



Module 1 of the Learning Alliance on Extractive Industries aimed to share knowledge on a range of issues regarding land use planning and access in the context of extractive industries. Participants exchanged their own perspectives and assessed how such knowledge could be adapted to their own regions.

## EXTRACTIVE INDUSTRIES: LAND USE PLANNING AND ACCESS

### SUMMARY

During the five weeks of Module 1, the Moderator, Gerardo Damonte, presented Latin American policy frameworks and practical experiences related to land use planning and access. National Land Use Planning Systems (NLUPS) were reviewed in order for participants to gain knowledge of the general framework of land planning in the region. Assessing the restrictions and conditionalities of these NLUPS formed a key part of the discussions. In the second part of the module, the debate focused on land access issues. Participants deliberated the importance of social licensing in Latin America and its potential for other regions. Issues such as territorial rights and compensation methods were also discussed, based mainly on a review of the Yasuni ITT case study.

This document contains a summary of the issues raised each week by the Moderator and the main conclusions drawn from discussions. Materials shared during the exchange are hyperlinked and relevant contributions are included in text boxes. Finally, conclusions for the whole module are presented.





## KEY ISSUES:

- Latin American land policies for facilitating sustainable extractive developments need to be adjusted to national and regional social contexts in order to be applicable in Africa or Asia.
- Clear and legitimate land tenure systems in Africa and Asia would help to tackle challenges related to land value, land transaction procedures and compensation methods for extractive resource projects.
- Latin American experience has shown that greater state and civil society involvement contributes to more effective land use regulation in the context of extractive projects.
- A participatory and transparent mechanism, such as consultation, is necessary in order to foster consensus building over extractive industry land use.

## CONTENIDO

---

<a href="#">Week 1</a>	An Overview of Land Use Planning and Access Policies Related to Extractive Industries In Latin America	<a href="#">Page 3</a>
<a href="#">Week 2</a>	Issue for Discussion: Land Use Planning Systems (LUPS): Latin American Policies and Experiences	<a href="#">Page 6</a>
<a href="#">Week 3</a>	Issue for Discussion: Limitations in LUPS: Restrictions and Conditionalities for Extractive Industries	<a href="#">Page 9</a>
<a href="#">Week 4</a>	Issue for Discussion: Land Access: Getting Social License – Territorial Rights and Property	<a href="#">Page 12</a>
<a href="#">Week 5</a>	Issue for Discussion: Obtaining Social Licence for Land Access- Compensation Methods	<a href="#">Page 14</a>
<a href="#">Module One General Conclusions</a>		<a href="#">Page 17</a>



## Week 1: An Overview of Land Use Planning and Access Policies Related to Extractive Industries In Latin America

---

### Moderator's Introduction

Land use planning and land access related to extractive industries is an important issue for Latin America, a region rich not only in natural resources but also in cultural and environmental diversity. Brazil, Colombia, Ecuador, Mexico, Peru and Venezuela are all on the list of the world's 17 mega diverse countries, and in almost all Latin American countries indigenous people and peasant communities depend on agricultural and pastoral activities in existing or potential (known) mining areas. Extractive development therefore entails a diverse range of environmental, social and cultural concerns. In this context, Latin American countries are making improvements to extractive development planning and are starting to regulate access to land for extractive purposes. In particular, they have developed policy tools for land use planning and implemented specific mechanisms to facilitate land access.

#### Questions posed to participants

Are the Latin American policies and mechanisms described in these materials relevant to your country or region?

What are the similarities and differences with your country/region?

#### Week 1 Supporting Materials

ELLA knowledge publications on land use and land access prepared by Latin American experts are considered relevant for this week's discussion as they provide an overview of the main issues.

[ELLA Brief: Land Use Planning for Extractive Industries](#)

[ELLA Brief: From Expropriation to Social Licence: Accessing Land for Extractive Industries](#)

[ELLA Guide: Accessing Land for Extractive Industries: Socially and Environmentally Sustainable Approaches](#)

### Summary of the Exchange

From the exchange it is clear that there are a variety of different experiences from African, Asian and Latin American countries. We have learned from **Uday Bhanu Sen of Tata Steel in India**, for example, that accessing land for extractive industries in India shows similar challenges to those faced in LA.

