large groups or many communities. The mobilisation is on a common ethnic or livelihood identity and the protests take the form of rituals or an expression of collective identity in which traditional and cultural symbols are used. Examples of this form of protests are the rituals of remembering ancestors in lands that are now under company plantations, the plough protests on farm lands that have been grabbed from peasants and the donning of traditional combat headgear during marches for protecting "sacred" lands. When affected communities are powerful as in the case of Kapuas, they engage in extreme steps such as reoccupation of community land taken away from them. In this case, the affected farmers took control of the land under company plantations and decided to harvest and sell the produce on their own. Women have participated in huge numbers in protests in all three countries and have also taken up leadership roles.

A big number of conflict cases in India have used administrative routes to remedies. It is the second most preferred strategy and has been used both as a single strategy and as part of multiple strategy cases. The Indian administrative system is large and decentralised to the village level and so is accessible to people. Administrative remedies are often sought for specific problems such as pollution and employment and where the purpose of seeking remedies is not to shut down the project but to improve its operations or realise its commitments. In Myanmar, approaching the administration for land grabs has become necessary due to the new laws that provide for land registration to the farmer based on certain documents such as tax receipts. Administrative complaints have been used as one of the strategies in 59 of 75 cases in Central Kalimantan, Indonesia. In cases of environmental harm which was reported as an impact in all 25 mining cases of the dataset, an administrative complaint was filed.

Affected communities approach the administration when they have clear evidence of illegal actions by projects. The observations of illegality or violations in complaints made to the administration can bring about institutional action sooner. But it is important to ensure that actions do not only end in minimum legal compliance rather

than actually address remedies. Usually governments are interested in cases only till the point of moving the project in violation to compliance. So it may agree to temporarily stop or stall the project until commitments to compliance are obtained. In some cases projects that are operating without approvals are granted approvals without their impacts being addressed thus legalising the problems. Legal compliance and stricter regulation is a necessary condition for positive change for communities but it is not sufficient.

Participation in legal procedures such as public hearings have also been seen as a form of strategy of engaging the administration. In all three countries, public hearings are held for some kinds of project approvals or expansions. In these platforms, communities use their knowledge about project operations and legal clauses. Affected communities receive legal and scientific trainings and this information is used to engage decision makers, donors and investors and other public. Through these forums, the affected people bring attention to critical aspects of the project that would have otherwise gone unnoticed. In such forums, affected people invest in improving projects almost entirely at their own time and cost and with little or no support from governments and projects who benefit from these interventions. There are also cases where test runs and graded operations are suggested by the government and people accept it as the only available recourse. These strategies show how remedies are shaped along the path of project development.

The importance of legal strategies and the strategic use of law for administrative remedies is seen in several cases that involve affected people, pro bono lawyers and NGOs. Litigation has been used by farmers for getting their land back, to increase land compensations and against poor relocation in Myanmar and India. Some access to financial resources due to land ownership, a clear stake to protect their titles and compensations given by government being altogether unfair have resulted in high levels of litigation as a strategy for land acquisition cases. In Indonesia and Myanmar litigation has also been used in environmental cases and in case of project induced accidents like mining floods. In Indonesia, courts have been approached mostly for policy changes and legal clarification and not against individual projects that affect specific communities. (Litigation has been pursued for individual projects when they affect the larger public interest eg. Batang thermal power, Jakarta Bay project). There are also specialised courts in India and Indonesia, such as the National Green Tribunal and the Tribal Rights Court that hear specific types of cases and grievances. In the case of the largest coal mine in Borneo, the Tribal Rights Court fined the company 486 million IDR for violating the rights of villagers living near the mine.⁷

Affected communities engage in negotiations as a strategy for many reasons. It is used as a strategy in conflicts taking place in remote areas where there is little or no government presence and where people are almost entirely dependent on the company for jobs and remedies. They also choose to negotiate in situations where there are already conflicts within the community over land ownership or when the affected people are unable to work together. They may also choose strategies of negotiation when they are sure of not being able to stand up to the company due to political corruption, collusion of the project with the police and a general environment of fear and injustice. In some cases, negotiations appear as a strategy used when the state is unwilling to accept the unfairness of the project and the continued operations of the project seems inevitable.

The cases of land conflicts analysed show that communities choose to engage into negotiations in situations where they have no right to refuse the project. In such cases, communities choose to take an accommodative approach to seeking remedies rather than being combative. Negotiations are critical for affected communities with few other options and the importance of having good legal representation in the process is brought out in these studies.

