

TRANSCRIPT

"IMPACTS OF STRATEGIC LITIGATION ON INDIGENOUS PEOPLES' LAND RIGHTS"

A conversation with Lucy Claridge, Jérémie Gilbert, and Rodrigo Villagra

Moderator: James Goldston

Recorded April 27, 2017

* * *TRANSCRIBER'S NOTE: some accents are difficult to understand.* * *

ANNOUNCER:

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JAMES GOLDSTON:

My name is Jim Goldston, the director of the Open Society Justice Initiative. And-- very pleased to be collaborating with our colleagues at Minority Rights Group and-- ESCR Net-- in presenting this-- panel discussion on the occasion of the release of a new report on the impact of strategic litigation to vindicate indigenous people's land rights. Executive summary is in print. And here, the online version is available. And the full print will be distributed very, very soon. And-- I should say-- the Justice Initiative in Open Society-- is very pleased to be involved in this effort.

The report on indigenous land rights litigation is part of a larger multi-year project that my client, Erika Dailey, has been-- shepherding-- ruthlessly and relentlessly and with great effect. It's a-- it's a project that has a very-- immediate-- institutional interest.

Because the Open Society Justice Initiative engages in litigation, much of which we like to think of strategic, anyway, in many parts of the world, with many partner. And Open Society Foundations is one of the largest funders of litigation by many folks in the field of human rights around the world. So we have a-- perhaps understandable interest in-- exploring and interrogating what's the value of the litigation that we are

engaging in or supporting. And with what effect. But I think, as well-- we thought there are-- broader interests at stake-- in addition to our own that animate-- these-- these studies.

One of which is that while there have been a number of-- studies in the academic sphere and others that are aimed primarily at the litigator level-- how to do effective litigation, which of course is critical. We thought it was important to look more broadly, through the lens of the social change actor, someone who is seeking to effect change in a particular area, thematically, geographically.

And asking how do I do that or how-- how do I and my community members and allies do that? And what role does litigation, if any, play in conjunction with the range of other tool that people use to bring about change in the human rights field. And so we thought that we would try to make a contribution with this range or partners by rooting the research-- and the-- the-- the activity very much in the-- in the minds and in the hands and the-- the-- the-- the-- the emphases of actors in the field.

So while this was guided-- the studies have been guided by an extremely reputable-- group of advisors-- the-- the principle-- the-- the-- the principle questions emerged, frankly, from the actual practical challenges that actors engaged in a range of human rights areas, are in fact confronting.

So that this can be as useful as possible for them as a tool. And I guess, finally, as well, we felt that this is-- an important thing to do. Even though we started this a few years ago, we feel it's become even more important with the wave of nationalist populism that has-- taken over broad parts of the world, including right here. Which has impacts on-- various kinds of political organization and the ability to-- air certain grievances. And in many ways-- courts have become even more important as a space for people to raise concerns, as a space for people to-- trigger independent scrutiny and sometimes public comb-- condemnation of government action.

So-- we feel that that-- that the-- the question of what impacts litigation can have has grown only more urgent. Now, as I said, this is-- a-- the-- the study on indigenous people's land rights is one in a series. We're also looking at-- the situation of equal access to quality education in a number of countries.

And-- we'll be coming out with a report-- later on, as well, on-- litigation-- to-- secure redress from custodial torture. And then we'll be kinda pulling these together to see what-- general lessons can be learned. But we didn't wanna wait until it was all done before-- presenting the really interested findings-- that-- that are-- that are in this-- this report on land rights here.

And-- before going, I'll just say one other thing, that-- the-- the studies have been framed to look at three broad categories of impact. So-- recognizing that there's no right way to-- to define these. But loosely, we've been thinking that one category is material impacts-- compensation or other-- immediate benefits to the parties to litigation.

Secondly-- institutional changes, policy changes, jurisprudential changes that may result from litigation. And finally-- discursive or at-- attitudinal changes, changes in a

public agenda, the symbolic-- role of litigation in affecting the way peop-- people think about, speak about and ultimately act to bring about change. So with that, as a preview, we're thrilled to have-- three superb-- panelists here-- to-- talk about these issues. First of all, to my-- far left, is-- Rodrigo Villagra Carron, who is the president of Tierraviva A Los Pueblos Indigenas Del Chaco in Paraguay, the leading litigation and advocacy organization working on behalf of the rights of indigenous persons.

Who litigated the landmark Sawhoyamaxa indigenous community versus Paraguay case that I think we'll be hearing a little bit more about before the Inter-American Court of Human Rights. To my immediate left is Jeremie Gilbert of the University of East London, who's a professor of International and Comparative Law.

Jeremie is the author, the principle author of the study. Did an extraordinary job and we're thrilled to have him here-- as well. And is really one of the leading experts on the field of-- indigenous person, indigenous land rights. And finally, to my right-- Lucy Claridge-- who directs litigation at Minority Rights Group. Has been deeply involved in the indigenous from Kenya involving the Endorois Community. We'll be hearing about that.

But is involved in a range of indigenous touching on these issues. And gratefully for us-- Lucy kindly served as an advisor to-- the project in this report. Our plan is to hear-- brief presentation from each of the colleagues in turn. I'll follow up with some questions. And then we'll open it up. And-- very much welcome an interactive discussion with colleagues-- here in the audience. So with that, Jeremie, if I can ask you to begin, please?

JEREMIE GILBERT:

Hello, everyone. Please to meet you. And for those of you that were already at the lunch early on, sorry to impose myself on you again. So I'm gonna take seven minutes to give you a summary of the main finding of the reports. So basically, it won't be everything. So I really invite you to go to the report itself. It's not that long. So briefly, to place where this is coming from, it's-- even though we've been looking at three countries, namely Malaysia, Paraguay and Kenya-- we aiming at talking at the global level.

Litigation for-- on land rights has really become global over the last ten years. It's been present before. But over the last ten years, there's no country in the world when these peoples haven't started to go for litigation. So this is really much where the study's placing itself.

The reason we choose those countries is to give ourselves the five-years period to go back to the communities and see what happened after a case. So-- like all the studies-- part of this project, it's called a 360. So it wasn't (UNINTEL) the communities went to the medias, politicians, judges, lawyers to really get a sense of what is the impact. So what I'm gonna take you very briefly are the main bites on impacts on the three that-- Jim has just mentioned. Before I do that, even though I'm at the podium, this is

not a one-man show. My colleagues here, Kenike (PH), from Kenya, Jorell (PH) works on Paraguay and Colleen from Malaysia, taking picture, are very much also the authors with me.

So we work very close together on this-- to make sure that's what is-- coming from the ground is representates (SIC) in the-- exactly f-- based on the facts. So-- what we find was common is-- as I said, early on-- the word, "strategic" was a bit problematic when we started.

Why? Because indigenous peoples, when they start to go to court, it's not strategic. It's just the last resort. It's just your land has been taken away. The government is telling you, you don't have any right on that land. And basically you've tried all the option. What's left you is to go to court. And again, that's for the country where the rule of law is possible. So what we've learned is the word, "statistic" is not (UNINTEL) and that's why it's still on the title. Because what all communities have said, it becomes strategic.