#### **Uday Bhanu Sen, Tata Steel, India** .....

*"Accessing land for extractive industries in Latin America shows similarities with India in terms of its challenges. Here, land for mining and environmental governance are awaiting adequate legislation, but no consensus is visible between the state and central governments. This has emerged from a dilemma regarding ownership rights bestowed by the national constitution, which has disrupted the licensing process, as well as unresolved issues of revenue sharing. Royalty sharing with communities is also ignored. It is also the case that widespread underdevelopment prevails in potential mining areas and forestland (...)"*



Subhasis Ray, Xavier Institute of Management, India highlighted the challenge of pursuing economic growth while meeting the goals of social and environmental justice. To illustrate his point, he shared the example the the [conflict between the Dongria Kondhs tribe and the London global mining company Vedanta](#).

Subhasis Ray, Xavier Institute of Management, India .....

*"Here are two brief answers.*

*i. Mining being environmentally (and sometimes socially) disruptive, these issues have a global undertone, while the local realities are more nuanced and peculiar. Yet, the challenges remain the same, how to ensure economic growth while ensuring social and environmental justice. We must remember that economy, environment and society are discourses that have their own languages in our history and bringing them together without an adequate conceptual framework may lead to a very divergent conversation. Unless we adopt a trans-disciplinary approach to address these issues, like complexity theory or systems thinking, it may be very difficult to arrive at a meta-level understanding*

*ii. Uday has highlighted some of the key aspects of the differences in India and the challenges of developing a comprehensive legislation..."*

Participants from African countries affirmed that land in their region has remained under customary control, so that land transactions are regulated by local traditional authorities, such as chiefs in West Africa. Granting access to land for extractive purposes is therefore in the hands of these community leaders, undermining land rights and compensation issues. In Latin America, states have granted land property rights to most indigenous and peasant communities, and the state regulates land transactions in a more or less open land market.

Farai Maguwu, Center for Research and Development, Zimbabwe .....

*"Communal land in Zimbabwe, just like in Ghana, as we have learned from Kwame, is in the hands of traditional leaders / chiefs who become the major beneficiaries of the mining venture as an incentive for abandoning their people. Thus the entry of a mining corporation into a community leaves the community divided as some will benefit whilst others won't."*

Various participants expressed their concern about the lack of access to information by the public and the high rates of illiteracy among the indigenous people in Africa. They also underlined the weakness of civil society in the region compared to Latin America, where there is a higher degree of civil society participation in extractive projects. **Sam Wong, University of Liverpool, UK** stressed the need for effective collaboration between governments (national, regional and local levels), the private sector (mining businesses), civil society and local communities, in order to achieve good governance regarding access to land for extractive industries.



## Week 1 Moderator's Main Conclusions:

- There are a variety of different experiences from African, Asian and Latin American countries, but in general there is a gap between state legislation and actual social practices regarding land tenure.
- Transparency is an important and common issue for all our regions and countries. In this regard, Latin American experience shows some improvements related to two socio-political processes: democratisation and globalisation.
- Social conflicts, in particular involving indigenous people, seem to be a global issue in the context of extractive developments. However, we need to be careful in addressing this issue since there are a number of different conflicts and all of them are tightly related to the specific social realities in each country or region.



## Week 2: Issue for Discussion: Land Use Planning Systems (LUPS): Latin American Policies and Experiences

### Introduction

In Latin America, Land Use Planning Systems (LUPS) have been developed to regulate land use by identifying the best use of land, including extractive activities (see, for example, the [map of Santa Cruz in Argentina](#)). However, the implementation of LUPS has faced a number of challenges; in particular, poor coordination between national and sub-national governments and a lack of a clear regulatory framework (see the [interview with Prof. Nicole Bernex](#), a geographer specialised in extractive industries and land use). The most serious conflicts arise when areas for extractive industry need to be defined. In some cases, even national and local government bodies cannot come to an agreement on selection criteria (see the [news article on the Marmato case](#)).

