

DRIVING DISPOSSESSION

THE GLOBAL PUSH TO
“UNLOCK THE ECONOMIC POTENTIAL OF LAND”



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The Oakland Institute

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Executive Summary

The COVID-19 pandemic might have briefly eclipsed the escalating climate and environmental crisis facing the world. Yet, deforestation, desertification, environmental degradation, pollution, and the destruction of biodiversity continues at alarming rates, jeopardizing the health and livelihoods of billions.

A common thread within these threats is the overexploitation of our natural resources. The land available to us is finite – we have access to only 149 million square kilometers, less than 30 percent of the surface of the earth, but we act as if it were unlimited. The “World Overshoot Day,” which marks the point each year at which “humanity starts to consume the world’s natural resources faster than they can be replenished” illustrates this overexploitation. In 2019, the date was July 29, the earliest ever.¹

With the world’s attention fixated on the current pandemic, the need to address the climate crisis remains urgent. We know what needs to happen to stop this destruction and preserve the planet for current and future generations. In addition to phasing out fossil fuels, we must stop the overexploitation of natural resources, including ongoing massive deforestation. With regards to agriculture, the 2019 report by the Intergovernmental Panel on Climate Change (IPCC)² warns against the damaging effects of monocropping. It also highlights the importance of agroecology to improve the “sustainability and resilience of agricultural systems by buffering climate extremes, reducing degradation of soils, and reversing unsustainable use of resources; and consequently increase yield without damaging biodiversity.”

Humanity has a decade to reduce global emissions by half or we will rocket past a global temperature increase of 1.5 degrees Celsius, an outcome scientists warn will be disastrous.³ Inaction will result in an immeasurable cost, as climate catastrophes will cascade and continue to intensify.

Despite these clear warnings by scientists, world leaders are still failing to act on the scale required. Instead of taking meaningful action, governments, corporations, and international institutions are actually “doubling-down,” wanting to exploit more land through a euphemism-based narrative of putting it to “productive use” in the name of economic progress and “development.” To attract private investment, governments are thus marketing hundreds of millions of hectares of land as “available” without regard for those whose livelihoods depend upon it.

Faced with this covert threat, communities globally continue to resist the exploitation of their lands. A major part of the land on the planet is still not controlled by private interests. As much as 65 percent of the world’s land area is stewarded by communities under customary systems.⁴ Whether it is on legally recognized public land or customary land, billions of people rely on communally managed natural resources such as rivers, lakes, forests, and savannas for their livelihoods. For most of us, land is a common good, valued as an ancestral asset with social and cultural significance.

Local communities and Indigenous groups are the stewards of these resources and are on the frontline to defend them against land grabbing and destructive practices. They courageously resist the governments and corporations that want to convert smallholder farms, grasslands, and forests into monoculture plantations, cattle ranches, and mines which further contribute to climate change and environmental degradation.

As people’s very presence and resistance is seen as an obstacle to investment and business, many governments around the world have been prompted to adopt the Western capitalist notion of private land ownership. This includes the creation of land markets so that land can be leased or sold and put into so-called “productive use” to “unlock its value.” The World Bank is a key actor in the push to privatize and commodify land. In 2017, its *Enabling the Business of Agriculture* report prescribed to governments the series of measures they should take in order to “enhance the productivity of land use” and encourage agribusiness expansion. The key policy prescriptions included formalizing private property rights, easing the sale and lease of land for commercial use, systematizing the sale of public land by auction, and improving procedures for expropriation.⁵

This report details how this doctrine is being applied around the world. Six country case studies show how governments pass new laws, create land markets, conduct land reforms, and sign Public Private Partnerships to open more lands and natural resources to exploitation. This trend is largely encouraged by Western governments and private foundations, as well as international institutions such as the World Bank and the International Monetary Fund (IMF).

The role played by these two international financial institutions in driving the marketization of land is fully on display in Ukraine, where the IMF has leveraged the economic fallout from the COVID-19 pandemic to coerce



“Europe’s breadbasket” into creating a land market despite overwhelming opposition in the country. In March 2020, Ukraine ended the moratorium on the sale of land that had stood for 19 years in order to qualify for a desperately needed US\$5 billion loan package from the IMF. The World Bank, along with the European Bank for Reconstruction and Development (EBRD), has been laying the groundwork for the creation of a land market to the benefit of agribusiness and private investors who promise “growth” in exchange for access to land. Farmers, agricultural workers, unions, and the vast majority of the population have staunchly opposed the creation of a land market, as this major reform will allow agribusiness conglomerates, oligarchs, and private foreign investors to increase their already substantial control over land and natural resources in the country.

While technological innovations can play a role in documenting and securing land rights, they can also be used to entrench existing inequalities in access to land. Blockchain technology is an increasingly used element of this push to privatize and access natural resources. In Zambia, the government is partnering with Medici Land Governance (MLG), a blockchain company and subsidiary of the US-based online retailer Overstock.com, to assist with land registration and titling. The goal of the National Land Titling Program is to register “all property in the country in order to provide security of tenure to property owners.” Former Overstock.com CEO, Patrick M. Byrne, explains that the use of blockchain for land titles will help unlock trillions of dollars in global mineral reserves that are inaccessible due to unclear land governance systems. In 2018, he signed a multi-country partnership with the World Bank to expand the use of blockchain for registering land around the world.

A third case study examines how Myanmar intends to put land to its most “efficient use” through amendments to the country’s “Vacant, Fallow, and Virgin” (VFV) Land Law. Passed in fall 2018, the amendments imposed a six-month deadline to anyone occupying so-called VFV land to apply for a 30-year permit to continue using the land, after which any unpermitted lands were made available for agriculture, mining, and other purposes. Far from being vacant or fallow, these lands are used by communities for farms, gardens, orchards, and forests and are governed under customary tenure systems. Those who call these regions home are confronted with the stark choice of rescinding their ancestral claims to the land in exchange for a 30-year permit, or facing eviction, jail time, and fines. Hundreds of civil society groups from ethnic Karen, Kachin, Shan, Chin, Karenni, and Mon communities have expressed their concerns over the law,

with support from national and international NGOs, but it proceeded on schedule for its May 11, 2019 deadline. The law has already been used to seize community land for palm oil operations, which threaten people’s livelihoods and the ecosystem. The law also threatens the ability to ever return home for hundreds of thousands of displaced people and refugees. Nearly half of Rakhine state, where the majority of Myanmar’s Rohingya people originate from, is considered VFV land.