Land conflicts that spiral out of the pervasive injustices of land transformations are a focus of large development and environmental organisations, pro-bono legal groups, and international security and policy analysts. They support and participate in global advocacy and campaigns on land and natural resource protection. But usually these actors need some actions ongoing on the ground to become involved. So the initiative to make land conflicts visible to those outside is of the local affected communities. Once the communities take a public position, other actors get involved. The importance of international campaigning is seen in all three countries where investments involving land use change have been brought under scrutiny due to the efforts of media houses, international legal firms and global organisations working on human rights and environmental protection.

⁷<https://www.ft.com/content/6fe28630-cf30-11e1-bfd9-00144feabdc0>

Responses to community strategies

The chapters describe several reactions and responses these community strategies have evoked from governments and projects. These are both in the form of counter strategies to intimidate communities as well as more creative strategies to manage conflicts and arrive at negotiated arrangements. Criminalisation of affected communities who undertake protests or marches or reoccupy their lands is almost normalised as a response of the local authorities in charge of law and order. Their primary function appears to be protecting investments and ensure the smooth conduct of business operations.

Mobilisation of affected people is met with use of power by authorities. Even in cases where communities have not actively disrupted the work of the project, leaders or active members of the groups seeking remedies are intimidated, charged with false cases and their mobility is restricted. These cases are poorly drafted. They have led to imprisonment in some cases but the cases don't necessarily hold when interrogated by a court of law. However, they do succeed in their aim to harass the leaders, restrict them in their ability to mobilise communities and discourage them from seeking remedies. Many of the affected community leaders interviewed for this study spoke of how they restrict their mobilisation efforts due to these counter reactions. They fear for the consequences on their family and friends in the community and prefer to protect their community members rather than expose them to these difficulties caused by mobilisation. So they choose to work in small groups or individually, taking the risk entirely on themselves.

Project staff and paid contractors also engage in such intimidation tactics as they are emboldened by the support of local governments. They bribe members of the community to break away from the mobilised groups, engage in rumour mongering about corruption or unethical practices of the community leaders and plant false evidence against them on trespass, damage to company property and threats to company staff.

In 2006, the global price of crude palm oil increased by 27%. By 2007, the Indonesian government officially introduced a mechanism to increase oil palm production and share financial returns from the sector with farmers. The Plasma scheme is offered as a benefit sharing mechanism to farmers living around the main plantations run by a company. These schemes come in different forms from a buy back system of community oil palm to financial support to community palm oil cooperatives to sharing a percentage of profits from sale of oil palm from the community lands. While the schemes seem beneficial to the farmers, in reality their implementation is riddled with problems. Communities have been threatened and coerced to join the scheme in many cases. The schemes have been rolled out despite problems in demarcation between project land and community areas, individual families have been identified for benefits under the scheme even though they don't necessarily own the land, oil palm has been harvested before time by force and financial returns have not been disclosed by the company in several cases.

These problems regarding the implementation of plasma have been articulated by many affected communities and are the most visible problems of the oil palm sector. Yet these issues have been left unresolved by policy. Since most plasma schemes are managed by community level cooperatives, the company and government refuse to take any responsibility in creating these problems. Eventually, when individual cases are resolved, they have favoured the company. This has caused many communities who have burned their fingers in the Plasma scheme to see it as a trojan horse that legitimises and generates support for unjust land use by the oil palm sector.

Governments in collaboration with large international NGOs have embarked upon land titling projects as a means to minimise arbitrary and faulty land acquisitions and reduce conflict. While clarifying land titles may be a useful exercise in itself, it is unclear regarding how this will help reduce conflicts in the context of forceful and unlawful land acquisitions. There are also questions regarding the scale of conflicts that can be avoided through land titling alone. While community level conflicts over land ownership may be reduced to some extent, conflicts that involve parties with significantly more political and financial powers like the government or corporations may be unavoidable.

The conflicts caused by forceful acquisitions have moved the Indian government to finally reform the main legislation that governs land acquisition. In 2013, the Indian parliament enacted a new law to replace the colonial act of 1894 (it still exists in Myanmar and the government proposes to amend it). Under the new law, the procedures for acquiring land involve a social impact assessment and consent of over 70% of the landowners. There are clauses for compensation upto four times the market value of land, for repatriation of unused land within a time frame and protection of multi-crop lands from acquisition. Although these progressive clauses were introduced to the law, several state governments and the central government have made continuous efforts to undermine the law by bypassing it, amending it and using other regressive laws to acquire land. The government has also tested models of land pooling as an alternative to land acquisition. But these are not without their problems. Land acquisition continues to remain one of the most complex problems for development in all three democracies.