#### Questions posed to LEA members

Do you think the Latin American LUPS objectives are viable? If not, what are the alternatives?

Regarding LUPS, how does your country/region compare with the Latin America experience?

Do you consider land use planning policies that promote extractive industries to be compatible with sustainable development goals?

#### Summary of the Exchange

It seems that in many African countries, such as Uganda, Nigeria, Zambia and Ghana, land rights have not yet been well defined, and are centralised, or are somehow contested, as demonstrated by the contribution made by Kweku Afari, WACAM, Ghana.

### Summary of the Exchange

It seems that in many African countries, such as Uganda, Nigeria, Zambia and Ghana, land rights have not yet been well defined, and are centralised, or are somehow contested, as demonstrated by the contribution made by Kweku Afari, WACAM, Ghana.

#### **Kweku Afari, WACAM, Ghana** .....

*“Every mineral in its natural state in, under or upon land, as well as rivers, streams and water courses throughout the country is vested in the President in trust for the people of Ghana. Also, where land is required to secure the development or utilisation of a mineral resource, the President may acquire the land or authorise its occupation and use under an enforceable enactment; the National Land Policy developed by the Ministry of Lands and Forestry in 1999. Section 4.5(a) of the National Land Policy states that, “to ensure the conservation of environmental quality, no land with primary forest cover will be cleared for the purpose of establishing a forest or tree crop plantation or mining activity”. Mining in forest reserves contravenes these provisions, however despite this, mining companies have mined the Kubi, Tano Suraw and part of the Nueng forest reserves and exploration work is on-going in the Bonsa Forest Reserve.”*



In this regard, some contributors, such as Ayokunle Christopher Dada, Institute Of Ecology And Environmental Studies, Nigeria, pointed out a key obstacle to the applicability of the LUPS in Africa.

**Ayokunle Christopher Dada, Institute Of Ecology And Environmental Studies, Nigeria** .....

*“Latin American policies and mechanisms described in the first and second modules are highly relevant to my country, Nigeria. However, applicability becomes a challenging issue particularly in the light of largely inexistent or not-well defined property rights system. Corruption, on the other hand, from my experience, tends to affect the success of consultation or financial compensation mechanisms as equity becomes threatened. Notwithstanding, these policies are feasible when visionary political leadership emerge at community, state and federal levels.”*

Regarding India, Sreedhar Ramamurthi, Mines, Minerals & People, India commented that many of the public agencies responsible for managing the country’s land resources have remained virtually ineffective.

**Sreedhar Ramamurthi, Mines, Minerals & People, India** .....

*“The National Land Use and Conservation Board (NLCB) is located in the Ministry of Agriculture, Department of Agriculture and Cooperation and serves as policy planning, coordinating and monitoring agency at national level for issues concerning health and management of land resources. (...) However, most of these have virtually remained non-functional. Therefore, while it is a very robust and effective mechanism for designating land use and avoiding conflicts, the recent example of the Go, No-Go areas initiated by the Ministry of Environment has seen lot of opposition.”*

However, we have learned that land reform is under way in Kenya and, in the opinion of Jarso Mokku, CEDMAC, the objectives of the Latin America LUPS are feasible in some African contexts.

**Jarso Mokku, CEDMAC, Kenya** .....

*“Major land reform is taking place and we are in transition towards decentralisation of power to a county-level system of governance. The new constitution provides a clear and elaborate legal framework and principles of land policy. However, the necessary legislation is still not in place and new structures and institutions for land planning are yet to be created. Article 60 of the new constitution provides some guidance, stating that land in Kenya shall be held, used and managed in a manner that is equitable, productive and sustainable, in accordance with principles of equitable access to land, security of land rights, transparent and cost effective administration, sound conservation and protection of ecologically sensitive areas, and encouragement of communities to settle land disputes through recognised local community initiatives consistent with the constitution.”*



The success of LUPS lies in good coordination between central, regional and local governments as expressed by **Sam Wong, University of Liverpool, UK** and **Kingsley Paul Essegbey, EnerWise, Ghana**, among others. Yet, the power relationships between them make the decision-making process very complex and the case study seems to illustrate this point (see the [news article on the Marmato case](#)). **Jan Magoro, Foundation for Ethical Youth Leadership, South Africa** is of the opinion that striking a balance between a broad spectrum of issues ranging from land for mining, environmental sustainability and resident communities is a complex issue, “the best policy option when dealing with land issues is to have a clearly proportionate Spatial Planning and Land Use Management Frameworks.”