While 97 percent of the country is under customary land tenure, Papua New Guinea (PNG) is making available millions of hectares of lands for palm oil, mining, and timber operations under the guise of “unlocking” the economic value of land. Despite international outcry and substantial national mobilization, PNG’s most recent development plan aims to move 20 percent of all land into a formal market by 2022. Additionally, in 2019, the government organized a Land Summit to promote this agenda and in August of the same year, the new Prime Minister announced plans to create up to 18 special economic zones to boost economic development, which will also require seizing more customary lands. Yet, as already seen in the past four decades, rather than delivering on the promised development benefits, the take-over of customary land for the exploitation of natural resources has led to deforestation and environmental degradation, destruction of livelihoods, and caused conflicts within and between communities.

The fifth case study analyzes the compact between Sri Lanka and the United States Millennium Challenge Corporation (MCC) that could potentially shift millions of hectares of land into private control. A Land Project focused on mapping and digitizing state lands has the explicit purpose of stimulating investment and increasing its use as an economic asset. Motivated by the difficulty the private sector currently faces in acquiring land in Sri Lanka, the project will extensively map and digitize land records of up to 67 percent of the entire country. Civil society groups have called on the government to reject the compact and warned that it will result in “land grabs by creditors, the transfer of prime land to multinational corporations, [and] the loss of livelihoods for local farmers.” For dispossessed groups and ethnic minorities, the prospect of the government determining what land is vacant poses an enormous threat given the country’s history of war-related displacement, internal colonization, and landlessness.

Finally, in Brazil, far-right President Jair Bolsonaro is using a pro-business, anti-Indigenous rhetoric to garner public





A villager carrying sacks of grass for livestock in Maw Ya Wadi, Maungdaw township, Rakhine State, Myanmar © FAO / Hkun Lat

support for seizing Indigenous land. Bolsonaro assumed office in January 2019 after a campaign in which he promised to expand the exploitation of the Amazon, halt the demarcation of Indigenous lands, and arm ranchers to allow the takeover of those lands for cattle ranching. While some of his attempts have been blocked by Congress, he has succeeded at emboldening politicians and citizens alike, resulting in increased land invasions, killings of and violence against Indigenous and land rights activists,⁶ as well as an acceleration of deforestation. The budgets, staffing, and enforcement of the agencies responsible for environmental and Indigenous protections have all been slashed.⁷ It was in this context that in 2019, ranchers set large portions of the Amazon on fire, threatening a multitude of Indigenous communities and the ecosystems on which they rely.

Whereas some like Patrick Byrne or Jair Bolsonaro are explicit about their goal of accessing or “unlocking” profitable natural resources, most proponents of the privatization of land rather use a development imperative justification. The idea that privatizing land will bring development comes in part from the – now largely debunked – claims of Peruvian economist Hernando de Soto, that “securing land rights” via private titles would improve access to credit, agricultural investment, and environmental stewardship. Research

reveals that private titling has not increased access to credit and loans. The claim that private titles offer tenure security while customary systems remain insecure is often repeated, yet not substantiated by evidence. On the contrary, the process of transitioning locally developed customary systems – that in many cases offer tenure security – into private titled land is likely to result in considerable social and economic displacement while placing ecosystems at risk. While research has long shown the value of customary systems, Western aid agencies and international financial institutions generally fail to recognize the evidence and continue to advocate and support the privatization of land and the creation of land markets.

Together, these six case studies sound the alarm on a trend that threatens people and the planet. Returning to normal is not an option as unfettered capitalism has brought us to this disaster. We must halt and reverse the privatization of the commons to protect and nurture these natural resources for future generations. Rather than erasing local governance and negating Indigenous autonomy, governments must instead build systems that incorporate a diversity of ownership and tenure systems, and focus on a development path that serves the people instead of one that takes the land away from them for corporate profits.



Introduction

The COVID-19 virus has upended daily life around the world and laid bare the fragility of the global economic system and the consequences of staggering inequity. It has also eclipsed the escalating climate and environmental crisis facing the world. Yet, deforestation, desertification, environmental degradation, pollution, and the destruction of biodiversity continue at alarming rates, jeopardizing the health and livelihoods of billions. What is at play is the survival of the planet as we know it as well as our own.⁸

Almost half of the land on earth is used for agriculture, including for a large part livestock pasture and crops not meant for human consumption, such as biofuels and animal feed.⁹ Furthermore, what is grown for human consumption is increasingly produced unsustainably, involving large monocrops and intensive use of chemicals. The August 2019 Intergovernmental Panel on Climate Change (IPCC)¹⁰ warned against the damaging effects of monocropping, and explained that the “expansion of areas under agriculture and forestry, including commercial production, and enhanced agriculture and forestry productivity...have contributed to increasing net GHG [Green House Gas emissions]... loss of natural ecosystems (e.g. forests, savannas, natural grasslands and wetlands) and declining biodiversity.”¹¹

An obstacle to this expansion has been the prevailing land tenure regime in many countries. As much as 65 percent of the world’s land area is still stewarded by communities under customary systems.¹² Many formerly colonized countries have adopted dual systems of land tenure that recognize

customary land laws while also establishing that all land is owned by the state.¹³ This situation is seen as a constraint for investors and businesses. According to the World Bank, “undocumented [land] rights pose challenges and risks to investors,”¹⁴ and in the case of Africa, the continent is “held back by land ownership confusion.”¹⁵

Indigenous people and local communities have proven to be effective stewards of natural resources, managed under a variety of communal and collective tenure systems.¹⁶ Traditional Indigenous territories cover 22 percent of the world’s land surface and contain 80 percent of global biodiversity.¹⁷ However, encouraged by the World Bank and other financial institutions, the priority for governments is to put more land into “productive use” in order to allow private interests to take advantage of its “potential economic value.”¹⁸ Around the world hundreds of millions of hectares of land are marketed by governments as “available” or “unexploited” to attract investment in agribusiness, commercial forestry and mining.

Through six case studies – Ukraine, Zambia, Myanmar, Papua New Guinea, Sri Lanka, and Brazil – this report details the various ways by which governments – willingly or under the pressure of financial institutions and so-called donor countries – attempt to privatize land and make it available for exploitation. These include land reforms, changes in laws and regulations, use of new technology for land registration, as well as the removal of safeguards in place to protect Indigenous People and the environment.