Remedies

Affected communities articulate their grievances and seek out institutions to address them. Their articulation of demands gives a sense of what justice could look like in these situations of fear, anxiety, loss, distrust and confusion. This study shows the immense effort put in by affected communities to seek remedies that are meaningful to them. It also shows that the process of seeking remedies by affected communities helps not only to politicise questions of democratic decision making and land governance but to actually improve land and project governance outcomes. Affected communities take on the role of asking questions, monitoring and seeking accountability in a hostile environment of risk of intimidation and criminalisation. These efforts to built project accountability and better governance through land conflicts are still largely undocumented and uncelebrated.

There are a variety of remedies that have been sought by affected people in the case of individual projects as well as in the overall analysis of land conflict cases. Remedies are almost never thought of in singular, specific terms as that does not reflect the complexity of problems faced by communities over time. However, there are specific remedies that are sought for a specific nature of the problem, such as greater compensations for unfair land acquisition or project suspensions in cases where land is the most valuable asset to peasant farmers or in ethnic areas where it is a source of collective identity.

Remedies can be short term to respond to immediate concerns as well as long term to build on sustainable protection for their land as well as their livelihood security. Some remedies are ones that actually reduce the harm or compensate for the negative impacts such as monetary compensations, greater regulations, temporary suspension or closure of projects, rehabilitation, repatriation or relocation. Others could be considered as outcomes of conflicts as they are related to the process of decision making on the project, such as testing out the project, setting up more investigations and reviewing the project. These could include various steps taken by project authorities or governments acknowledging that there has been a problem as well as setting in place certain procedures such as mediation, or setting up of committees to investigate the problem and collect evidence that justifies future actions. In some cases, there is little or no follow up after interim actions are taken, making it seem like governments or projects are only interested in managing the conflict in their favour or pacifying the protests rather than actually resolving the conflict through genuine efforts.

Some of the remedies sought in the cases studied here are the classic NIMBY ones such as moving the pollution to another area and diverting or displacing harms to others. However, many cases offer great examples of how affected communities go beyond project specific remedies to seeking systemic policy and political changes. In the process of seeking remedies for their problems, leaders of organised community groups are or become public spirited in their approach and seek broad based changes. Increasing the overall accountability of project management systems, making better regulations and their implementation more transparent, activation of grievance redressal mechanisms and legal aid, increasing community participation in decision-making and seeking political reform to end corruption are some of the remedies that affected communities have sought. Their struggles are articulated in terms of defending democracy, ending the monopolistic control of natural resources by corporates and restoring the social functions of land for the wellbeing of communities.

There are several remedies or outcomes that the affected communities succeed at getting. These are mostly only limited successes but they surely are positive stories of collective agency and change and are articulated as small victories by communities who struggle to get them. The slew of strategies that they deploy is responsible for these successes. Community education programs, public pressure through well designed media strategies, legal strategies of negotiation, mediation and litigation, domestic network building and seeking out politicians and institutions that are supportive, international campaigns directed at "naming and shaming" investors and much else is done to achieve remedies.

The cases analysed show the partnerships developed between affected people, NGOs, pro bono lawyers and journalists to squeeze these remedies out of the system. But there is still a long way to go in terms of affected people having systematic help to frame the remedies they could possibly have and how these should be arrived

at. For example, even though compensations are so routinely sought in land conflict cases, there is little or no information that communities have on how they should assess how much compensation is fair in their case. Ways of measuring damages and arriving at fair monetary compensations for these have hardly been worked out even by courts even though they hear many cases on this issue. The problem is even greater for remedies such as restoration of lands affected by pollution or how to work out a gradual system of closure of polluting units without affected those dependent on it for employment.

Even in cases where affected communities seek better relocation, there are huge challenges in developing a relocation plan even though a vast literature on the principles and practice of good relocation exists. In such cases, remedies granted to communities appear arbitrary and a result of pressure. As stated by some of community members interviewed, government responses are primarily to pacify people and not to give justice. It also points to the lack of foresight in project planning and the central assumption that nothing will go wrong even though many projects are caught up in conflicts. Governments and projects fail to plan for such situations even though they are so common. When the AKT project in Central Kalimantan was shut down due to financial irregularities, the next course of action was not clear and it was uncertain if affected people would get remedies due to them. After a state-owned Indian consortium took over the financially unviable Maheshwar Dam project from a private investor, the responsibility of rehabilitation of over 2000 families fell upon the public exchequer.

