EXECUTIVE SUMMARY

THE SCRAMBLE FOR LAND RIGHTS

Reducing Inequity between Communities and Companies

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A new scramble for land is heating up across the developing world. Global demand for natural resources—minerals, timber, oil, and fertile farmland—is skyrocketing as markets rebound from the 2008 Great Recession and economic growth raises the living standards of millions. To keep pace with demand, companies are rapidly expanding their operations into resource-rich Africa, Asia, and Latin America, often encroaching on land that Indigenous Peoples and rural communities have held for generations. Forced to make way for these investors, communities are losing their land at an alarming rate.

Indigenous Peoples and rural communities are now racing to secure their land rights before companies come knocking. While they collectively hold more than half of the world’s land, these communities legally own just 10 percent of land globally, and even less of this land is registered and titled. The customary tenure arrangements that once protected collectively held land are weakening, and those who lose their land lose everything: their livelihoods, homes, cultural heritage, and more.

But, as this report finds, Indigenous Peoples and rural communities face an uphill battle in registering and documenting their land rights. This report is one of the first comprehensive global reviews of how communities and companies obtain formal land rights, and it reveals the vastly different barriers that each face—disparities that give investors a clear advantage.

To safeguard their land rights, communities sacrifice years, sometimes decades, navigating unwieldy, expensive government processes. As these procedures drag on, companies acquire long-term rights to large swaths of undocumented community land. Investors with savvy lawyers and deep political connections find shortcuts around complex requirements, work with governments to obtain land rights in as little as 30 days and, in some instances, begin to clear the land before securing rights to it.

This unfair playing field not only threatens the livelihoods of the 2.5 billion people who depend on collectively held land, but it also poses grave environmental risks. Too often, investors who obtain rights to community lands exhaust natural resources in one community and then move on to the next. They displace Indigenous Peoples and rural communities, many of which have sustainably managed their land, surrounding forests, and nearby rivers. Little wonder that, as previous WRI research in the Amazon Basin shows, deforestation rates on tenure-secure indigenous lands are less than half what they are outside of them.

As the race for land intensifies, governments, companies, and civil society organizations must step up their efforts to safeguard Indigenous Peoples’ and local communities’ land rights. This report shows how creating fairer, more accessible procedures to register and document collectively held land, as well as following through on implementation, can begin to level the playing field. The report also calls for providing communities with a more comprehensive bundle of rights, including their right to give free, prior, and informed consent to any developments on their land. Establishing dedicated resources to transparently mediate border conflicts and resolve competing third-party claims that arise during land formalization processes is equally crucial. These recommendations will be useful to government land agencies, communities seeking recognition of their rights, companies that want to operate ethically, and nongovernmental organizations pressing for legal and regulatory reform.

The stakes are high. Reducing the inequity in community and company procedures for acquiring formal land rights can help protect the rights of our greatest environmental stewards, the Indigenous Peoples and communities who care for half the world’s land.

Andrew Steer
President
World Resources Institute
EXECUTIVE SUMMARY

Indigenous and community lands, crucial for rural livelihoods, are typically held under informal customary arrangements. This can leave the land vulnerable to outside commercial interests, so communities may seek to formalize their land rights in a government registry and obtain an official land document. But this process is time-consuming and complex, and in contrast, companies can acquire land relatively quickly and find shortcuts around regulatory burdens. This report maps these inequities between communities and companies, and offers recommendations on how to level the playing field.
Land Rights in Context

As global demand for foods, fuels, minerals, fibers, wood products, and other natural resources grows, both large and small-scale land acquisitions are on the rise around the world. Companies and investors are scrambling to acquire land and secure it for long periods of time. As this competition intensifies, land that communities (including Indigenous Peoples) hold under customary tenure is vulnerable to acquisition by powerful political and economic elites, particularly if it is not entered in a government registry (cadastre) or officially documented (land certificate or title). Against this backdrop, communities across Africa, Latin America, and Asia are mobilizing to formalize their customary rights and better protect their land. The stakes are high, given that as many as 2.5 billion people depend heavily on community land for subsistence (Pearce 2016). And while the drivers of socioeconomic inequality (and the resulting unequal opportunities and treatments) vary by country and over time, land inequality largely drives income inequality in Latin America and is a growing factor in some Asian and African countries.