IMF Leverages COVID-19 Economic Fallout to Create a Land Market

In a dramatic emergency session of Parliament that stretched into the early hours of the morning on March 31, 2020, Ukraine passed a law legalizing the sale of farmland and lifting the country's 19-year moratorium on land transactions. Ending the moratorium was part of a series of policy reforms that the International Monetary Fund (IMF) conditioned a US\$5 billion loan package upon.¹⁹ Faced with a deep economic crisis, an ongoing civil war, and the rapidly escalating COVID-19 pandemic, Ukraine risked plunging into default without the loan package. While loans often include conditionalities, the manner in which the IMF exploited Ukraine's economic predicament to force the country to make its land available for sale against overwhelming opposition is without precedent.

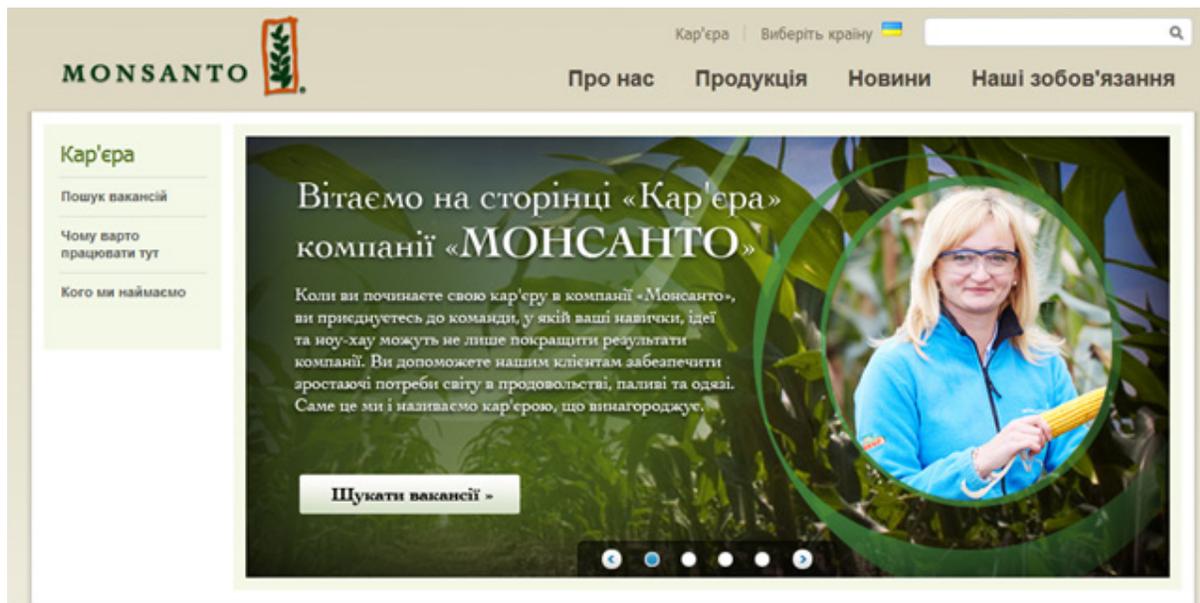
Lifting the moratorium had been a key demand of Western financial institutions since the 2014 Euromaidan movement and the resulting Association Agreement signed with the European Union.²⁰ The IMF, the World Bank, and the European Bank for Reconstruction and Development (EBRD) have all pushed for the reform to enable agribusinesses and private investors access to Ukraine's farmland. Known as the "bread basket of Europe" for its rich, black soil, Ukraine

has 32 million hectares of fertile land²¹ – equivalent to one-third of all arable land in the European Union – and is the world's leading exporter of sunflower oil²² and seventh-largest exporter of wheat.²³

An earlier version of the bill was passed in November 2019, which had stalled in the Parliament given widespread opposition. According to an October 2019 survey, 73 percent of Ukrainian citizens opposed the lifting of the moratorium, and 81 percent were against land sales to foreigners.²⁴ A series of protests against the bill grabbed international headlines, as broad coalitions of farmers, agriculture workers, academics, and political parties banded together to protest the bill.²⁵ Lawmakers opposed to lifting the moratorium managed to delay its passage by proposing thousands of amendments and calling for the issue to be put to a national referendum.²⁶

With some concessions made in the final version, the law creates a land market in several stages. Starting in July 2021, individual Ukrainian citizens will be able to purchase up to 100 hectares. The second stage begins in January 2024 and will raise the limit to 10,000 hectares and permit sales to legal entities.²⁷ The initial draft version of the bill would





Screenshot from Monsanto-Ukraine website prior to its purchase by Bayer

have allowed sales of up to 200,000 hectares.²⁸ Foreign individuals, companies, and companies whose ownership is impossible to determine are prohibited from purchasing land, a provision that can only be lifted by a national referendum.²⁹

A spokesperson for President Zelensky applauded the creation of an “open, transparent, and fair land market” and noted that the administration is working on complementary legislation to ensure the market “function[s] efficiently.”³⁰ In response, the opposition announced they will challenge the law in constitutional court.³¹

The final version of the bill was only able to pass after the COVID-19 pandemic further intensified Ukraine’s ongoing economic struggles and made the IMF loan essential. The timing of the bill’s passage coincided with mandatory stay at home orders in place across the country, effectively quelling any potential protests or demonstrations.³²

Before the breakup of the Soviet Union in 1990, land that covers present-day Ukraine was held by the state in collectivized farms. Following a brief transition period after independence, Ukraine passed a Land Code in 2001, providing Ukrainians who had worked on collectivized farms with titles to approximately four hectares of land each, and created a moratorium on the sale of land.³³

Public fears of Ukraine’s most productive agricultural lands being handed over to global agribusinesses are well founded. As previously reported by the Oakland Institute,

portions of these lands are already concentrated in the hands of oligarchs and Western agribusinesses who have been able to take advantage of loopholes in the moratorium.³⁴ Who precisely controls Ukrainian land has long eluded researchers, as off-shore tax havens and land tenure practices make it difficult to discern.³⁵ As of 2018, the top 10 foreign and domestic agro-holdings controlled approximately 2.8 million hectares.³⁶

Whereas the IMF conditioned the loan package on the creation of a land market, for the past six years, the World Bank and the European Bank for Reconstruction and Development (EBRD) have been laying the groundwork for this move in favor of the expansion of industrial agriculture in Ukraine.³⁷ The EBRD, Ukraine’s largest international investor, has poured millions into supporting the country’s leading agribusinesses while pressuring the government to create a land market to increase private investment.³⁸ The World Bank provided an US\$89 million loan for the Ukraine Rural Land Titling and Cadastre Development Project in 2013.³⁹ The main objectives of the program were to privatize state lands and communal farm enterprises, allocate land parcels and issue deeds to land parcel owners, and establish an electronic land cadastre. Through these goals it encouraged “the restructuring of farms into more efficient units.”⁴⁰ In August 2019, the World Bank approved a US\$200 million loan for the restructuring of the agricultural market and the auctioning of state lands.⁴¹ The announcement of the loan was accompanied by President Zelensky’s pledge to move fast on lifting the moratorium.⁴²