Land conflicts are often caused around the demands for employment, financial stakes or long-term benefit sharing in the project. These demands indicate that contrary to the government view of land conflicts as "anti development" protests, locally affected people are interested in participating and realising the goals of development. Even though these demands are articulated at several public hearings before the project is approved or given access to community land, there are few models worked out on how this can be achieved. Most forms of land use change take away land from the local communities promising benefit sharing or employment but these promises are rarely realised. In cases where local or regional governments have supported such demands and when communities have mobilised into a powerful interest group, there have been limited successes. In other areas, it is a long struggle to realise these remedies. Even in cases where affected communities have accepted the continued operations of the project, they are not given the opportunity to officially support the government in monitoring the operations, in inspections and reporting on the project. These roles are still held by government agencies even though they clearly lack the resources and the logistical capabilities to perform these functions effectively.

Remedies for land conflicts have come from limited institutions. Specialised agencies such as the NGT in India or the anti-corruption agency (KPK) in Indonesia have gained attention for their efforts to resolve conflicts and issue remedies in the form of fines and stop work orders to violating projects. They have also been responsible for landmark decisions that have brought the mining and oil palm sectors to a halt until the government reviews the reasons for pervasive illegality in these sectors. But these judgements have caused them a loss of popularity among powerful companies, politicians and bureaucrats. They have been termed as too radical, too arbitrary in their use of authority and criticised for "overstepping" their role. There have been legislative and administrative efforts to curtail their powers or make them less effective through budgetary cuts and changes to their member composition. These agencies have to walk a tight rope in terms of maintaining credibility through fair judgements as well as remain relevant in a political economy that is largely supportive of investments at any social cost.

Conclusion

Land conflicts show the social function of land and property. Communities value land for housing, livelihoods, attachments, memory and security. Land investments and land laws see land only in monetary terms. These contrasting values fuel land conflicts. Land conflicts also show that people are not against development per se but oppose the conditions under which these imposed upon them. Promises of employment, better relocation and other benefits that support communities that lose private, common and community lands are rarely kept. The laws of information and prior consent are not complied in nearly all cases. Governments or projects seem unaccountable to social commitments or legal standards making conflicts occur by design.

Conflicts are costly. They impose delays and disruptions on the funding, approvals, construction and operations of projects. Stalled projects have financial cost implications and reputational risks for governments that support such projects. Parliamentary committees, high level political offices or government committees are set up to monitor the progress on these projects. They are monitored as stuck projects rather than problematic ones. They force policy reforms in the direction opposite to what is needed. They demand swifter land acquisitions, faster approvals and shortcuts to project implementation rather than building systems for maximum transparency, participation and accountability.

Law-making for land governance itself is a terrain of conflict. All the three countries are engaged actively in law making to meet the demands for land. Processes for reforms and amendments to land and zoning laws, approval procedures, environmental regulations and social grievance redressal are all being undertaken with corporations and large organisations. Many more people such as researchers, activists, labour unions and affected communities would like to engage in the ongoing legal reforms from within and outside the system. They fear that without such widespread participation these laws will result in the monopolisation of land for corporate use and aid land grabs.

Due to the outstanding conflicts over developmental projects, the government's proposals for new projects are seen as plans to usurp land from communities. Aggrieved communities refuse to allow new projects or expansions. So any projects planned in the future are also threatened by conflicts. The legitimacy of land use change depends on how existing grievances are handled. Addressing these long drawn conflicts on a case to case basis does not seem like a very effective way forward given the number of conflicts. Leaving this task to government departments has been ineffective, especially since they have demonstrated bad faith in several cases by legalising violations by projects. These complex issues are better handled through deliberative processes that are led by specialised high level committees of politicians or judges empowered to take bold decisions and policy steps.

Asia is poised for more investments in energy and industry. In Myanmar, 43 more dams are planned mostly in ethnic states. JATAM's data shows that almost 10% of total land area of Indonesia has been allocated for coal mining, 80% of which is under exploration. A renewed commitment to their domestic energy program would mean more coal mining and power plants. The Indian government's "Make in India" slogan hopes to launch new projects such as manufacturing SEZs, port complexes and energy hubs. All these will involve more land acquisitions, purchase and leasing of lands used by communities. As these processes unfold, communities would benefit from the support of government and independent legal aid, researchers, organisations and the media. While land conflicts are created by the necessary interaction of various actors, the greatest risks and consequences of land conflicts are borne by affected communities.

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