## Week 2 Moderator’s Main Conclusions:

- Land tenure systems need to be developed as a foundation for successfully implementing LUPS in Africa. In the case of Latin America, governments have gradually improved their land tenure systems, mainly through three mechanisms: enacting land reforms in order to establish or re-establish land tenure rights; implementing land cadastre processes in order to register land property rights (as in Mexico, Peru, Bolivia and Ecuador), and; establishing territorial rights for indigenous communities (as in Colombia and Bolivia).
- There is a need to achieve consistent power relationships between national, regional and local governments and/or authorities with regard to land use plans. In several countries such as Tanzania, Uganda, Zambia and Ghana, either central states or local chiefs seem to prioritise extractive projects over the concerns of local populations. In Latin America, decentralisation processes have enabled the development of suitable political frameworks for LUPS implementation.
- In Latin America, one on-going challenge in the context of extractive industry expansion relates to land use and environmental protection. Better information can help decision-making. The document shared by **Julio Lopez, Grupo Faro, Ecuador** on [Environmental Impact and Rewards in the Ecuadorian town of Intag](#) is a good example of this.
- Politics matters. Political commitment from central and regional governments is vital to implement LUPS, and a combination of government interest and civil society involvement is key. Transparency and clear participatory procedures are required during the whole process to avoid a deadlock or permanent conflict ().





## Week 3: Issue for Discussion: Limitations in LUPS: Restrictions and Conditionalities for Extractive Industries

---

### Introduction

Land Use Planning Systems (LUPS) are a useful tool for defining and regulating territorial development. Yet there are many challenges to implementing LUPS, and some of these are demonstrated by extractive activities taking place in the Peruvian Department of Cajamarca, in particular, the Minas Conga project. The LUPS applied in this case was the Economic and Ecological Zonification (EEZ) tool. In the article [The Cajamarca EEZ Dilemmas](#), the author outlines the problems encountered with using the EEZ tool in the region. The [EEZ map](#) shows just how complex it is to undertake the zonification process. A diverse range of environmental and social data has to be gathered and discussed in participatory processes in order for land use planning to be considered a legitimate practice. Finally, the Moderator proposes that participants read an [interview with Carlos Monge](#), which provides a sense of what is at stake in the case of the Minas Conga project.

#### Questions posed to LEA members:

Based on these Latin American cases, do you think EEZ is a mechanism that is suitable for your country/region?

What sort of challenges would the implementation of an EEZ process face in your country/region?

Can you share some thoughts or examples of how you consider these challenges could be overcome in your country/region?

### Summary of the Exchange

During the exchange participants expressed the importance of understanding the similarities and differences between the Latin American EEZ tool and other land planning systems in order to better analyse possible policy improvements. For example, the Special Economic Zone (SEZ) in India has similarities with the Latin American one as mentioned by Amina Joseph, [Business & Community Foundation \(BCF\) India](#). But while the Indian SEZ is an economic based instrument designed mainly to foster extractive developments, the Latin American EEZ is an economic, environmental, legal and social based instrument designed to foster different forms of land development, including but not limited to extractive developments.

The issue of political commitment has been raised again this week by participants from India, Nigeria, Ghana, Kenya, Myanmar (Burma) and South Africa. Likewise, the issue of achieving consistent power relationships between national, regional and local governments in the realm of weak state institutions also emerged again during this week's exchange. From participant contributions, we learned that in several countries, such as India, Nigeria, Uganda, Tanzania, Zimbabwe, South Africa, Myanmar (Burma) and Ghana, central governments seem to impose extractive projects on local communities with no consultation processes (see, for example, the [Niger Delta Conflict case](#) posted by Ayokunle Christopher Dada, Institute Of Ecology And Environmental Studies, Nigeria), triggering a variety of conflicts that, in turn, undermine extractive developments.