*“The prospective sale of agricultural lands will result in their further concentration in the hands of the so-called “efficient owners” – Ukrainian agricultural oligarchs and transnational corporations. The farmers’ and peasants’ access to buying land will be blocked because of their poor financial capacity.”*⁴³

“Towards Peasants’ Right to Land in Ukraine Through Responsible Management of Land Tenure and Land Use System.” Public Forum, December 9, 2019

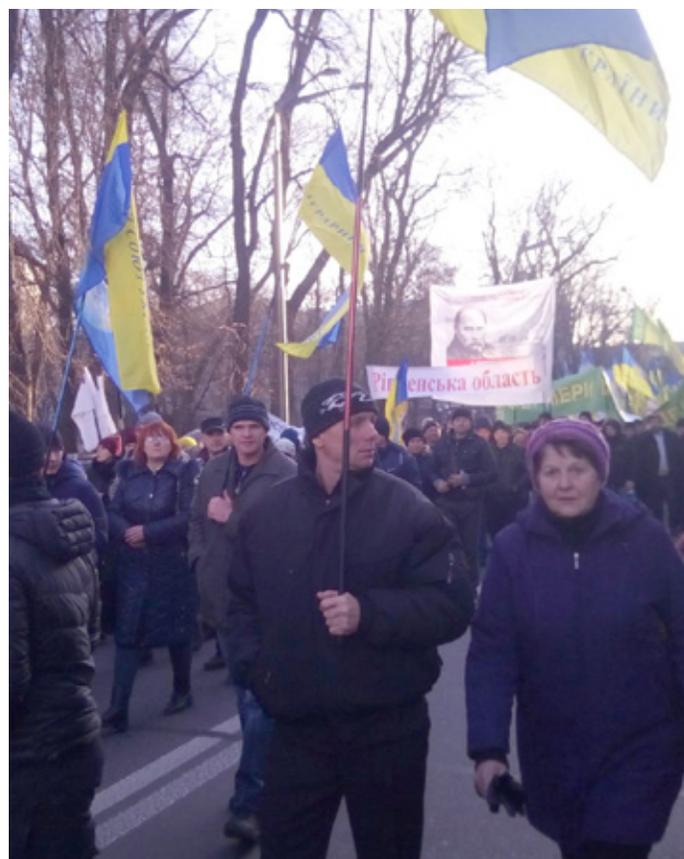
In November 2019, members of rural communities, agrarian universities, research institutions, public organizations, and unions – together representing the interests of over four million farmers – came together at a public forum and published an open letter to the respective heads of the World Bank, EBRD, and IMF. “The prospective sale of agricultural lands will result in their further concentration in the hands of the so-called “efficient owners” – Ukrainian agricultural oligarchs and transnational corporations. The farmers’ and peasants’ access to buying land will be blocked because of their poor financial capacity,” the letter states.⁴⁴ Responding to claims that opening the land market will result in investment and growth, they counter: “only beneficiaries will be the new landowners, not Ukrainian farmers. Peasants who sell their land plots to solve their pressing financial problems may soon join other marginal social groups that badly require substantial permanent assistance on behalf of the state.”⁴⁵ Opening a land market, especially during an economic crisis, only further marginalizes peasant farmers and risks severing them from their most valuable resource.

The few concessions included in the final version of the bill that was passed are inadequate in preventing further consolidation of land ownership. For instance, the ban on foreign or unknown owners from acquiring land would require tracing and enforcement, which are very unlikely to materialize within the current global economic system where companies and subsidiaries constantly change hands and are financed and owned without transparency. There are other loopholes in the new legislation, which removes restrictions on rezoning agricultural land, a practice that has been done in the past to circumvent caps on the ownership limitations.⁴⁶ Given how oligarchs were able to easily circumvent the law when the moratorium was in place, creating a market will only serve to open more avenues for a few private interests to consolidate their control over land and the agricultural sector.

The creation of a land market in Ukraine aims to intensify large scale, industrial agriculture dominated by

agribusiness. Once the legal limitations are lifted in 2024 and legal entities can purchase up to 10,000 hectares legally, agribusinesses can further expand their access to land. Multinational agribusiness firms are already heavily involved in Ukraine with Cargill, Bayer, and DuPont having made substantial investments over the past few years.⁴⁷ In July 2019, Ukraine announced that it “attracted” two loans from Cargill Financial Services International for 100 million (US\$112 million).⁴⁸ In August 2019, Bayer (the group that now owns Monsanto) won an anti-monopoly suit in Ukraine’s Antimonopoly Committee – an antitrust body that already approved consolidation in the agribusiness sector, prompting questions regarding its consistency in applying antitrust laws.⁴⁹

Instead of opening a land market and risking further consolidation of land ownership in order to stimulate economic growth, Ukraine should pursue policy options that promote the interests of smallholder farmers and agriculture workers. This could include offering farmers direct financial and technical support to bolster agricultural production and incomes. Working together with rural coalitions, the government could catalyze an economic recovery built on the sustainable use of its rich farmland by its own farmers. The IMF is advancing an industrial agriculture model that remains environmentally untenable and disastrous for the majority of the country’s farmers.



Farmer protests against the land reform, December 2019 © Oleksiy Frayer





Land Unchained? Blockchain to “Unlock the Economic Value of Land”

Blockchain technology is presented as the silver bullet solution for securing land rights, with over 20 governments worldwide implementing or considering the technology for land registration (see Box 1). The Zambian government has partnered with Medici Land Governance (MLG), a blockchain company and subsidiary of the US-based online retailer Overstock.com, to assist with land registration and titling.⁵⁰

At the time of independence in 1964, there was no private land in Zambia, with 94 percent of the country under customary tenure and the remaining six percent under state control.⁵¹ This started to change in the early 1990s, when the World Bank and the IMF required the government to change land laws towards privatization as a condition for the restructuring of its international debt.⁵² Although the resulting 1995 Land Act recognized customary land, it also created legal pathways for reducing the amount of land under customary land tenure. The Lands Act combined reserve/trust land into customary land, strengthened state leasehold rights at the expense of customary rights, eased restrictions on foreign ownership of land, and facilitated the conversion of land from customary to state.⁵³ As a result, Zambia saw a drastic reduction of customary land, from