It wasn't at the start. But then it become very strategic in the struggle for land rights. So indigenous becomes one of the tool-- the other tool that are there. And what also has been important-- it's to understand that despite all the community have been f-- facing extreme challenge in term of getting to court.

I guess many of your are litigators in this room. Land rights cases are very special in the sense they take even longer than any case you can imagine. Because the burden of proof is immense. It's actually totally unfair. It's put on the indigenous people that live on the land to prove that they live on the land. And they've done so. That takes an immense, long and painful process for communities. The cases we're talking about usually take ten years to arrive to a decision. What also was common, the very poor implementation. You might win in c-- in the courts, but that's not the end of the road. But what communities have been clearly in those three countries saying it's that despite the poor implementation, they're still glad they went through the process and they still will do it.

And they still recommend to their colleagues to do the same. So why is that? So I'm gonna take you through material (?) impacts. 'Cause-- of course, the main question is do you get the land demarcation, do you get the land restitution. I wish the answer was yes. But it's not like this. It's a bit more complex.

It's not totally no. It's not totally yes. It's something between. What really is the learning point is litigation is rather the start than-- rather than the end. If-- despite the ten years that I just mentioned, you start litigation, you win a case. But actually, you start the process of implementation. When I say (UNINTEL), you start-- it's the legal team, it's the communities that have to engage and push the government to really follow what the court have been saying. And that is part of the process. And that's been common for the communities.

So it's not that there's no land restitution. And some of my colleague here will talk more about the details. And-- there's a lot of details in the report. So I invite you to look at that. But overall, there's been a bit of restitution, but not that much.

There's been also material impacts in term of economic benefits-- recognition of the value of the land and et cetera. Now, in term of the other factor we look at, it's legal and political. And in term of the political impact, the main thing is mainly institutional. We don't see massive change in the political apparatus of the states or the approach to-- towards indigenous people. Which, I should say, is massively discriminatory in all the countries. The change really comes from states in the three countries, when they've been victor in courts.

They actually established specific institution with mandates. You can look at the detail, that are not so strong. But nonetheless, institution that are in charge to look at the implementation or process, (UNINTEL) task force. It says a lot in the sense of the (UNINTEL) trained to think about what would be in the eventual implementation.

But nonetheless, we also see parallel Involvement of institution like National Human Rights Commission that were not so active that-- because of the litigation, get more interested and are more open to receive-- those claims. The impact on the legal system, as I said, usually-- and that's quite (UNINTEL PHRASE) peoples.

They are in a bad situation when they start where the legal system, the formal legal system just say, "You don't have the right to the land," that simple. What the court decision are doing is to say, "No, actually, there's space for other form of ownership of the land."

That's create a space in the judicial system. So that's one of the important impact, is to challenge the often colonial legacy that was left on what is land possession, that it can't be collective, it can't based on customary law. So there's an opening. I'm not saying it's perfect. But the courts are actually opening a gate there to challenge this dynamic. In terms of-- the third impact, which was about the behavior, which is actually the most challenging one was to measure this-- we divided the task on looking at the communities and the non-communities, so the medias, politician, et cetera. For the communities, it's been quite clear that-- the main word that came across was empowerment. And I think the best summary I got from one of the quote from the-- from some of the victims was the right to have rights. It's basically this notion that you're not anymore a squatter on the land.

You just actually have a right to the land. Whatever the implementation, it's just this process of recognizing this is a right-based approach to-- to it. What was connected to this many communities-- have been saying that it was a motivation factor in the struggle.

Remember I said litigation come usually as a last resort when all-- everything has been tried. But this litigation actually provided a new momentum in the struggle. It's providing motivation by the community and-- Lucy will talk more about the equation, the participation of the community. But that was a very vi-- big, vivid-- clear statement from all the communities across the three countries. There was also-- it's not only positive. Many communities, and especially in Paraguay, have been saying, you know-- last resort, we go to court. We win, no implementation.

That create a lot of disillusion and disempowerment. If nothing happen then the

question is what's next, once you've exhausted everything. So there's also-- there was also this problem of lack of implementation, what is next, what will happen.

And maybe to put it-- straight away, one of the main finding and recommendation is actually on this. It's-- any lawyers, litigator-- engaging in this needs to realize winning in court is not the end, it's the start. The post-strategy litigation is very important to work with the communities even before the decision is made. In term of the changing society-- there was very little evidence of impact on the challenge on the largely racist and discriminatory approach of the mainstream society towards indigenous communities. There was evidence that some of the local media picked up and started to acknowledge that there was indigenous communities in the local vicinity (?).

But again, the poli-- that wasn't really something that came strongly on challenge. It doesn't look like litigation actually challenged the mainstream vision of indigenous peoples. I'm getting there. (CHUCKLE) The also-- maybe a bit negative impact of indigenous was the increase of violence that (UNINTEL)-- be created. The imbalance between the communities-- the neighboring communities. But also the reaction of the governments after winning a case.

We've seen-- communities being targeted, leaders being targeted-- because of the engagement in the litigation. So to conclude-- the three words that-- the studies putting forward, there have been three main effects. One is the unlocking. What we mean by unlocking is, as I said, the narrative of the state was, "You don't have any right on that land. It belongs to the government."

That's-- litigation has allowed to unlock a bit, this dynamic, and to challenge that. And it's links to the second aspect which is the re-framing. Trying to re-frame the narrative of this possession of-- indigenous people being squatter to be seen as actually entitled to rights to the land. And the third important-- element is the participation. And I'm gonna conclude on this 'cause my colleagues will touch on this.

But really for communities, they've been clear that the whole process of going to court, working with their legal team with the NGOs that are supporting has been extremely important in the narrative of the community building the case and getting-- a sense of community. An important aspect was the evidence of the land. You know, how do you do the mapping, how do you prove who has the right to the land, the participation of the woman, the younger, the older in this process of proving the possession of the land. So on that note, I'm gonna pass on to my colleagues. They will develop a bit more on those three aspects and (UNINTEL) in the question to develop much more on this. Thank you.

JAMES GOLDSTON:

Thank you, Jeremie. It's-- it's hard to summarize so succinctly. And you've done a fabulous job. A report of such-- comprehensiveness and depth. Lucy-- I wanna turn to you, but I'm-- I'm tempted to ask and-- we can-- you can touch on it now or we can

touch on it later.

But-- where Jeremie started, actually, is-- in some ways-- makes sense. Some ways, it's counter-intuitive. Yes, he says that strategic litigation, the-- the study found-- in this field is not a construction. You know, lawyers, we go to these meetings and think about how are we gonna put together the various elements, what's the kind of case we want to create. But he says that's not how it's happened.

It's happened because people are forced to a certain situation. They've tried everything else. Nothing works. Their backs against the wall. And they have no choice but to go to court. That's how they do it. And the case over time acquires strategic aspects as they marry it with other tools and other forms of advocacy. I'm just curious, does that-- does that represent your experience in this work?