The Moderator reminded participants that in Latin America, decentralisation processes have helped to generate suitable political frameworks for the implementation of LUPS and EEZ. He also highlighted the importance of building regional and local institutional capacity before promoting the decentralisation of policy responsibilities. For example, regional-driven EEZ implementation in Peru has faced several institutional and political limitations, so that some voices are now calling for a more centralised scheme.

**Dimetri Sanjeev Singh, [Mirada Global Advisors](#)**, US asked if the EEZ tool could be applied retrospectively. The Moderator commented that the EEZ technical report can show current land misuse by establishing a scenario for best use, but it cannot impose land use change. **Sudhir Kumar Sinha, [ArcelorMittal](#)**, India shared [an interesting case](#) of local people organising local land use by forming their own company and making land available for the development of a township. Although it is a compelling story, it is not a feasible model for state policy; it is a specific case of local people making collective land use more profitable. LUPS, on the other hand, are state policy tools (involving state design and participatory processes) for large-scale land planning based on economic, political and environmental issues.

**Uday Bhanu Sen, Tata Steel, India** asked about EEZ phases in comparison with the Indian system. The Latin American Moderator stated that EEZ implementation follows three main stages: i) The technical report; ii) The validation process and; iii) Plan approval. The objective of the Indian land use policy tool is different from that of the EEZ, as explained by Uday.

**Uday Bhanu Sen, Tata Steel, India** .....

*“But while the Indian SEZ is an economic-based instrument designed mainly to foster extractive developments, the Latin American EEZ is an economic, environmental, legal and social-based instrument designed to foster different forms of land development, including but not limited to extractive developments.”*

This comparative analysis was welcomed by the group.

### Week 3 Moderator’s Main Conclusions:

- Different land planning systems are in place in countries like Tanzania, Ghana and India. These policy instruments are comparable - even if different - to the EEZ tool implemented in Latin America.
- A combination of government interest and civil society involvement is necessary in order to achieve political commitment. Since the Rio conference in 1992, Latin American countries have signed several conventions committing themselves to develop policy tools for environmental protection. For their part, civil society groups have pressured central and local governments to comply with these commitments while respecting local priorities.
- Achieving social consensus over a certain LUPS or EEZ is certainly a challenging issue.



- On the one hand, different actors always express dissimilar ideas and interests regarding how land should be used. In this regard, EEZ is implemented via a three-step process. First, experts prepare a technical report suggesting the best use for land in economic, environmental and legal terms. In the second step, the experts' suggestions are validated by local organisations through a participatory process. During the validation process, local communities can accept or reject technical suggestions and even make their own suggestions for land use. In the final step, the state negotiates with social actors in order to get a final consensus. In most cases, EEZ cannot change current land use (i.e. mining projects) and must incorporate local rejections of proposed land use change. Thus, LUPS are political mechanisms to achieve some consensus over technical suggestions for land uses.

On the other hand, land, when viewed not as a commodity but as a social space, has a multidimensional value (cultural and historical, for example) that cannot be grasped through a one-dimensional approach (economic, environmental or social). LUPS implementation processes try to tackle this issue in two key ways. Firstly, the LUPS integrates an analysis of the economic, legal and environmental issues into the technical report. Second, other land 'values' are integrated into the analysis via participatory validation of the recommendations. In many cases, this consultation is still a limited and restricted process, in particular in cases where certain social actors have more political clout than others.



## Week 4: Issue for Discussion: Land Access: Getting Social License –Territorial Rights and Property

---

### Introduction

Over the last decade, several Latin American countries have changed their policies concerning access to land for the development of extractive industry projects, moving away from land expropriation practices towards social licensing. Within the social licensing model, governments have been developing new land policies and instruments aimed at involving local communities in land transactions. In addition, some governments have granted land and property rights to local and peasant farming communities and, in some cases, have officially recognised indigenous territories.