94 percent to less than 60 percent today.⁵⁴ This so-called formalization of land tenure resulted in shifting the control over land from people to the government, thereby making it available for exploitation by private interests. In the years after the Act was passed, conversions of customary land to leasehold increased, displacement became common, and while investors reaped the benefits, local villagers suffered through “social and economic exclusion, elite capture, displacement, intra-community conflict, and the enclosure of common pool resources.”⁵⁵

Ignoring the plight of local communities, the Zambian government decided to go farther on the path of land reform by launching a National Land Titling Program in 2014. The stated objective of the program is to “carry out a systematic registration of all property in the country in order to provide security of tenure to property owners.”⁵⁶ Zambia’s 2017-2021 National Development Plan confirms the country-wide land titling program, alongside the development of a digitized governance system in the land sector and a comprehensive land audit.⁵⁷

Following the release of the development plan, in 2018 the Zambian government signed a Memorandum of Understanding (MOU) with MLG, “to develop a program



for systematic land governance within the country.”⁵⁸ The project uses blockchain technology to create and digitize land titles (see Box 1). MLG’s initial 2018 project issued 50,000 titles⁵⁹ “to serve as proof of concept for a systematic, streamlined process to scale up the country’s land titling program.”⁶⁰ Less than a year later, the company signed a second MOU, this time with the Lusaka City Council, to issue “no fewer than 250,000 certificates of title” to people living in Zambia’s capital.⁶¹

“There are also trillions of dollars in value in global mineral reserves that cannot be accessed by the mining firms...which have difficulty conducting operations where land governance is not clearly established because of various laws and regulations that go back to the 1940s. We believe our work can unlock those values. In the process of unlocking such tremendous values, there should be a few shekels for us, and mountains of shekels that will come into the possession of the world’s poorest.”⁶²

– Patrick Byrne, Former CEO, Overstock.com, July 15, 2019

As expressed by its former CEO, Overstock.com’s interest in land titling is closely tied to the Bank’s motto that private property rights can help unlock the economic potential of land. In communications with investors, Byrne cited “trillions of dollars in value in global mineral reserves that

cannot be accessed by mining firms” due to unclear land governance systems.⁶³ Private titles would allow mining companies to enter into agreements with landowners to exploit vast natural resources, and ensure that the wealth extracted through mining is enjoyed by land rights holders and corporations.⁶⁴ Under this scenario, Overstock.com would also benefit financially from unlocking this “dead capital,” though exactly how this would be negotiated remains unknown. What is known in terms of revenue models is that in Zambia, the company expects to receive a cut of the tax revenues generated through government land titling and the resulting increase in taxes.⁶⁵ In addition, Byrne has commented that donor countries pay healthy sums for land titling projects,⁶⁶ suggesting that international development aid dollars could potentially support MLG’s efforts globally.

The day after MLG signed its first MOU in Zambia, it also penned an agreement with the World Bank to collaborate in other countries to “support the design, implementation, and evaluation of pilot programs that will create systems to ensure secure land tenure.”⁶⁷ The Bank’s lead economist on land issues, Klaus Deininger, commented: “Joining forces with MLG allows the Bank to provide client countries access to cutting edge technology, work with the countries on adapting the technology to their context, and then document the impact of the updated process. We are excited about the opportunities this collaboration offers us to generate transformative innovations and make the case for greater public and private investment in an area that is key for development.”⁶⁸ According to Byrne, the Bank is now helping open doors for blockchain-based land titling “all over the world.”⁶⁹



Chiapata, Zambia in July, 2018 ©Sandra Coburn





“Thanks to the World Bank ... we have more projects to discuss with governments than we have people who can fly around the world to have the discussions.”⁷⁰

– Patrick Byrne, Former CEO, Overstock.com, November 8, 2018

BOX 1: BLOCKCHAIN EXPLAINED

Blockchain is a digital ledger that keeps track of transactions with “blocks” of information that store data such as the date, time, amount, and participants of a transaction in a chronological “chain.”⁷¹ It is a distributed ledger, which means whenever a transaction occurs, it must be verified by a network of thousands or possibly millions of computers around the world before the transaction can be recorded as a block on the chain. Once verified, the added block is given a unique identifier called a hash, as well as the hash of the previous block in the chain. This makes blockchain difficult to hack.⁷²

Blockchain was invented in 2008 for Bitcoin, the world’s leading cryptocurrency, by an anonymous entity called Satoshi Nakamoto.⁷³ The security and transparency provided by blockchain technology has caused many to try to adapt it for a wide range of applications such as medical records, property records, private contracts, and election ballots.⁷⁴ Within the field of agriculture, applications include crop insurance and traceability in supply chains.⁷⁵

In recent years, there has been a surge of American and European startups attempting to apply blockchain technology to land registries.⁷⁶ Georgia,⁷⁷ India,⁷⁸ Ukraine,⁷⁹ the Netherlands,⁸⁰ the United Kingdom,⁸¹ Colombia,⁸² Saudi Arabia,⁸³ Kenya,⁸⁴ Honduras,⁸⁵ Bermuda,⁸⁶ Brazil,⁸⁷ Mexico,⁸⁸ St. Kitts and Nevis,⁸⁹ Ghana,⁹⁰ Rwanda,⁹¹ Zambia,⁹² Liberia,⁹³ India,⁹⁴ Ethiopia,⁹⁵ and Papua New Guinea⁹⁶ are all at various stages of implementing blockchain land registries.

Proponents of using the technology for land administration argue that it has the potential to improve the security and transparency of land registries by storing all information on property boundaries and owners in an immutable, online source.⁹⁷ However, for blockchain technology to bring about improvements in the security of land tenure, claims over land ownership would first have to be determined and verified. As a result, implementing this technology requires countries to move towards systems of private land ownership, which will require registration and digitalization.⁹⁸

The World Bank, one of the major proponents for the use of blockchain for land registration, claims that countries without the required records need simply to “clean up” their registry in order to make blockchain work.⁹⁹ However, this “clean up” is a much larger and more expensive undertaking than suggested by the Bank, given it requires “documenting rights in the first instance, resolving and demarcating boundaries, and establishing the necessary policies and laws for an effective modern land administration infrastructure.”¹⁰⁰

This process runs the risk of further marginalizing disadvantaged groups by allowing wealthy and powerful interests to access land that does not belong to them and formalize their claims through blockchain. Thus, blockchain does nothing to help countries who maintain communal land systems and who have abstained from privatizing land to create more secure records, and instead encourages governments to create individual, private land ownership.