LUCY CLARIDGE:

Thank you, Jim. So-- I'm speaking from-- my experience working on-- litigation-- for indigenous people's rights in-- in eight years in Eastern Central Africa. But also MRG's experience more over the last 15 years. In terms of-- the strategic nature-- nature of MRG's-- involvement in-- in the litigation, I think-- when we first became involved in the Endorois case, we could see it actually was very strategic-- on-- on an international level and on a regional level.

And we looked first at the Inter-American system and all the precedents that had already been created there-- recognizing indigenous people's rights. And we can see that this hadn't actually been reflected within African regional jurisprudence. And therefore we felt that there was a need to-- take a case, on behalf of the Endorois, to the African Commission.

And for the African Commission to establish the rights of indigenous peoples and recognize their rights over land, their right to culture-- religion-- their right to livelihood. And so for us, it-- it-- it's-- it-- it was strategic. I think that the Endorois would have a different perspective, because they really were in a desperate situation. They had been evicted from their homes in the 1970s. They'd spent nearly-- well, 30-- 30-- 35 years before they came to us. They'd been through national litigation. They'd been through national advocacy. And it hadn't led anywhere. So coming to us was a bit of-- a bit of a last resort. Luckily, it-- it was successful in terms of establishing a statistic precedent. But there is still obviously a lot of work in terms of implementing that precedent.

JAMES GOLDSTON:

Great. Thank you. Do you want now to elaborate on any of the points that Jeremie-- please go ahead.

LUCY CLARIDGE:

Sure. So-- I was going to-- talk a little bit about-- what-- Jeremie touched on, the litigation for indigenous communities being very-- protracted, very onerous, very unpredictable. And those of you in the room who are lawyers or those of you who've been involved in litigation may think, "Well, why is that so different to other litigation? Why is that so different to other national, regional, international litigation?" And I just wanted to offer a bit of perspective of the challenges that that actually poses for indigenous communities.

So first of all, in-- indigenous communities will often be very large. The Endorois, for example, number approximately 60,000. The Ogiek, another community we work with in Kenya, about 35,000. It's not just a case on behalf of one person or-- or two people. It's that there is a real need to keep them involved in the litigation throughout this whole lengthy process.

And that's a very difficult thing to do, actually. There's a c-- need for constant outreach. And there's a need for-- engagement with civil society representatives on the ground. And-- to keep-- to s-- to make sure that they stay involved and understand the process throughout-- throughout the whole of the litigation. And then through the-- the post-litigation period, the implementation. Secondly-- the events leading to the evictions-- may have happened years ago. There will be numerous violations, as I've already touched on.

This won't-- this isn't just about the right to property or natural resources. It's about people's livelihoods. They will be living, often, in very destitute circumstances. And they will be very open to divide and rule. And so-- and certainly in the case of-- again, the Endorois, some people did come forward and give evidence-- on behalf of the government.

So again, there is this need to engage with this whole-- whole vast community, these vast communities and-- ensure that they understand the process. And to keep them behind, to keep them together, to keep them united. Thirdly-- another effect of the evictions is that community who are physically often been together, will actually have been scattered across a very wide area. Again, so there's a need for-- for a lawyer or a team of lawyers working on-- working on a case-- to actually go out and-- and visit them and to regularly do that, to keep that-- to keep them together. And you need to take evidence of whole swaths of-- of-- different people in the community. So from women, from the elders, from youth. Because the-- the evictions will have had a completely different effect on-- on-- on different-- on women-- for example, in comparison to the effect this will have-- taken place for men.

And then I think also Jeremie also t-- t-- touched on this need to have a very long-term strategy. Unfortunately-- even successful before the courts, governments-- for various reasons, whether it's lack of political will, whether it's r-- respecting the interests of investors, they-- they don't wish to implement these judgments.

So really, before you start the litigation and throughout the litigation, you need to be

thinking, "How are we going to implement this?" And you need to be conducting national advocacy engaging with-- local human rights, Sonbursemen (PH), for example in-- in Kenya we-- particularly involve the Kenya National Commission on Human Rights. And-- so litigation is just a tool. But there need to be a whole raft of other-- other-- other methods-- that-- that-- that go alongside the litigation and-- and compliment it.

And lastly-- Jeremie also touched on-- the harassment that can happen for lands rights offenders. This is happening unfortunately more and more. And particularly in-- in-- in Latin Americas. But it's-- been very high profile recently.

So organizations can-- we have used-- (UNINTEL PHRASE) used-- paralegal training to empower-- communities so that they understand what their rights are. And so that they can go and-- represent-- victims-- who are perhaps-- silenced through-- through-- criminal action. So because-- 'cause lawyers may be far away and they live very remotely.

This is another way of-- of empowering and bringing together unity. So-- in conclusion-- I think the-- the-- the two points I will raise are that, yeah, there is this-- a huge need for unity. There is a big need for a long-term strategy. But this has big implications in terms of the resources, the amount of-- of investment and also the level of engagement for-- strategic litigation for indigenous peoples. Thank you.

JAMES GOLDSTON:

Thanks, Lucy. So I'm-- I-- I-- (CHUCKLE) I'm provoked by so many comments. I'm-- I'm-- (CHUCKLE) I'm thinking where to go here. First of all, I think it's important to acknowledge that there is not-- at least in the terms in which the report uses the term, I think.

There's not a self-identified member of an indigenous community on this panel, although there are some in our r-- in the room. And there were a number-- certainly at the meeting we held today at the United Nations. But obviously, those voices are critical to this dialogue.

And I guess, actually, that does move me to ask, in light of the observation, Lucy, you just said that-- you know, the importance of-- lawyers visiting communities, having r-- maintaining very close contacts. You used the term, "important to keep them together, keep them united."

Who's agency are we talking about here? Who decides? Jeremie, in your experience-- and-- and I-- just-- yeah. Let me just ask you on this. So what did you find? I mean, who's deciding on these cases? Who's deciding whether to pull the trigger and go to court? And what decisions are made about the way that is done in these cases? Did the lawyers do that? Did the communities do that? Did somebody else do that?

JEREMIE GILBERT:

I'm gonna outside this-- (CHUCKLE) the report, actually, and just on the case I know that I worked on, which is in Uganda. So the Batwa are very-- marginalized in Uganda. They live on the volcano between Rwanda and Uganda. They've been chased from the park. It took them ten years to decide to go to court.

But-- they did. NGOs were clear, "We're gonna take the time despite being really pushed." That's why I said they are extremely marginalized. The racism is huge. People are tellin' me, "But Jeremie, they're not human. Why do you work with them?" It's that kind of racism you're facing.

Despite this, they didn't want to attack the government in their own world. So the NGOs, plus the communities that they created their own NGOs, realized that there was no way out. That they had to go to court. They went back to all the communities, 'cause the same situation here, it's a bit smaller. We're talking-- only about 6,000 people. But they live in a very scattered areas. All the leaders took the time to go back to explain what is litigation, what it means. It took three years. But it became clear that the 6,664 people wanted to go to court.