To provide background to this discussion, the paper [Land Use, Land Cover and Soil Science](#) explains different forms of land use and management, in particular sections 5 to 7 that discuss land use and tenure value, and provide a rationale for land management practices. In addition, the hyperlinked videos show two different proposals for granting land rights to local people; while [de Soto](#) argues for land titling even for indigenous people, [Colque](#), based on experiences from Bolivia, supports indigenous territorial autonomy.

#### Questions posed to LEA members:

Looking at the Latin American story, do you think policies aimed at involving local communities in land transactions are viable in your country/region? If not, what are the alternatives?

In your opinion, what are the challenges of granting territorial autonomy to indigenous communities in your country/region?

What conclusions/lessons can we draw?

### Summary of the Exchange

Several participants have noted the potential applicability of Latin American land tenure policy instruments in African countries, but with certain adjustments to their socio-political contexts.

States should be careful not to impose one vision on different indigenous groups who hold different legal, economic and cultural views. Certainly, in most indigenous groups, land is a multidimensional concept that cannot easily be reduced to a legal right or to an economic value. For example, [Sudhir Kumar Sinha, ArcelorMittal, India](#) [attached an article](#) that traces the transformation of land from natural commons to capital in four historical phases, with a special reference to the Munda tribe of Eastern India. It argues that for indigenous people the effects of privatisation of natural commons have gone beyond the loss of their livelihoods, affecting the integrity of their communal life.

In addition, [Fernando Ponce, Environmental Activist, Ecuador](#) commented on the limits of social licensing policies in Bolivia and Ecuador. He attached an [article](#) describing the conflict between the state and indigenous people over the construction of a road in the TIPNIS (Indigenous Territory and National Park Isidoro Sécuré). The article describes how the Bolivian state has agreed to start a consultation process to secure a social licence after



a series of large-scale demonstrations. However, during the consultation process, the indigenous communities were made to choose between two undesirable options. Again, it seems the Latin American experience is diverse and we should appreciate that policy changes are often gradual.

**Subhasis Ray, Xavier Institute of Management, India** asked how the Latin American and Indian contexts compared with respect to state presence in industrial development. In Latin America, two historical patterns are clearly identifiable. Over the last 40 years, most countries in the region have reduced the role of the state in the national economy following the implementation of neoliberal policies that have encouraged a primarily export-driven economic model. However, over the last decade this model has begun to change as state-run companies have once again increased their economic presence, mostly in the extractive sector.

### Week 4 Moderator's Main Conclusions:

- In Latin America, most land is privately owned while the state has, in some circumstances, recognised indigenous property and/or territorial rights. However, defining indigenesness can present a challenge. In addition, there may be certain constraints, such as underdeveloped land markets, that impede the development of social licensing strategies. In any case, there is reasonable consensus that clear and socially legitimate land tenure systems represent a useful first step to creating an improved set of circumstances for applying social licences in extractive projects.
- The lack of active (and legal) participation by the local community in extractive projects seems to be a problem in many countries. To encourage participation, states need to establish clear tenure rights. This means recognising peasant and indigenous communities' customary rights by granting property/tenure/territorial rights. On the other hand, states also need to bestow some degree of political rights (i.e. consultation rights) to rural communities through administrative and political decentralisation processes. It is worth noting that local empowerment in Latin America has most often resulted from two intertwined processes: state decentralisation and civil society organisation/mobilisation.
- In relation to local empowerment, some contributors have pointed out the complex relationship between states and indigenous communities. In several countries, states are trying to impose legal frameworks that fail to recognise customary laws or practices regulating local social life (i.e. land transactions) adequately. In this regard, states need to take into account specific historical backgrounds while being flexible in reconciling national and local expectations and interests.
- Although Latin American states have gradually begun to acknowledge some customary laws and local cultural and political rights, an on-going challenge is understanding the interplay between local customs and national or even international legal frameworks. In this regard, participants are recommended an [article by David Szablowski](#) on the case of Antamina, a large mining project in the Peruvian Andes.