Making “Vacant, Fallow, and Virgin” Land Available for Exploitation

In September 2018, an amendment to the Vacant, Fallow, and Virgin (VFV) Land Law in Myanmar was passed, reportedly to boost economic development in the country by making so-called “vacant” lands available for agriculture, mining, and other purposes.¹⁰¹

The VFV Land Law was initially passed in 2012, along with the Foreign Investment Law and the Farmland Law. These laws had huge implications for customary land systems in the country. Whereas large-scale projects would previously require as many as 11 internal approvals from up to seven government entities to convert VFV land,¹⁰² they created a fast and legal opening for takeover of lands by industrial agriculture and corporate interests, including for palm oil and rubber concessions.¹⁰³ Between 2011 and 2016, an estimated 770,000 hectares were allocated to such agricultural pursuits, destroying livelihoods and ecosystems in the process.¹⁰⁴

With the VFV Law amendment, a six-month deadline was given for anyone occupying so-called VFV lands to apply for a 30-year permit to continue their use. Anyone found using the lands after March 2019 without a permit could face eviction and up to two years in jail and/or a K500,000 fine [US\$330].¹⁰⁵

Nearly one third of the country is considered VFV land – thus subjected to the six-month deadline – with the large majority located in Myanmar’s ethnic states,¹⁰⁶ inhabited by ethnic Karen, Kachin, Shan, Chin, Karenni, and Mon communities.¹⁰⁷

The amendment also threatens the ability of hundreds of thousands of refugees to return home, because of a stipulation that requires VFV permits to only be applied from within the country.¹⁰⁸ Even the Internally Displaced People (IDPs) are at risk of losing their land, as they often lack access to resources necessary to complete and submit an application. Nearly half of Rakhine state, where the majority of Myanmar’s Rohingya people originate from, is considered VFV land, creating an impossible situation for Rohingya IDPs and refugees.¹⁰⁹ Concerned that their land rights would be permanently revoked, some people returned home before the area was declared safe, resulting in wounds from landmines.¹¹⁰

Although last-minute changes to the amendment added language exempting “customary land” from the registration deadline, there is no clear definition of customary land in Myanmar law.¹¹¹ This leaves landholders uncertain of their status and at the arbitrary whim of the administrative offices overseeing land.¹¹²



Furthermore, a survey conducted by Namati, a civil society legal empowerment network, indicated that at the end of the registration period, most local villagers were unaware of the legislation, including the customary land exclusion, putting them at risk of losing their land.¹¹³

Those affected by the amendment assert that there is no such thing as vacant, fallow, and virgin land in ethnic areas.¹¹⁴ The lands are used for “farms, gardens, orchards, productive forests, and communal village land”¹¹⁵ with numerous innovative Indigenous land governance systems found throughout the affected areas.¹¹⁶ Instead, even though agriculture accounts for 30 percent of national GDP, the Ministry of Agriculture, Livestock, and Irrigation insists: “both the benefits that are gained from farming as well as the socio-economic status of farmers are extremely low.”¹¹⁷ The government’s objective is to “improve the performance” of the agricultural sector by “developing vacant, fallow and waste lands into new crop land and livestock zones.”¹¹⁸

Under the new law, those who live and rely on these lands for their livelihoods were confronted with a stark choice – give up their ancestral rights to their lands for a 30-year permit, or face the possibility of eviction, fines, and imprisonment.

Civil society widely opposed the newly amended law. In a joint statement, nearly 350 organizations condemned the widespread dispossession and called for the government to recognize and safeguard customary land rights.¹¹⁹ They warned of the serious implications of the law on the country’s peace process, making dialogue that had taken place “meaningless.”

“[This] is an unjust law that prioritizes the creation of a land market for investors to come in the name of development. This law makes millions of people into landless criminals, and it eliminates their livelihoods, cultures, identity and social status.”¹²⁰

–Land in Our Hands. “Civil Society Organizations’ Statement on Myanmar Vacant, Fallow, and Virgin Land Management.” November 16, 2018

National and international NGOs joined this mobilization. While condemning the amendment in an open letter to the government, they called for the immediate halting of the law’s implementation and creation of “open and transparent consultations” with local stakeholders to establish a fair framework.¹²¹

Ignoring public outcry, the government proceeded with implementation as scheduled and the new law had immediate implications. Lawyers from the advocacy organization, Tanintharyi Friends, reported that “four people in Kyauksha village were sued on August 24, 2018 in the Yephyu Township Court” for “trespassing” under the new VFV amendment. Yuzana Co, a conglomerate with business in palm oil, had already sued 23 villagers under the law before the March 2019 deadline.¹²² In July 2019, Ms. Yanghee Lee, the UN Special Rapporteur on Human Rights in Myanmar, also recognized the role the law has played in creating land insecurity for millions and called for its full repeal.¹²³

Han Win Naung, a farmer from Yangon, has not been able to tend to his 5.7 hectare farm since September 2018,



Farmer with his buffalo © Christopher Michel





Maungdaw – Farm laborers and livestock in Warcha village April 2016 © FAO / Hkun La

when administrators of the Tanintharyi region accused him of violating the VFV law and sued him for trespassing. While he fights alongside representatives from Tanintharyi Friends, his mango, banana, and cashew trees are dying and he struggles to feed his family.¹²⁴

The original enactment of both the Farmland Law and the VFV Land Management law on March 2012 led to numerous cases of land grabbing and lawsuits against farmers.¹²⁵ The amended law has only intensified the issue, and has already been used to seize land for palm oil operations.¹²⁶

“There is no vacant, fallow & virgin land in ethnic areas. [The new law] facilitates making people who depend for their lives on land & forest to become landless. Instead of accepting and enacting this law, the fundamental priority must instead be to effectively recognize customary practices and communal land rights, and to safeguard the interest of the peoples depending on land.”¹²⁷

– Land in Our Hands. “Civil Society Organizations’ Statement on Myanmar Vacant, Fallow, and Virgin Land Management.” November 16, 2018





“Unlocking Land for Development”

In May 2019, the government of Papua New Guinea (PNG) hosted a Land Summit to “explore options with strategies aimed at mobilizing customary land for development.”¹²⁸ The summit was part of the country’s land reform process to ensure “private sector growth” and “the registration of customary land for commercial use.”¹²⁹

While 97 percent of the country is under customary land tenure, PNG is already making millions of hectares of land available for palm oil, mining, and timber operations.¹³⁰ However, land has unique protections under PNG’s Constitution, which instructs the government to control enterprises engaged in exploitation and conserve natural resources for the collective benefit of the majority.¹³¹ These protections have been undermined in recent years as successive governments have taken steps to open up land to investors in the name of development.