Governments often consider community land, especially the land managed as common property (e.g., forests, pastures, and wetlands), to be vacant, idle, and underused. For many, the promise of economic growth and needed foreign exchange trumps community land rights and justifies allocating this land to companies for investment purposes. In addition to this bias, there are often inequities between legal procedures that govern acquisition of formal land rights by communities and by companies, as well as in how these procedures are implemented.

Understanding the challenges and opportunities for improving community land formalizations procedures is central to securing customary lands and protecting rural livelihoods worldwide. To this end, the authors designed research to better understand procedural pathways for communities and companies and assess whether community or company processes are advantaged and favored by government. This report provides a systematic review of the law and practice of 33 community and company procedures for acquiring formal land rights in 15 countries (see Methods below).
This report also provides practical recommendations for improving and ensuring equity in community and company procedures. The recommendations target government agencies responsible for developing and implementing community and company procedures, as well as their development partners; domestic and international companies and their investors; and communities, local civil society organizations, and international nongovernmental organizations concerned with land rights, human rights, and poverty reduction.

Why Formal Community Land Rights Matter

More than 50 percent of the world’s land, across all continents except Antarctica, is community land. Globally, national laws recognize 10 percent of land as belonging to communities, and another 8 percent is designated by governments for community use (Pearce 2016; RRI 2015). But not all community land that is legally recognized is registered and titled. In most countries, a significant amount of community land is not formalized. In Peru, for example, some 6,500 groups hold 36.3 million hectares of land that is registered and documented to them, but another 4,000 groups have pending claims to a further 34.9 million hectares (AIDESEP 2016; Defensoría del Pueblo 2014; GOP/MINAM 2016; IBC 2016).

Despite its importance to rural populations, community land formalization is rarely a government priority. In many countries, national laws do not recognize collectively held land or establish a formalization procedure. Elsewhere, the law permits formalization but limits the types of customary land and customary rights that can be formalized. Where formalization procedures are in place, the law is often poorly implemented, or implementation efforts have stalled. In Bolivia, for example, formalization efforts for land titles granted to Indigenous Peoples since 2005 have slowed in recent years with the government instead allocating customary land to investors to generate needed revenues for social programs (Achtenberg 2013; Sturtevant 2015).

While customary tenure systems historically provided communities with land security, the growing threats to exploit community land are leading to new insecurity. Communities around the world are therefore applying for formal land rights in order to integrate their customary rights into official legal systems and to protect their lands. Even in countries where formalization is not needed for legal recognition, communities are seeking to register their land to “double-lock” their rights (Alden Wily 2017). While registration and documentation of land is not a guarantee of tenure security (and can bring challenges such as property taxes, gender inequality, and exposure to unwanted investors), many communities consider the benefits to outweigh the costs.

Formal land documents can help communities convince others of their legal rights, ensuring that they will be recognized and respected by others. These documents can be used as evidence of legal possession in a court of law when challenges arise, where they commonly carry more weight than oral testimony on customary rights. Land certificates or titles can also provide communities with critical leverage in negotiations with outside investors, improving the chances that they get a fair deal in sharing the benefits and reducing the likelihood of conflicts that can arise from bad deals. Documented community land rights may also open opportunities for accessing project finance. In seeking viable community-based investment projects, many governments and banks consider documented community land to be more secure than customarily held land, thereby reducing their risks.
**Methods**

To conduct this research, the authors collected data on 19 community land formalization procedures in 15 countries—five each in Africa, Asia, and Latin America. National laws were reviewed for all 19 community procedures, and on-the-ground implementation for 7 land rights procedures. In addition, 14 company land acquisition procedures were examined in 12 of the research countries. Researchers reviewed the relevant laws for all 14 company procedures and investigated practice for 6 procedures.

Across the 15 countries, data comparisons between community and company procedures focused on eight key issues:

- preconditions and steps
- cost in time
- cost in money
- land size
- rights duration
- rights granted
- rights maintenance
- rights revocability

To help ensure consistency in data collection across informants, procedures, and countries, the researchers developed common indicators for each of these issues and a corresponding methods guide. For more information, see the Data Collection Methods section.

In Peru, Tanzania, and Indonesia, field teams were mobilized to conduct the research. The teams were led by the Ujamaa Community Resource Team (UCRT) in Tanzania with support from the World Resources Institute (WRI); the Center for International Forestry Research (CIFOR) in Peru; and the AsM Law Office in Indonesia with support from the Rights and Resources Initiative (RRI). Data collection methods included literature reviews of community and company procedures, legal reviews of national laws and technical directives, interviews with a range of stakeholders, and site visits to meet with community members with experience in land formalization.