## Week 5: Issue for Discussion: Obtaining Social Licence for Land Access-Compensation Methods

---

### Introduction

Obtaining social licence for land access requires not only providing land tenure security but also establishing compensation methods for land use changes. In Latin America, the two main issues regarding land use compensation are how to determine the value of land and the land transaction type, namely purchasing, leasing, or sharing. These considerations have brought up additional issues such as property rights of the subsoil and whether communities should be shareholders of extractive projects. In this discussion, participants expressed how these issues are emerging in African and Asian countries rich in mineral resources.

To facilitate discussion, two documents and one video were shared. Firstly, the [ELLA Policy Brief: From Expropriation to Social Licence: Accessing Land for Extractive Industries](#), which outlines land access strategies in Latin America. Second, in the article [Land Rent and Value In the Peruvian Andes: Reflections Upon New Mining Land Transactions](#), Manuel Glave, Senior Researcher at GRADE, presents the concept of 'absolute rent' and how it applies to land transactions for mining in the Peruvian Andes. Finally, **Community Director of Rio Tinto Mining Corporation in Peru**, [shares in an interview](#) the ways in which mining corporations deal with the issue of land access and compensation for extractive use.

#### Questions posed to LEA members:

How does your region/country compare with the Latin American context?

Do you think that compensation methods used in Latin America could be applied in your country/region? What would the limitations be?

What other methods for valuing land and providing compensation exist?

### Summary of the Exchange

The exchange highlighted several constraints that would make it difficult to implement the compensation methods proposed from the Latin American experience in Africa and Asia. On the one hand, several participants raised the issue of political land control. In countries such as South Africa, Tanzania, and Ghana, community land is either centrally owned or controlled by the state. Thus, companies and states negotiate land access with very limited local participation. In countries such as Uganda and Zambia, community land is controlled by local chiefs who privately negotiate land with extractive companies, again with very limited local participation. In this regard, the contribution of **John Tembo's, Zambia Revenue Authority** provides an interesting description of typical chief-company negotiations in Zambia.



### John Tembo's, Zambia Revenue Authority .....

*"Here in Zambia we do not seem to value land the same way as in Latin America. Much of the land is in the hands of traditional authority. The government and investors can go and negotiate with traditional leaders when they need land. The government will come in to formalise the transfer of traditional land to investors by issuing title deeds. The fees for the application forms charged by the Ministry of Land and its agents plus the property transfer tax charged by the Zambia Revenue Authority are the income from the sale of land by landowners that accrues to the government and ordinary people of Zambia. Therefore, valuation of land is dictated by the owner of the land, traditional rulers and powerful politicians. It does not matter what type of land it is and whether it is endowed with rich mineral and other natural resources. The value of land in Zambia is speculative and shows how badly central government has failed to appropriately give national guidance on the marketing of land. For instance, a person may apply for a plot of state land and pay for the application form at the Ministry of Lands that may cost an equivalent of \$10 to \$15 but resell the same plot at more than \$50,000. It takes a long time to obtain a title deed and the poor are often disadvantaged. This has bred corruption within the Ministry of Lands and its agents. Officers in such institutions will acquire many plots for speculative reasons to resell at exorbitant prices. In some local councils, there are employees who can go for months without receiving a salary and depend on incomes from such speculative activities."*

On other hand, some participants pointed out that legal and market conditions have constrained proper land transactions. For example, in Zambia, land markets are so underdeveloped that it is effectively impossible to obtain a "fair" market value, as explained by **John Tembo**. These kind of conditions (unless they really protect community land) generate fertile spaces for the abuse of power and corruption. This increases the risk of land dispossession and damage to livelihoods as a consequence of the expansion of extractive and agricultural industries.

Some contributors commented on Latin American experience with land use compensation methods. **Sydney Machafa**, [HelpAge International](#), **Mozambique** considers that providing company shares to local communities would be the best compensation method though it is not yet established in law in most countries. In general, contributors that support this method argue that this is the only way to rightfully include communities in extractive business. Conversely, critics assert that this would further disrupt local (non-capitalist) ways of life.