Donor agencies have pushed for land titling in PNG for several decades. The World Bank along with then-named Australian aid agency AusAID financed a land titling and registration program in the 1980s, just a few years after the enactment of the PNG’s Constitution.¹³² The theory behind land titling purports that in enabling people to register their land with the government, they will gain access to

leasing opportunities and bank loans. However, their earlier attempts failed, with less than 150,000 hectares removed from customary tenure between 1979 and 2002, likely due to both lack of interest from the private sector as well as active opposition from community landholders, which led to protests and violence.¹³³ The conflict stemmed from the government’s attempt to regulate, which inherently involves determining ownership, and directly contradicted customary systems where land is held collectively.¹³⁴

By the mid-2000s, moves by the government to transfer customary land into the hands of corporations were taking off. This was partially due to the start of a lease-leaseback mechanism called Special Agriculture Business Leases (SABLs) in 2003, which soon led to 12 percent of the country (5.5 million hectares) being leased out to foreign corporations.¹³⁵ To overcome landowner dissonance, many SABLs were leased under “bogus” land groups created by private interests and firms.¹³⁶ Additionally, a 2007 amendment to the Forestry Act created a loophole that allowed firms to obtain licenses without consulting landowners,¹³⁷ spurring the exponential growth of SABL leases.¹³⁸ A 2011 Commission of Inquiry into 74 SABL leases confirmed that “prior consent and approval” by communal landowners was absent in the majority of cases.¹³⁹ While



the SABL scheme was supposed to be for agriculture, some of the large deals were made with logging companies that proceeded to decimate PNG's rainforest.¹⁴⁰

The government's rationale for SABLs and continued attempts to open up customary lands is to "unlock" the economic value of the land for "productive use."¹⁴¹ In a 2013 interview, officials from the Department of Agriculture and Livestock stated that their priority was to "free up land for development."¹⁴²

Yet, as seen with decades of palm oil operations in certain areas of the country such as West New Britain,¹⁴³ the more recent SABL projects not only pushed people off of their native lands but they have also failed to benefit the local people.¹⁴⁴ They have wreaked havoc on communities by destroying livelihoods, provoking environmental degradation, spurring social conflict, and exacerbating climate change through massive deforestation.¹⁴⁵

Still, successive governments have continued to plough forward with a plan to move customary lands into the hands of the private sector. Years after the damning inquiry that found most SABLs to be illegal and official announcements that the illegal leases will be cancelled, the government continues to allow logging and palm oil operations on these lands.¹⁴⁶ The country's latest development plan, which spans from 2018 to 2022, notes that land governance is a "chronic problem" and states a goal of "provid[ing] a secure well administered land market that serves needs of landowners and contributes to the nation's strategic development."¹⁴⁷ It aims to privatize 20 percent of all land in the country so it can be traded in a "land market" by 2022.¹⁴⁸ The goal is to "increase bankable land for productive utilization to unlock its economic potential and engage land-owners in the formal market,"¹⁴⁹ claiming that "future growth in agriculture and industrial sectors require the legal unlocking of land for productive use."¹⁵⁰ Additionally, the 2019 budget emphasized that "extractive projects are still at the forefront of PNGs development aspirations."¹⁵¹

*"Future growth in agriculture and industrial sectors require the legal unlocking of land for productive use."*¹⁵²

– PNG Medium Term Development Plan III
2018 – 2022

Although the government claimed that the 2019 Land Summit will not result in further alienation of customary land,¹⁵³ "private sector growth" is unlikely to be anything

other than the expansion of activities in logging, palm oil, mining, and oil and gas sectors. Prime Minister James Marape made it clear that the 17 resolutions of the summit are not to protect communal land, but to use it for economic gain.

*"Our citizens own land, and if we properly work it through and ensure that the land is convertible...that land can be used for investment, then certainly our people can be on the right path towards sustaining their own lives on their own land."*¹⁵⁴

– "Our Land, Our Life, Our Future." James Marape,
October 17, 2019

As part of the Connect PNG strategy, in August 2019, Prime Minister James Marape announced plans to create "17 or 18 special economic zones" (SEZs) in the country to attract investors to a specific area,¹⁵⁵ with a budget of PGK 16 million [US\$4.7 million].¹⁵⁶ The idea of creating SEZs in PNG is not new – plans have surfaced at numerous times over the past decade¹⁵⁷ and the country's latest multi-year development plan calls for the creation of five SEZs to develop "a world-class agriculture and livestock sector that is responsive to international and domestic markets for a diverse range of products."¹⁵⁸ However, these zones could have substantial implications for customary land, as evidenced by previous attempts in 2018 to propose a blockchain-themed SEZ for the Finschhafen region (Morobe Province) in collaboration with US-based blockchain company Ledger Atlas.¹⁵⁹ The plan would have given complete power over the land to Ledger Atlas executives and "such other fit and proper persons" appointed by the Chairman,¹⁶⁰ spurring protests from locals who feared losing their customary land rights.¹⁶¹

The move to restrict the autonomy of local communities, spurred by promises of economic growth, neglects the highly productive use of land under customary arrangements, which provides the livelihoods of the large majority of PNG's population. The value of the average family garden is worth around K20,000 [US\$6,000] in terms of food consumption, and a further K20,000 [US\$6,000] in terms of domestic informal market trading. Moreover, recent government research has stressed the importance of local agriculture in sustaining 90 percent of the population.¹⁶² The efforts to privatize land in order to spur "development" ignore these





Palm oil nursery in West Pomio © Paul Hilton / Greenpeace

facts. As detailed in a recent joint report by Jubilee Australia and the Oakland Institute, there are alternatives to the government's approach of further eroding customary land tenure so more of it can be sliced off for deforestation, palm oil plantations, and mining leases.¹⁶³

The informal economy and the agriculture sector depend on the maintenance of the customary land tenure system. Instead of undermining it, there are many ways that the government could consider supporting existing agriculture, forestry, and horticulture businesses.