I was a bit blown away, you know, (CHUCKLE) arriving there like, "Oh, wow, three years." But then I'm so glad because, you know, whatever happen in the court, they are so strong. And again, it's not the whole community can stay united all the time. There's a lot of, you know, money-- there's a lot money involved in those lands. And-- but because the decision was a collective will from the start, it's harder to break. So my an-- answer, it's-- it takes time. But many communities said, "So what? We've been there for so long. We've been oppressed for so long. What is two years in that time?"

So I think it's for lawyers and NGOs to understand this process that in a way, we're just witnessing, we're just there to support when we've been asked on, "What is their determination really means in this context?" But that's pretty much it.

The rest is the community actually doing that. They could've decided we not go to court. And that's-- that's-- so I know-- I-- I can only talk-- this is the only case where I've been really involved for a long time. But I guess, Lucy and-- also you can talk about this. But-- every single case basically takes a lot of time. But it's-- it's important to give that time.

JAMES GOLDSTON:

Great. Thank you. No, we will definitely-- come back. We can return to this theme. I do wanna get Rodrigo into the discussion. Rodrigo, you've been-- one of the leading litigators on Paraguay, a country which, if I'm not mistaken, has seen more litigation before the Inter-American Court of Human Rights and the Inter-American system more generally on these issues than any other countries in the Americas?

RODRIGO VILLAGRA:

Yeah, (THROAT CLEARING) that's right.

JAMES GOLDSTON:

What's-- what's the experience-- that you-- that you've had there?

RODRIGO VILLAGRA:

Well-- actually-- (CHUCKLE) talkin' about time, I want to talk to time before litigation for a little bit. So exactly (UNINTEL PHRASE) have, like, five cases. And two of them were, like, friendly agreements. So three of them not actually cases taken before the court.

But-- I don't know whether considering we're-- we're talkin'-- when a strategic litigation start. From our point of view at some point, we were trying to a national level strategic litigation. You know, once the-- there was a coup d'etat against the dictator. There was a guy who found the Terraviva and supported 13 communities and say, "Well, now we have to go bold and we have to go public and we have to be very political." Not doing the-- what the kind of support that other NGOs were doing, like just, you know, taking the cases-- before the-- state agencies.

Not doing, like, much support, much noise on the press and not confronting especially the land owners who had sites, the land of the indigenous people. So the strategy was there, when-- "We going bold now. We're goin' in public. We're go to-- show how evil are these land owner." They were able but-- they were, you know, doin' the whole span of their evilness like-- and-- that one have backlash.

That actually-- in the '90s, some cases-- actually some-- some land owners just gave out and say when there-- there was some money in government-- because there was another fight just-- just to get the money to compensate the-- the land owners. They-- they have to be compensated. And-- well, some of them just gave up and say, "Well-- I say (UNINTEL)." And that was one of the friendly agreement. But the others just become-- harder. And said, "You know, this-- this are poor. They don't work." And many of the land owner were like politicians themselves. So when it comes the time when we have to take to (UNINTEL) law, then the-- the-- the momentum went higher. And then they were harder.

And actually, then when-- when we go the-- the backlash and the-- happen, what we say-- "What now?" And the people say, "What now? You know, we had lose this probation (?). What is left? We-- we lose in the national (UNINTEL). And there's nothing else that we can do."

You know, is it parliament? We have some-- sometimes, like, some alliance in the executive. But the parliament says no. And from the-- the-- s-- the beginnings-- 20th Century, like, 21 Century, they-- there-- haven't been-- any kind of laws related to

indigenous people that has passed through the parliament.

So it was really blocked. And actually it was kind of-- we say, yeah, ideological kind of con-- conspiracy. And so the three cases, like, we're blocked in the parliament. And that's when we decide to go to the Inter-American court. And then it's how Jeremie described. Like, people had to-- we-- we, in the process, like, say, I-- I began as-- as a law student Terraviva.

And-- in-- (UNINTEL) as an anthropology doctor. You know, because actually we needed to-- to-- to-- find out the arguments and really stronger and better and wiser-- like arguments about, like, the economic order-- or-- order like-- related rights to land. And to show, like, that people die (?) when-- when-- expecting to get back the land. People have no education, have no health service, they have no opportunities, they-- they couldn't go even hunting because the-- the confrontation with the land owner was big.

So that's why it was a second momentum. And then we got the sentences. But then, you know, that's-- that's the-- kind of the three sentences where, like, the last one was in-- in 2010. And from them, we-- we-- we began with the implementation, which is another stage.

And-- and then we had to re-frame the whole-- the-- the-- the whole strategy. Because, you know, at that time, before we expecting now, we got the sentence, you know, like-- like the implementation should follow, like, automatically, which it didn't happen at all. And we say, when we now have, you know, the Inter-American court, the-- the organization of the American states, like, you know, by-- (UNINTEL PHRASE). But actually, you have to see the same faces of the same, you know, politicians or-- or actors. And-- and in a local level it have to actually-- deliver. So you have to also develop that created state that actually is prepared to-- to do-- do-- oblige to what the-- what the court has said. So that was kind of the experience.

JAMES GOLDSTON:

Thank you very much. Lucy, are-- is-- is this a field? And is this a field that's learning? Are we learning from the experience? Is this-- this report-- is produced on the assumption that there is someone coherent discussion? And that groups, legal, non-legal, community, non-community in one place may be learning from the experiences of others? Is that the experience you're finding at MRG? Is that happening?

LUCY CLARIDGE:

Thank you. Is this a field? Yes, I-- I think I-- I would say (CHUCKLE) it is. We have-- a number of-- different-- communities who-- contact us, asking for-- assistance, whether it's-- regional litigation or regional advocacy, international advocacy. But also national advocacy, as well, national litigation. Indigenous peoples land rights and other rights-- and the other rights that flow from them are not respected throughout

the whole of the world.

And litigation has-- developed. I think it's started to develop particularly in the Inter-American system-- but also in-- in Latin American courts, as well as Latin American litigation. But-- it has developed as a tool that indigenous peoples can use to try and seek their rights to-- to gain recognition-- to-- to get restitution of their land, to have their culture r-- rights respected, to gain identity. So-- simple answer, yes. I would say it is. (CHUCKLE)

JAMES GOLDSTON:

Please, Jeremie, yes.

JEREMIE GILBERT:

Just-- maybe (UNINTEL PHRASE) you know, I'm looking at-- we picked Malaysia, Para-- and what's-- I was stuck by is-- you know, the commonality between the struggles but also the learning experience from each other. Indigenous communities share a lot and they can learn-- you know, the sharing is amazing.

Because they face exactly the same problem with cases. Building those evidence, you know, it's really hard for a community that an expert will talk on their behalf in front of the court. Why is this expert sitting up there? Why is the anthropologist up there? You know, (CHUCKLE) and not--

(JAMES GOLDSTON: UNINTEL)

JEREMIE GILBERT:

--become the-- but you know, it's-- so from this, there's a lot to learn. And also, we shouldn't forget, law is very colonial in its language, especially when it comes to property rights. It's individual property title. It's a massive challenge for a community which there's no concept as such. It's the customary collective-- it's not even ownership they (UNINTEL PHRASE) the custodian of the land. So that creates a massive learning experience between communities on how do you challenge-- which Indian be-- even if it's similar common law, it's very common.