Some participants shared other compensation methods used for land biodiversity conservation (rather than land use). In this regard, one interesting experience is the [Tchuma Tchato programme](#), also mentioned by **Sydney Machafa**. The programme established a mechanism of tax revenue sharing (33 percent for local communities, 32 percent for local governments, and 35 percent for the national tax system) as a way to motivate local communities and local governments to participate in conservation. This programme highlights the role that central government can play in promoting community development.

**Juan José Herrera** posed a question about the role of the state and the private sector in managing conflicts. The Moderator stated that this is a very important issue related to how governments define the public or private authority in society. During the 1980s and 1990s, most Latin American countries implemented structural market reforms, delegating a larger role to private companies in managing local conflicts in the hope that they would follow principles of Corporate Social Responsibility. While this model has resulted in some interesting participatory techniques (including consultation procedures and transparency policies), it also faces a key constraint since companies work to maximise private benefits, and not to advance the public interest. As such, this model is now being reconsidered and more state-driven mechanisms are emerging.



## Week 5 Moderator's Main Conclusions:

- Compensation methods are not easy to implement in particular with regard to indigenous land. However, several countries have tried to deal with local participation and market issues by establishing land rights and participatory standards in the development of extractive projects.
- These changes have sometimes triggered conflicts between states, companies and communities who want to negotiate compensation on better terms. While in the short term, this could certainly delay extractive projects, over the long term it can lead to more socially sustainable developments. In this regard, participants are invited to review [Preventing Conflict over Land: Exploring the Role of Business and the Value of Human Rights Approaches](#) posted by David Allan, Spectrum, Myanmar.





## MODULE 1 GENERAL CONCLUSIONS

It is clear from the contributions that Latin American land policies for facilitating sustainable extractive development need to be adjusted to national and regional social contexts in order to be applicable in Africa or Asia. In this regard, three specific issues are of importance: land tenure systems; land value methods; and land transaction types and legitimisation procedures.

In Africa and Asia, different tenure systems exist and in several cases property and/or land use rights are not clear and/or are not recognised by local populations. In Latin America, most countries have established two kind of rights over land: property rights (individual or collective); and territorial rights (reserved for indigenous communities). Other types of rights (i.e. land use rights) can be considered in accordance with a specific social context or customary rights. The document attached by Jarso Mokku, [CEDMAC](#), Kenya on the [Kenya Land Reform Progress](#), the documents on [global guidelines](#) on [land tenure](#) provided by David Allan, Spectrum, Myanmar and the [Land Coalition website](#) are good sources for further knowledge.

Contributions highlight a variety of legal procedures and mechanisms, but also raise one important question: who should be responsible for designing and regulating land transactions and compensation methods? In Latin America, the market regulates most land transactions, while compensation methods are proposed by both states and private corporations. However, our experience has shown that greater state and civil society involvement contributes to more effective regulation of land use in extractive projects. Since using land for extractive industry activities is socially sensitive, some kind of political consensus may have to accompany market transactions.

There is a need to develop participatory and transparent mechanisms, such as consultation, in order to contribute to consensus building over extractive industry land use. We have previously acknowledged the cultural value of land, but it is also worthwhile remembering that land transactions are just one step in a long process to secure and maintain social licence for extractive developments. As **Sudhir Kumar Sinha**, [ArcelorMittal](#), India pointed out, maintaining local consent for extraction also involves safeguarding local access to common resources such as timber or water. In this regard, any agreement for extraction (under the social licensing paradigm) is effectively a long-term contract between states, corporations and local populations.

### CONTACT [GRADE](#):

To learn more about extractive industries in Latin America, contact the Moderator, Gerardo Damonte, Principal Researcher at GRADE, [gdamonte@grade.org.pe](mailto:gdamonte@grade.org.pe).

### FIND OUT MORE FROM [ELLA](#):

To learn more about Latin America's extractive industries, visit the [ELLA website](#), which has a full list of the knowledge materials available on this topic. To learn more about other development issues, browse other [ELLA Themes](#).



ELLA is supported by:

