

Land rights and conflict avoidance

28 May 2019

Companies must ensure that community land held under customary tenure arrangements is acquired ethically, writes Peter G. Veit

Land acquisitions by corporations in Africa, Asia and Latin America are on the rise as global demand for foods, energy, minerals, wood fibre and other products grows. Much of this is community land held under customary tenure arrangements.

This is a problem for communities and companies: while most such land is not recognised under national law, registered in a government cadastre or officially documented with a land certificate or title, it is nevertheless legitimately held under custom. Companies acquiring contested land can damage their reputation, and cost their operations time and money.

In these world regions, international companies commonly secure land from the government. This community land was sometimes acquired by the government without the knowledge or approval of communities, and often without paying fair compensation. This raises serious human rights issues as community land:

- is a primary source of income and livelihood;
- establishes social identity and security;
- has cultural and spiritual significance; and
- generates significant social, economic, and environmental benefits for society.

Even where new commercial investments bring jobs or other benefits, these rarely compensate for the community's loss of its lands. As communities learn of their rights, many are taking action to [protect their lands](#). More are turning to the courts, staging demonstrations, meeting their representatives, organising monitoring patrols, evicting intruders, mapping their lands and formalising their customary land rights. Such actions expose community members to risks. Clashes have escalated in recent years and become more violent.

With more governments encouraging foreign investment, more companies are acquiring community land. The risks posed by land conflicts can have reputational and financial consequences for companies making land-related investments, such as in agriculture, logging, mining and infrastructure. Operational delays can inflate costs by as much as 29 times, jeopardising projects and even [companies themselves](#). In Peru, a major mining project with capital expenditures of \$3-\$5bn lost \$20m per week because of production delays as a result of [conflicts with communities](#). In some cases, land conflicts have led to international boycotts that have tarnished the corporation's brand and cost it in terms of sales.

These land-related risks and associated costs merit serious attention from companies with field operations and their investors, including banks and asset managers. There are 3 measures companies can take to reduce their exposure to land-related risks in their operations, however:

1. developing and implementing company land policies consistent with international

- standards;
- 2. carrying out due diligence on land targeted for investment; and
- 3. helping to clarify and secure community land rights.

Investments in rural Africa, Asia and Latin America can be highly profitable. In many places, land is inexpensive, and the costs of putting it into productive use are often low. When land conflicts with communities arise, companies have typically dealt with them on a case-by-case basis; but as conflicts become more common and the costs of contested land have risen, a new approach is needed.

A small but growing number of corporations, especially those that are consumer-facing, have developed land policies, including [L?Or?a|Coca-Cola](#) , [PepsiCo](#) and [Asia Pulp & Paper](#) , although the implementation of such policies remains a challenge. Some aspects are consistent with international standards or norms, such as the [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests](#) and [International Financial Corporation Performance Standards](#) .

The majority of companies do not have land policies, however, and those that do exist do not meet international standards. The financial risks of contested land will therefore only escalate; this warrants a shift from handling conflicts on a case-by-case basis to dealing with issues across all land-based investments and supply chains systematically. Developing a sound land policy is the first step, followed by investing to ensure effective implementation.

In many African, Asian and Latin American countries, national laws do not recognise or sufficiently protect community land and customary tenure arrangements. Land administration is weak, with incomplete and outdated government registers and poorly documented community land rights. Few governments know which land in their country is held and used by indigenous people or other communities under customary tenure systems. Yet there is little, if any, vacant, idle or unclaimed land in these regions.

Formalisation of rights

Land and tenure rights are at the heart of a global battle for land and environmental resources. The importance of establishing these rights, and the corresponding security they offer people and communities, cannot be understated. The formalisation of slums, natural resource management, affordable housing and the establishment of sustainable taxation and service provision are all done on the basis of formalised land and tenure rights.

RICS has been working with more than 30 global professional organisations to help [develop international due diligence standards](#) that focus on land and real-estate transfer. Eight key elements have been identified, and each has the potential to trigger the formalisation of rights.

Title searches to verify the landholder?s right to transfer ownership or its use rights, and to uncover any claims, disputes, errors, debts or other restrictions on the land, are not possible; even if they can be carried out, they are likely to be incomplete. Corporations must carry out due diligence on the land targeted for investment and manage risks at the inception of operations.

Several tools are available for companies to review such sites. For example, [LandMark](#) , an online global platform, provides precise boundaries for indigenous and community lands around the world. The map is not complete ? currently 12.4% of the world?s land is mapped,

far less than the 50% that is held by communities ? but it has helped companies to reduce their risks. As a result, many risk assessors and investors, including the [IMF](#) , now use LandMark or incorporate its maps into their risk assessments.

When communities have strong, secure land rights, businesses benefit from reduced land-related risks, protecting their reputations and boosting profits. Community land rights are complex and not the responsibility of one corporation, but risk provides a strong incentive for them to contribute to clarifying and [securing these rights](#) . Depending on the local context, corporations can support government efforts to enact and implement strong community land rights laws and ensure communities affected by their operations have recognised, registered and documented those rights.

Corporations should recognise community land and customary tenure arrangements as legitimate, even if the host government does not. They should acknowledge communities as the legal authority over their land, recognise customary rights that those communities exercise over their lands as a lawful form of ownership, and ensure that customary systems have the same protection as rights under other tenure systems.

Procedures for communities to register and document their customary land rights are complex and costly, requiring them to sacrifice time, finances and even customary land itself. This can take decades. For example, in the Philippines, the process requires 56 legally mandated steps, while in Indonesia, 21 different [government entities are involved](#) .

In comparison, companies acquire formal land rights relatively quickly, with some taking short cuts or beginning commercial operations before they obtain final approvals. When the law is skirted in this way, more responsible companies are at a disadvantage and communities are vulnerable to being displaced.

To level the playing field between communities and companies, governments should establish accessible and transparent community procedures that recognise customary land, mitigate land conflicts, and monitor company compliance. Businesses should also recognise customary land that is in the process of being titled, support communities' rights to free, prior and informed consent, and negotiate fairly with them over access to their land. By taking these measures, companies can reduce their exposure to costly and complex land-related risks.

Peter Veit is director of the Land and Resource Rights Initiative at the [World Resources Institute](#)

Further information

- Related competencies include: [Access and rights over land](#) , [Cadastre and land administration](#) , [Legal/regulatory compliance](#)
- This feature is taken from the [RICS Land journal](#) (May/June 2019)
- Related categories: [Agricultural and rural disputes](#)