They're actually based on the same basis, which is either you have individual property title to the land-- many are wealthy enough to have this and under formal process. Or it belongs to me in the government. For these peoples, it's all the same.

It belong to the government. They don't exist. So for them, learning that even it's in Malaysia or Paraguay, or in Kenya, that's-- they arrive to the same thing, the same problem. It's actually-- a massive learning experience across the board. And that could be applied to any country, you know, even this country.

So in that-- that sense, yeah, it's a field. But also a field that's-- there's a massive

comparative element. And I think when I talk about globalization of indigenous, this is what has happened in the last ten years. It used to be only the same actors, Canada, U.S., New Zealand, Australia.

That's totally changed. Why? Because Malaysia started with cases that were brought from Canada, from Australia. And that's-- unpack all this dynamic of colonization. So in that sense, yeah, there's-- it's more than a field. It's-- it's-- moved very quickly. One victory in one corner of the world, will create a movement somewhere on the Amazon (?), when it's taking back in the Arctic.

RODRIGO VILLAGRA:

I-- you know, just wanna say the-- about, like, the-- the question is, you know, who's agency-- it is that we're talkin' about. Like, actually, our experience is, like, at some point when the people-- what-- the first job what we have is, like, to tell people that actually there were laws after the coup d-etat, the transition to democracy, that they have law that they support and to have the claims before the state.

Because before there was a policy that agencies would just w-- give money and the money will be used to buy land that was offered for anyone. But no talkin' about (UNINTEL) land, all do-- and no-- not whatsoever. So (THROAT CLEARING) and then the communities kinda become-- and the leaders become to be more public.

And they just pick up from the-- and then, as well, there were some points where the-- where the land owner didn't want to give back their land or sell their land. And even sometimes we suggested them, "Why you don't occupy the land?" You know, this-- is different, your situation to the peasants who have no right to be in their land, that is not they're (UNINTEL) land. You know, there have to be another process.

For indigenous people, they have the right to be on the land. It's not illegal in any point. But people, at some point, would say, "No, no." Or they wouldn't say anything but say, "Well, we're gonna do it." But they actually were expecting (?). And that's what happened when they saw that the land owners were kind of defeated legally, they say, "Well, that-- that's the time."

You know, and now we are gonna resist til the end. And even if the police come here and that happen in the (UNINTEL PHRASE) and in other cases. So actually-- and-- and also, as well, like, there is a process-- a harder process to get consensus in a thing like litigation-- strategic I-- litigation have two legs, you know, have the lawyers and the team that have to be (UNINTEL) to have many complicated things.

It's a long time, a lot of money, a lot of training and I don't know-- many things. At the same time, the community, they have their own conflicts. Sometimes, you know, some leaders just want to compromise with the government and say, "Well, let's go for 3,000 hectares than-- than 40,000 for the-- yeah-- yeah, 14,000 hectares."

And they will actually want to make like-- a deal under the table, sometimes. And it also happen. And then the-- the state will do that-- use that against their own

litigation case. "Yeah, you know, why you want to keep that (UNINTEL). The leader said already they wanna get 300,000."

"You are the one, you know, who's keeping these problem not to be solved." So these all kinda problem happens. And-- and in ten years, in 20 years, it just get bigger and repeated. And-- but in the end, it's-- are the communities that-- with the resilience, you know, and their capacity, you know, to struggle. Like, actually also held, you know, lawyers and mutually all-- all the other team actually become-- a bigger team, actually-- to-- to hold the cases.

JAMES GOLDSTON:

I wanna-- (THROAT CLEARING) invite people to come in. But I-- so please think of-- comments or questions you may have-- and raise. Before doing that, I just wanna raise one further question for-- for you guys. So-- for better or worse-- a fair amount of the litigation in this field to date has been donor supported. And-- I want you to correct me on that if that's incorrect. But let's assume that-- that you're talking with a donor-- about-- who is interested in-- furthering-- the land rights of indigenous peoples. And the donor says to you, "Look, I've read your report."

"It's a great report, Jeremie. And I-- I get your point, that you can't pursue any of the-- you can't pursue litigation in isolated fashion. You have to marry it to a range of other tools. I understand that. But-- I'm just one donor. And I only have a certain amount of money. And I want impact. And I wanna show, you know, the re-- the relationship between what I give and the results that are produced."

"So I can only focus on one of those tools. Other people are gonna do other things. I get it. But-- I want you to tell me, if I had to choose between putting all my money into litigation or into advocacy before the UN or a social media campaign or empowerment at the community level, what should I choose?" "Which one tool is more important than another?" What would you say to that donor?

JEREMIE GILBERT:

I think Lucy is more equipped than me to-- answer to this. But-- (CHUCKLE) because this is what she do on a daily basis. This is the challenge of litigation. 'Cause, you know, the ten years is-- you basically have to convince all those donors that on the way, they will get something on their specific project. So you create specific narrow projects that are part of the long strategy. And okay, this is the job of the NGOs, these too guys, of having this long-term perspective.

Will say, "I need a bit of money for the paralegals, a bit of money to support a meeting of the community in one place to actually talk about this. I need the money to have the anthropologist expert, the lawyers come in." (COUGH)

So the donors are doing-- I'm convinced they do really well because they have one project where their name will attached to it. They will get what they wants. But it's

the community and the supportive team that actually have the long-term vision. 'Cause there-- I wish we would find one donor that would do that the ten years job. But doesn't exist and I don't think it will ever exist.

So basically, it's to convince them, "If you want to do UN stuff, yeah, fine, I'm-- but the lawyer's actually gonna use that as a way to put pressure on the case by getting the UN to actually support the case at the national level." So it's-- it's the creativity of, I would say these two, (CHUCKLE) but all the people I've met that are doing this long-term of work.

JAMES GOLDSTON:

Lucy, anything you wanna tell that donor? (CHUCKLE)

LUCY CLARIDGE:

I want to say that Jeremie just summed up very well.

JEREMIE GILBERT:

Okay. (CHUCKLE)

LUCY CLARIDGE:

And maybe he should come and do some fund raising. (CHUCKLE) You know, I mean, I-- I think-- you know, we-- we've been working with the Endorois, for example, for 15 years. And it's very hard to find someone who-- who doesn't get a result, find a donor that-- that-- that-- if there's isn't a result in three years and you can't show some kind of impact, that they still want to continue-- continue funding.

And I think also the nature of-- of-- of particularly this litigation-- because it is to unpredictable. And you-- you-- you know, you-- you can have-- develop a three-year plan with various activities. And then, for various reasons, the activities will be delayed because the-- land rights defender is-- harassed.

Or-- and-- and you can't carry out the advocacy you're expecting. So I think really there's a need for donors to be-- incredibly flexible. And to really see what the-- what the outcome is at the end, what you're trying to achieve. And that this is a holistic process. It's litigation. But it's legal empowerment. And it's national, regional, international advocacy. There is no one-size fits all answer. But it has to be developed. And it has to be developed-- in conjunction with the community as well.