Figure ES-1  |  Map of Research Countries
The WRI authors conducted desk research on the law of community and company procedures in the other 12 countries. Data were collected principally by reviewing the literature on community and company procedures and all relevant national laws, to the extent they were available. For Guyana and Mozambique, the WRI authors also assessed the practice of community and company procedures principally by reviewing the academic and gray literature. The Rainforest Foundation-United States (RFUS), Amerindian Peoples Association (APA), and Forest Peoples Programme (FPP) provided important information on Guyana.

Findings
Analyzing the data collected on community and company procedures across three continents yielded five significant findings, which highlight the complexity of community land formalization procedures and the inequality between community and company procedures.

Figure Es-2  |  Obtaining a Native Title in Peru: 19 Legally Mandated Steps and Additional Barriers in Practice

Source: CIFOR, modified and simplified by WRI.
1. Community procedures are burdensome and inaccessible. In seeking to formalize their land rights, communities face complex and sometimes insurmountable legal, technical, and evidentiary requirements (see Figure ES-2). For example, in Indonesia, Indigenous Peoples must first lobby their regional legislature for formal recognition of their indigenous status. In Chile, indigenous communities are not eligible for the procedure unless they possess a specified historic document. And in Uganda, communities must incorporate themselves into an association, elect officers, and write a constitution. In addition, formalization procedures are rarely transparent. Communities are not always able to correct or contest government errors, to obtain information, or to find out why applications are delayed or rejected. They also may be excluded from crucial steps in the process such as boundary mapping. Finally, procedures are often complicated by third parties who claim competing rights to the land in question, or due to border conflicts. These disputes are not well addressed in law or in practice and may effectively halt the process.

2. To formalize their land, most communities must accept restricted rights, new risks, and/or less land. In most countries surveyed, significant areas of customary land may be excluded in certificates or titles granted to communities. For example, some communities cannot formalize any forested land, while others must exclude areas of land claimed by third parties. In addition, for all but one of the procedures that were assessed in practice, government officials impose arbitrary caps on the size of land granted to communities. Communities also do not receive full rights over the natural resources on their land. Governments retain the right to allocate overlapping concessions to high-value natural resources such as timber, and communities only had rights to exercise full free, prior, and informed consent to these transactions in 2 out of the 19 surveyed procedures.

Figure ES-3 | Land Formalization and Acquisition Timelines: Comparing Companies and Communities

Note: Limited data was available for companies in Guyana and Peru. In Guyana companies can take one year to “much longer.” In Peru there is not comprehensive data, but in one case study a company took four years. Across all procedures, tracking company timeframes is challenging due to limited transparency in concession allocation.
3. **Procedures are, on average, more challenging for communities than investors.** Community procedures generally take years to decades, while land acquisition procedures for companies typically range from one month to five years (see Figure ES-3). Many communities are unable to formalize their land, sometimes after decades of efforts. Different standards are imposed on communities and companies to screen for and resolve competing claims to the land. All community procedures require a screening for third-party rights, and such third-party claims in practice often prevent a community from successfully formalizing its land. By contrast, only 6 of the 14 corporate land acquisition procedures surveyed for this report require any form of community consultation, and only 3 of those contain provisions protecting communities’ rights to free, prior, and informed consent (FPIC). Instead, the law presumes that the government owns the land or has the right to give it away.

4. **Community rights are restricted in practice, but investors have expanded opportunities, especially if they do not have strong social and environmental commitments.** Communities have narrow windows of opportunity for land formalization. Legal procedures are narrow and offer little flexibility; and in practice, a lack of resources and capacity means most communities have only one opportunity (if any) to formalize their land. Similarly, in exercising rights over natural resources, communities are seldom able to realize those rights to the full extent allowed by the law. In contrast, for companies, land acquisition is facilitated by a range of legal alternatives, as well as quasilegal, extralegal, and illegal measures. Company engagement with key steps in the process, like community consultations, varies widely (see Figure ES-4). Across countries, some companies exploit natural resources to which they have not been granted rights, and revocations of land rights when companies fail to meet conditions or comply with the law are inconsistent. These companies therefore have a competitive advantage in obtaining formal land rights against both communities and those companies that comply with legal and social or environmental standards.

5. **Regulatory and policy frameworks favor investors over community formalization procedures.** Communities receive inadequate and sporadic support, compared to dedicated and sustained support for investors. Companies often benefit from dedicated investment centers and government recruitment efforts, whereas community land formalization programs are underresourced and implemented inconsistently. Some countries lack the requisite institutions to formalize customary land rights. In Uganda, entities responsible for approving key steps were never established, making implementation of the procedure impossible in some regions. Finally, in some countries political and economic elites have successfully undermined community land formalization efforts that threaten their interests.

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Figure ES-4 | Variations in Company Consultations with Communities in Mozambique

<table>
<thead>
<tr>
<th><strong>STRENGTH OF COMMUNITY CONSULTATIONS</strong></th>
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<tbody>
<tr>
<td><strong>WEAK</strong></td>
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<tr>
<td>Prior studies indicate between 10 and 33% of investors do not conduct community consultations</td>
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<tr>
<td><strong>TOKEN CONSULTATIONS:</strong></td>
</tr>
<tr>
<td>Sign-off by community leader or neighborhood chief</td>
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<tr>
<td><strong>LEGAL REQUIREMENT:</strong></td>
</tr>
<tr>
<td>Two community consultation meetings</td>
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<tr>
<td><strong>RIGOROUS CONSULTATIONS:</strong></td>
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<tr>
<td>For one company, consultations took 2 years</td>
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**Source:** Di Matteo and Schoneveld 2016; Ghebru et al. 2015; Hanemann 2016.
Recommendations

In comparing the complexity of community and company procedures, the research uncovered several key distinctions, to the benefit of foreign corporations. This is the opposite of what might be expected, given that communities are seeking to formalize long-standing customary rights, which in some countries already have the force of law, while companies are applying to obtain new rights. The research highlights significant procedural challenges, encoded in the law and realized in practice, to communities obtaining formal land rights. It also highlights inequalities in how regulatory frameworks and implementing actors treat community procedures as compared to company land acquisition procedures. To address this inequality, this research makes the following recommendations to reform community procedures:

1. **Establish and implement a clear community land formalization procedure.** Legislation and implementing regulations should provide a clear, accessible procedure for Indigenous Peoples and other communities to register and document their land rights. Governments should simplify overly complex procedures and amend steps that impose difficult burdens. Participatory community mapping is a best practice, and is crucial to ensuring accuracy and preventing later conflicts. Implementing institutions and civil society partners should collaborate in systematic implementation programs, adopt participatory community mapping as a best practice, and develop a coordinated budgetary strategy.

2. **Establish conflict resolution mechanisms and address competing third-party claims.** Boundary conflicts between communities and overlapping claims by third parties are primary sources of delays and increased costs during community land formalization. Governments should establish clear, fair, and accessible conflict resolution mechanisms; promote communication between the ministries involved in community land formalization and those involved in allocating concessions to high-value resources; and explore options for establishing a unified cadastre. Implementing institutions and partners should incorporate dispute resolution planning into titling programs. Companies should conduct their own due diligence and not rely on assurances from a single ministry or office that land is freely available.
3. Prevent the loss of customary land and provide more inclusive bundles of rights. Communities must not be forced to give up land or natural resources that they have customarily enjoyed. Governments should ensure that certain classes of land, such as forests or unoccupied areas, are included in formalization and should grant communities full rights to the range of natural resources on their land. As a safety net, legal procedures should clearly allow communities to obtain additional land in the future. Implementing partners and civil society should ensure that communities are included in land surveying and mapping, and can sensitize government officials on the importance of seemingly vacant collective land to community well-being.

4. Ensure oversight, accountability, and transparency. Monitoring and oversight mechanisms should be simultaneously bottom-up (from communities) and top-down (from higher-level institutions). Governments should establish avenues for communities to make complaints or appeal decisions and to request information about the status of their applications. Country-level monitoring of community formalization efforts, in law and in practice, is also key to the effective implementation of formalization procedures.