RODRIGO VILLAGRA:

Well-- actually is important, the thing, because it is true, actually, you need, like, the money all along the process. And there is one thing that you can give money back, you know, what you litigate, like, the court has said that Terraviva's litigator get some money back for the cost of litigation. But there is one thing, there is that (CHUCKLE) something that-- depending how to use the money, people will say-- and we have three cases like-- "Ah, no, you're doing this for money." And then certain communities wouldn't understand, like, why actually you will-- already pay.

Or your organization have, like, donors. Why they would use the money. And then the government will say, "Ah, right, you get the money from the government. Yeah, yeah, so you are part of the government." Anyway, you get the money from the government so it's like you gotta be really keepin' that out of the line.

And that's why also throughout yours history-- litigating, have to say to certain donors, "Yes, I wanna-- get your money." And to others like, "No." Because then you can be, you know, related to the government or to, like, even some-- some land owners or something like that. So that's a issue, as well.

JAMES GOLDSTON:

Very good. Thank you very much. So colleagues, there's a lot of rich expertise and experience in this room. So-- do-- Eric, do folks need to go to the microphone in order to be heard?

(OFF-MIC CONVERSATION)

JAMES GOLDSTON:

Right. So we're recording this. So if I can ask you-- we'll-- we'll start with three. So let's go-- this gentleman I saw first, the lady in black right here-- with the black shirt. And-- and that person over there? Yes, you. Please, if you could just go up to the microphone. Give us your name and any affiliation briefly. And then please, pose your comment or question briefly. Thank you.

BRUCE ROSEN:

Bruce Rosen (PH), cin-- citizen of Planet Earth. I would appreciate if you would tie this to the-- environmental calamity the planet is-- is facing. And I-- I know that a lot of the issues of land are over-- the environment, both environmental justice and economic justice and stewardship. So could you say something about that? And also a bit more of when in-- indigenous groups begin to cooperate. Where-- does the legal assistance fit in that realm?

JAMES GOLDSTON:

Thank you. Let's take-- let's take the three questions. Please, go head.

PAULINE VATA:

My name Pauline Vata (PH) from Hakijamii, Nairobi. And-- my question is basically to all the panelist. What is the impact of litigation to government? Do you think litigating-- reduces cases of evictions to indigenous people? Or-- do you get one successful case-- that the indigenous people learn from each other. Then they also go to court-- and then the government needs to stop? Or does the government also listen and does not evict? I hope you got the question.

JAMES GOLDSTON:

Great. Thank you very much. Please?

MEREDITH OGILVIE THOMPSON:

Hi, my name is Meredith Ogilvie Thompson. I'm a director of International Senior Lawyers Project. But I also have a strategic advisory in Nigeria. So we've been working across river. I'm just curious-- when you talk about the challenges around fund-raising for such a long-term project that has so many different parts, you said something at the beginning-- about once you win, the struggle can often begin then.

It's enforcement of the judgment. And I'm just wondering if you can talk a little bit about what team comes in then and how you think about it-- differently, strategically. And the challenges around funding then when donors turn to you and say, "Well, we paid for all this and you-- and here's what happened." "And now you're telling us that that's not the end of the case." So thank you.

JAMES GOLDSTON:

Super. Thank you very much. So what's the link between what we're talking about and issues of the envi-- environmental justice? What impacts on government-- and-- and-- following up on Jeremie's observations, what do you do once you win a case? Who-- who takes over? What do you do with the donor problem, the other problems we've been addressing? Should we start? Maybe Rodrigo, do you wanna start, just take any of those and go. And then we'll go right--

RODRIGO VILLAGRA:

Yeah. Just wanted to refer to climate change. Actually-- you know, when it started, we-- we didn't-- didn't speak much (UNINTEL) climate change. But you see now the rate of deforestation, the (UNINTEL) was the highest in the world or the second or third. I got one-- someone saying one and some places in worse-- worse.

You know, wow, so what-- you know, what consolation you get from that? Yeah, but-- if you see in Paraguay, it's one million hectares out of 40 are in hands of the indigenous people. The cases before the Inter-American Court and the Inter-American Commission have-- (UNINTEL) like 60,000 hectares, 6-- 6%.

So you can see the result there. Because, like, there is no deforestation on the level that is for, like, cattle raising or soil (?) producers. And there's di-- direct impact. You know, even these-- these in, like, thought like that and-- and-- and you can see. And many agencies, like, environmental agencies are-- looking now with indigenous people with-- in Paraguay saying, "Okay, now, the indigenous people actually are taking care of the forests."

JAMES GOLDSTON:

Jeremie, do you wanna?

JEREMIE GILBERT:

To make it easy, I'm gonna kick back to you, which is basically your question, answers your point. (CHUCKLE) It-- makes sense. Why it start is actually exactly that. It's finally if your right to the land has been recognized, which what we should recognize, it's not only the land we talk about.

It's the resources and the way they are used. This is really what is at stake. And again, looking at the map of the world, why are those cases taking place on those and there are the few last natural resource left on the planet that are so important. If you go to Kenya, they actually sitting on the place that is driving the water (CHUCKLE) crisis at the moment in Kenya, sand everywhere. So what I'm saying, it's the end. So you win in court. But then the question of the use of resources, this is where it starts.

This is what sustainability, stewardship-- which is the important word to use. This is really what is at stake. There's been a bit of-- firewall, let's say, between the environmentalist and the human rights movements where (SIGH) it hasn't really yet been included into the cases. So you win the case to the land. You have your human rights recognized. But actually, the next step which is sustainable development use of resources aren't indigenous (UNINTEL), which is the important aspect of the human rights law. Whereas, environmental law has been pushing for more of those aspects.

But very much we tell you to protect the land. So we are at sort of a junction. And that's what litigation will become even more interesting. There's only-- as far as I

know, I think there's only one case-- in (UNINTEL) that has done-- crossed the line, that has says environmental and human rights law actually work together.

Why-- go to the funder? Why is the money a demand for funding? You know, cl-- if you are climate change and red plus-- you all red about red plus? You in better shape to get a bit of money. It might change. I know where (CHUCKLE) you're going.

And we are in the right place. There's-- a power not far from here which is trying to stop this. But nonetheless, it's-- we are at this momentum where-- if you can use this money going to sustainable development, sustainable goals to achieve et cetera, and move to the human rights, it's-- maybe you challenge me, but I don't think it's yet totally clear that's-- you could use both and it's going the same way. Which is English (?) people are saying exactly that.

We've been-- on those lands, there's never been the problem we're facing because before you arrive, it was fine. So that's why I'm saying when the case is won, this is actually-- (UNINTEL) should start on this. But happy to defer to you. (CHUCKLE)

JAMES GOLDSTON:

Thank you. Lucy?

LUCY CLARIDGE:

So Jeremie has said there is just one case that has t-- touched on this link between-- environmental-- justice and-- and indigenous peoples rights. There is also another case that's currently pending before the African courts on human and people's rights which is looking-- exactly at this.

So there's an-- Ogiek representative in the-- in the room who can tell this story better than me. But the Ogiek community-- who have lived in the Mao Forest in Kenya-- for hundreds of years and they have been evicted-- ostensibly for conservation.

Yet, at the same time, there was a lot of logging happening in the Mao Forest. So-- what we have been asking the African court to do is to actually look at the role that-- the Ogiek (UNINTEL) hunter, gatherers, as indigenous peoples should be playing w-- within the conservation of the Mao Forest.

So if that their land is restituted back to them, that they are actually the best people to protect and conserve the Mao Forest. And therefore, they shouldn't really be any harm in implementing it if-- if we are successful implementing a successful judgment. So we're hoping that that judgment should be issued by the court within the next-- few months. So watch this space, basically.

JAMES GOLDSTON:

Excellent. We're-- with bated breath. (CHUCKLE) Further comment? One there.

Here. Anybody there-- and Pam. Yeah, if you guys could just go to the mic, please? Thank you.

DANIEL KOBE:

Yeah, I'm Daniel Kobe from Kenya, from the Ogiek community. My question is about the waiting and the wanting. Because-- it-- it happens that it is always a big issue. I don't know how Jeremie (UNINTEL) to. Because telling the community to wait because the case is being pushed and pushed, is-- is a big, big, big challenge.

And-- and again, keeping the community together to continue believing in what you are fighting for is-- is-- is another challenge. Another thing is an issue of-- when they say the agency, it is the community members who push for the cases. And then they now get what-- what they-- they-- they want. But there come a case whereby they now ask, "We have been waiting for the case. What am I going to eat?" Now, the issue of a nexus (?) of things to be put together to be able to contain the people is something I will wish you to comment on.

Because you are not able to-- because as I say, this is your waiting. There is no food on the table and something like that. But it's only few-- few partners or donors who are able to understand that we-- you cannot tell us only to keep on doing advocacy. But sometimes you can also do capacity building or livelihood-- projects to s-- to keep the community. Maybe you can--

JAMES GOLDSTON:

Sorry, to clarify then. Is the question, for-- for whom-- for the lawyer, how do you keep the community together, for a donor?

DANIEL KOBE:

As the leaders of the community, not the-- the lawyer come only to us. He's a litigator. But for us, the people from the community, how are you able to keep the people waiting for ten years?

JAMES GOLDSTON:

Okay.

DANIEL KOBE:

Waiting for this number of years to continue waiting for the case (UNINTEL PHRASE)--

JAMES GOLDSTON:

Great.

DANIEL KOBE:

Something like that.

JAMES GOLDSTON:

Thank you. Thank you. Yes.

PAMELA YATES:

So this is a good follow up to that question. I'm Pamela Yates, the director of the documentary film, *500 Years*. I'm wondering-- what you do when-- indigenous defenders of the land are criminalized dur-- during the process of strategic litigation. And even worse than that, when violence or assassination happens to them, how do you move forward with the litigation?

JAMES GOLDSTON:

Excellent. Thank you.

ANDREW SONGA:

Thank you. I'm Andrew Songa (PH) from the Kenya Human Rights Commission, but the non-governmental organization as opposed to the state one. Just about three to four quick comments that-- hope the panel can respond to. With regards to the conversation of-- whether litigation is strategic and how Jeremie described it at the beginning.

I think one of the things from the Kenyan experience to look at and take acknowledgement of is I think with any case-- its strategic nature is inherent in how it has the ability or potential to tap into the environmental context within which it operates.

And how it can harness the opportunities presented to advance the promotion and protection of rights. So, like, in the Endorois case, for example, one of the things that I think stood out also was how a claim on land rights became a doorstep to also almost litigating and reaffirm recognition of the community itself.

We started in a situation where there was a question as to whether the Endorois as a tribe does in fact exist or whether it was a sub-clan of another bigger tribe, to now

discussing implementation with the Endorois being in existence as a matter of fact. So you then find in the context and how you're able to harness the opportunities within that context. You then find a strategic nature coming through an evolving process. So I think that's what is inherent in every case. And it's how you tap into that potential. But then also-- with regards to the other issue around-- I think the notion of development that was raised in the context of some of the comments. I think another things that's imagined that we need to look at is the notion of ownership being minimized.

In the face of now trying to create compromises, encouraging increased dividends within the status quo. So by that I mean where states increasingly being challenged by the notion of ownership of lands by indigenous peoples. They now find it maybe a bit more comfortable to negotiate within the current status quo, concepts of developmental agendas.

So that the freezing, like, within our governments for now usually is try and treat communities like the Ogiek, by saying, "What you're not really looking for is ownership. What you're looking for is a better access to a better developmental agenda that the state can provide. But don't rattle the status quo. Let's leave the lands designated as public."

"That we can have access to the government, what we will do is facilitate better access to economic and social services for you." So then minimizing the very notion of ownership that communities are trying to drive on. And that, finally, on the issue of this being a field, I think what has emerged from this study and from the experience is, is that we need more analysis and appreciation of the impact.

But within a transformative paradigm. Which also attaches to the question of the donors. So that we should be having this conversation with a longer arc in mind. The study focused on immediately five years after decision. I don't think that's a sufficient paradigm. But what does that then mean in terms of investment? It means that you need institutions that look at this also from a strategic point of view at the institutional level.

So how far are you willing to invest in terms of furthering the notion of strategic litigation with these communities. And just outside the litigation people's conversation, I'll give an example of the Kenya Human Rights Commission. We invested in-- a case or a cause for-- war veterans from our colonial freedom fighter period, the Mau Mau case.

And actually, it transcended whatever negotiations and conversations we had with donors. It was literally something that was inherent from the formation of the institution. So it was actually a 20-year journey that really was about how invested the institution was in that process.

Regardless of whether we had donors at a certain given point in time. But the fact that we would make it work around that. So all our negotiations in terms of our strategic planning will always have the notion of that causal-- those people in that case within the very heart of the institution.

So that meant making tough choices. Tapping into strategic results of the organization to sustain the cases at a time when donors weren't exactly supporting those cases. But then 20 years later, you then have the dividend of a compromise with the British Government and the decisions coming in. But that only succeeded because the institution saw it as an-- strategic value for the institution and not just within an ordinary cycle of programming. Yeah.

JAMES GOLDSTON:

Thank you, Andrew. Those are fantastic comments. And the Mau Mau case is-- certainly one worth-- studying and learning from. So challenges of keeping communities together and dealing with the immediate-- difficulties that they face-- and sustaining them through the litigation. The challenges of criminalization of indigenous defenders and the complex concepts of what it means for litigation to be strategic. And what ownership means. Lucy, you wanna start at this end this time?

LUCY CLARIDGE:

Sure. So in relation to the-- the-- the challenges of-- yeah, a community that wants something on the-- on the table and how those who are working on the ground, like-- like Daniel-- and how to-- how to keep that community t-- together.

I-- I know this is-- you have faced, personally, a lot of-- a lot of challenges in-- in this respect. I-- I think you're right. That I think maybe-- maybe actually human rights organizations who litigate need to think about partnering with those with donors or with other organizations who can provide just a little bit more, who can provide the sustainability-- to-- to support the litigation-- who can support livelihood projects, micro-finance projects, these kinds of things.

And so that's-- I think it's a very, very helpful comment. In relation to-- indigenous defenders who are-- who are criminalized-- this had happened a couple of times in the-- in the cases that I've-- I've worked on. And-- how do we move forward? I-- I don't think that there's necessarily-- again-- a standard answer. I think it really depends on the circumstances. So for example-- one-- female-- indigenous-- community representative-- was facing a lot of-- harassment.

And we nominated her for a-- well, we didn't. But her organization nominated her for a human rights defender award. And in the hope that that might-- increase her-- improve her situation. And actually, it led t-- to even more harassment. So then we had to think very carefully about, you know, do-- do we go and raise this at the UN? And actually, she was-- in such-- a difficult situation that we decided-- we didn't raise it at the UN.

We didn't take it any further. And we let her deal with it in her own-- her own way. So I think it really-- it really does depend on the situation. And it also really depends on-- on what that-- really, what that person wants. You know, I think MRG is ready to

help. But-- but really wants to help. And-- and-- not make situations any-- any worse than they already are.

JEREMIE GILBERT:

Not much to add. I mean, Danielli (PH), I-- (CHUCKLE) situation. I-- I can only talk maybe to pick up on Lucy, there are-- going back to the cases I know more where I saw some creative way around the waiting game. You know, 'cause it's a long time.

But as I said, going back to the point that there's money on those lands-- in the (UNINTEL PHRASE) also starting a process of really long litigation, claiming a (UNINTEL), which, you know, the jewel of the (UNINTEL). What they started to do is on the margin and as an NGO, not human rights at all, started to create parallel tourism.

Which creates a lot of opportunities for the community. It's totally illegal under the government views (?). But that's fine. 'Cause tourists come. They bring money. That has supported the community fight (?) massively. And the Batwa have tried the same in Uganda.

They created the trail, you know, for the famous (UNINTEL PHRASE). As a repression the government, because they took the case, like, to dismantle the trail. So I'm not saying it always work. But it created opportunities for the communities to actually provide support and, you know, af-- as you said, food on the table. 'Cause (CHUCKLE) you can't wait ten years. And also knowing that even if you win, the-- you know, the food not-- not gonna arrive on the table.

So tourism is one. Also what the Batwa started was to create their own-- I hate the term, but-- you know, emirate the experts mechanism has commanded a study on business enterprise-- indigenous business enterprise. Not the best way to frame it.

But they're looking at this like small-scale way of-- for communities to have this regeneration. So the fact that emirate has started to look at this-- maybe touch on that finally human rights NGOs having to realize, "Hang on a minute, it's-- you know, it's not only about the long-term strategy of the litigation." Criminalization of-- again, that's why when I started, I was very-- I put the rule of law.

You know, which was country where we could actually talk-- talk about the law. I'm not saying there is no criminalization in Kenya or other places. But at least there's a process. In Malaysia-- what an interesting case-- that Colleen raise was six people were charged-- charged with trespass on the land.

What the lawyer did directly reverse the charge saying, "They're not trespassing. This is their land." And the court was a bit puzzled. "Okay, hang on, this is not about (UNINTEL), this is about trespassing. This is a criminal act." But "No, this our land."

And this actually started-- correct me if I'm wrong, Colleen, but this is reversing the charge of criminal offense to actually saying, "You can charge us. But actually this is our land." And pushing on this. Now, that's fine. And again, it's a country where the

rule of law is there.

The other country where I work where that (UNINTEL) is impossible is South African (UNINTEL). What we did, we had to evacuate people 'cause they just basically got killed. It was so dangerous to be a (UNINTEL) defender that you basically-- you were on the target list.

So what do you do? The human rights NGO becomes something totally different, which is a evacuation plan. Unfortunately, there is no other-- I don't see any alternative. 'Cause then the rule of law is actually pointless. And you know, (CHUCKLE) and that's the worst situation I've seen where-- people have been-- across-- shifted to (UNINTEL) basically waiting for the conflict to end. And it's not happening.

JAMES GOLDSTON:

Rodrigo?

RODRIGO VILLAGRA:

Yeah, regarding to livelihood. Well, actually with-- what-- what we did-- and the communities agree and then wanted is, like, to press the state to give some opportunities and to give out-- assistance to the community where-- like, with-- with food and-- clean water and health services.

And that was one of the-- it is still one of the fights with the government, like, just to-- because they are obliged to do so by the sentences and even before cer-- certain measures that-- that they-- they-- the court and the commission. And-- but that is a big issue, you know.

Because the people sometimes want to-- want to leave, want to go somewhere because they want to find jobs and they can't just do it when they-- in some cases, they live by the road. And sometimes they had to go hiding in-- into hunt and gathering in the land-- in their own land. So it's complicated. And that leads also to-- to criminalization, as well. And many leaders have been accused of several things. They've been harassed. And-- what-- what find use of-- for that is just to-- to make the case at more public-- possible. You know, and to denounce.

And for that, like-- like, the campaigning and international campaigning, some international, like, Amnesty and others help a lot just to-- to make the-- those cases known so there was actually-- can-- warranty that it would-- that-- that it would worsen that they-- they (UNINTEL)-- the-- were to be like-- sentence against those leaders or even to members of Terraviva we've been, like-- persecuted by the supreme court, as well.

Julio Cavellio (PH), Michael Legetch (PH)-- she was supposed to come here. She was being-- prosecuted by the supreme court because she-- she actually criticize one--

something that the supreme court of Paraguay did. So-- in criminalization is all the time. And now, when the people are in the land as well. Because there-- there is people wanting to do logging, you know, and it's under the law.

And the land owners, in some cases, say, "Well, this is still my land. And the people are stealing the forest-- wood from my land." So there are all kinda complications. But I think (UNINTEL PHRASE) human rights, like you-- what we do is just to make those cases bold and-- try to-- the best and make they public.

And related to context-- I will say that actually context-- wise, like-- all the cases require to be-- I mean, to be very flexible. And-- and to buy the donors and anyone who want to support the cases that they are going to support a long road. You know, and-- and when you have actually now in the process implementation and the process that we are gonna talk about, for instance, like the-- the development project about-- with the-- the money that the government is going to be-- the communities, that we had to learn all about the community, the lawyers and all the people, to-- to see how to implement that. Yeah.

JAMES GOLDSTON:

Thank you so much. Colleagues, I think we're gonna have to bring this to a close. But as-- it won't surprise you, this is not the last discussion of this. I mentioned that for Open Society's part, we are halfway through a multi-report process that will be yielding further discussions and further insights.

And we very much look forward to working with you as we better understand how to do this all better. I wanna thank the panelists who've been just superb. I wanna thank you. You wanna thank our colleagues at ESCR Net and at Minority Rights Group. And-- look forward to-- talking with you further. Thank you very much. (APPLAUSE)

* * *END OF TRANSCRIPT* * *