5. Level the playing field between communities and companies. Governments should strengthen monitoring and oversight of company behavior, require companies to engage in full FPIC, and ensure that natural resource concessions are not allocated on community lands while applications for community land certificates or titles are pending. In addition, all actors must pay renewed attention to customary understandings of land, and the challenge of integrating customary land-tenure systems into a statutory framework. Governments and civil society should support community empowerment initiatives both during and after the land formalization process. Companies should seek FPIC from communities, even when not required to do so by law, and promote industry-wide standards acknowledging customary land rights and the importance of communities giving their free, prior, and informed consent.

REFERENCES


ACKNOWLEDGMENTS

The authors would like to acknowledge several individuals for their valuable guidance, critical reviews, and research support. Dean Affandi, Celine Salcedo-La Viña, Rohini Chaturvedi, Fred Stolle, and Rafael F. Barbieri served as formal WRI internal reviewers of the report. External reviewers included Jon Anderson (independent consultant on rural development, natural resource management and policy, and empowerment and poverty), Darragh Conway (Climate Focus), Penny Davies (Ford Foundation), David Kaimowitz (Ford Foundation), Caleb Stevens (U.S. Agency for International Development), and Nicholas Tagliarino (University of Groningen, Netherlands, and the Land Portal).

Christine Halverson (Rainforest Foundation-United States), Tom Griffiths and Vanessa Jimenez (Forest Peoples Programme), and Laura George and Jean LaRose (Amerindian Peoples Association, Guyana) provided invaluable research support on Guyana.

Three researchers with the Yale Environmental Protection Clinic, a joint endeavor by Yale Law School and the Yale School of Forestry and Environmental Studies, provided research support. Allison Tjemsland conducted research on community land formalization procedures in Canada, and Adrien Salazar and Pooja Choksi conducted research on the community land formalization procedure in the Philippines. In addition, Amy Ching, a WRI intern from Wageningen University, Netherlands, conducted early background research on community land formalization procedures.

The authors are grateful for advice on the research and report from several WRI colleagues, including Mark Robinson, Daryl Ditz, and Laura Malaguzzi Valeri. We would also like to acknowledge WRI colleagues involved with editing, graphic design, and layout as well as communications and outreach, including Emily Matthews, Sophie Boehm, Carni Klirs, Lauren (Cole) Zelin, Vaishali Patel, Ally Friedman, Maria Hart, William Wen, Julie Moretti, Romain Warnault, and Sarah Parsons.

WRI is indebted to the Climate and Land Use Alliance for its generous financial support.

This research report represents the views of the authors alone. It does not necessarily represent the views of WRI, CIFOR, AsM Law Office, UCRT, RFUS, or the partners and affiliated networks of the RRI Coalition or their various funders. Nothing in this report constitutes legal advice, and the information contained in this report should not be relied upon to make decisions affecting legal rights.

We are pleased to acknowledge our institutional strategic partners, who provide core funding to WRI: Netherlands Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, and Swedish International Development Cooperation Agency.

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Cover photo, Ricky Martin/CIFOR; pg. ii, Nanang Sujana/CIFOR; pg. 2, Eduardo Fonseca Araujo/Flickr; pg. 5, Contrastes VelhoChico/Flickr; pg. 10, Daniel Cima/CIDH.
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Our Challenge
Natural resources are at the foundation of economic opportunity and human well-being. But today, we are depleting Earth's resources at rates that are not sustainable, endangering economies and people’s lives. People depend on clean water, fertile land, healthy forests, and a stable climate. Livable cities and clean energy are essential for a sustainable planet. We must address these urgent, global challenges this decade.

Our Vision
We envision an equitable and prosperous planet driven by the wise management of natural resources. We aspire to create a world where the actions of government, business, and communities combine to eliminate poverty and sustain the natural environment for all people.

Our Approach
COUNT IT
We start with data. We conduct independent research and draw on the latest technology to develop new insights and recommendations. Our rigorous analysis identifies risks, unveils opportunities, and informs smart strategies. We focus our efforts on influential and emerging economies where the future of sustainability will be determined.

CHANGE IT
We use our research to influence government policies, business strategies, and civil society action. We test projects with communities, companies, and government agencies to build a strong evidence base. Then, we work with partners to deliver change on the ground that alleviates poverty and strengthens society. We hold ourselves accountable to ensure our outcomes will be bold and enduring.

SCALE IT
We don’t think small. Once tested, we work with partners to adopt and expand our efforts regionally and globally. We engage with decision-makers to carry out our ideas and elevate our impact. We measure success through government and business actions that improve people’s lives and sustain a healthy environment.

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