Protecting and supporting domestic agriculture (production, processing, storage, marketing) can be accomplished

without giving the land away. PNG's burgeoning population growth will mean that communities' dependence on access to customary land will assume more and not less importance in the coming decades (PNG's population of eight million is growing at the rapid rate of 2.1 percent per year). Additionally, there are myriad commercial and productive activities, even for the export market, that can be developed without alienating land. The growth of cocoa or vanilla production, in-country processing of wood rather than exporting raw materials, the development of storage and transformation—processing of agricultural and forest products, are all examples of activities that could be initiated or expanded using the current land tenure systems and arrangements.¹⁶⁴



BOX 2: FALSELY LABELED AS “AVAILABLE,” “UNEXPLOITED” OR “UNCULTIVATED,” MILLIONS OF HECTARES OF LAND ON OFFER BY GOVERNMENTS FOR AGRICULTURE, FORESTRY, AND MINING

Hundreds of millions of hectares of land are being offered by countries around the world to attract corporate investment in agriculture, forestry, and mining. Below are examples of public land offerings marketed by governments and investment promotion agencies. The claim that these lands are “available,” “uncultivated,” or “unexploited” is false as millions of people rely on these lands for their livelihoods. The “vacant” land myth is a direct threat to them as it aims to open these lands to industrial exploitation that will increase carbon emissions, pollution, and further destruction of biodiversity.

Democratic Republic of Congo¹⁶⁵

AGRO-INDUSTRIAL SECTOR
OBJECTIVES :

- Increase the production of food, vegetable and perennial products;
- Restore food security.



Potentials

- 80 million ha of arable land and 4million ha of irrigable lands (only 10% is currently exploited);
- Vast area of pasture for raising more than

Mali¹⁶⁶

Avec des vastes étendues de terres arables et une faible densité de la population, le Mali jouit de la plus grande ressource foncière inexploitée de la région.

- 37 millions d’hectares de terres arables inexploitées
- Plus de 40 millions d’hectares de terres arables - 4 fois supérieur à la taille du Sénégal et 3^{ème} en Afrique de l’Ouest
- Faible densité de la population – 2^{ème} dans la région en disponibilité de terres arables par personne
- Seulement 7% du potentiel utilisé- 37 millions ha inexploités correspondant à un espace plus grand que l’Allemagne

Totalité des terres arables (million ha)

Nigeria	74,5
Niger	43,8
Mali	41,1
Mauritanie	39,7
Côte d’Ivoire	20,3
Ghana	15,5
Guinée	14,2
Burkina Faso	12,0
Senegal	9,5

Terres arables en fonction de la population

Zambia¹⁶⁷

Why Invest in Zambia

- ▶ Market Access
- ▼ Natural Resources

Zambia has vast resource endowment in terms of land, labour and water, indicating the high potential to expand and/or excel development; Zambia has a total land area of 75 million hectares (752,000 square km), out of which 58% (42 million hectares) is classified as medium to high potential for agricultural production.

Madagascar¹⁶⁸

III. POTENTIAL INVESTMENT SECTOR
1. AGRIBUSINESS

Madagascar has 30 million hectares of agricultural land, but only about 10% is used. Physical conditions (soil, weather) make it possible to cultivate several types of temperate and tropical products.

The majority of growing areas are only 200km from a major port, unlike many parts of Africa. Major ports are in the process of upgrades.

Wages, land and water costs are very competitive at a global level.

Existing processors and cooperatives have local knowledge and expertise, making them ideal for joint ventures to boost production & exports. Underutilised areas can be made available for new plantations.

Most regions have the capacity to use hydro, solar, wind or biomass for self-power generation for processing power.

The Madagascar brand commands a premium for agricultural goods, perfect for gaining a foothold in the organic product market.

Burkina Faso¹⁶⁹

Les potentialités du secteur

- Diversité de produits agricoles dominés par les céréales (le maïs, le riz, le niébé...) le coton, les tubercules (igname, la patate, le manioc, et la pomme de terre), les produits oléagineux et les fruits et légumes
- Potentiel en terres irrigables : 233 500 ha dont 26 758 ha aménagés
- Potentiel en terres cultivables : 9 million ha ; 1/3 exploité
- Potentiel en eau : de surface (10 milliards de m3), souterraine (113 milliards de m3)




Ethiopia¹⁷⁰



- Ethiopia's vast land, favorable climate, and water and land resources combine to make it an incredible hub for investment. Located in the horn of Africa, Ethiopia is at the crossroads between Africa, the Middle East, and Europe. Within easy reach of the Horn's major ports, Ethiopia is close to its traditional markets for export products – the Middle East and Europe. This geographical proximity provides major exporters in the world unparalleled access to the Ethiopian floricultural market.
- Sugarcane, horticulture, floriculture, forestry (including rubber tree plantation, fiber crops: (cotton, jute) animal husbandry, etc.
- The total land area coverage is about 111.5 million ha, of which 74.3 million ha is suitable for agriculture.
- Eighteen major agro-ecological zones have been identified in the country, and **over 3 million ha land has been made available for investment**. Ethiopia offers one of the largest and most diverse agricultural investment opportunities on the continent.

Nigeria¹⁷¹

WHY YOU SHOULD INVEST IN NIGERIA

- Availability of arable land across the country including 3.14 million hectares of irrigatable land;
- Favourable weather conditions that support all-year-round agricultural activities;
- Known and mapped-out soil characteristics across the country to guide crop cultivation;
- Supportive government policy that is geared towards encouraging mechanized farming and agribusiness; and
- Huge demand gap between the supply of agricultural produce and the industrial activities.

Peru¹⁷²

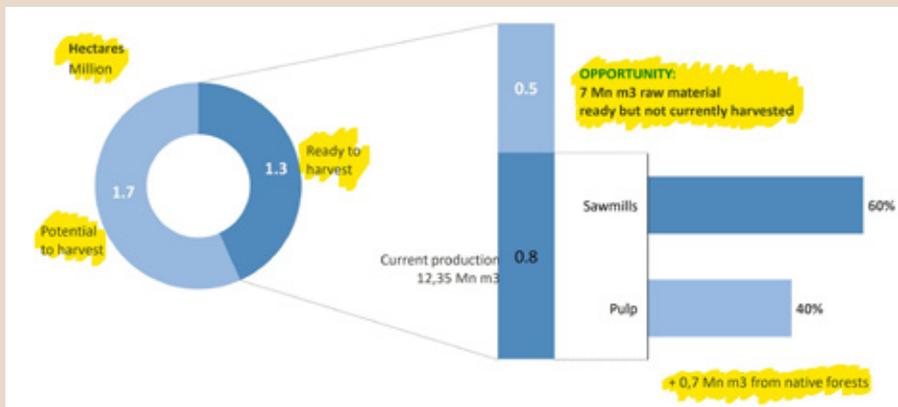
Peru's territory is 128.5 million of hectares.

Due its natural forest extension, Peru ranks ninth worldwide and second in South America.

Of the 128.5 million hectares (ha):

- 8 million have potential for agricultural crops.
- 18 million for pastures
- 49 million for sustainable forestry activities
- 54 million hectares of natural reserves.

Argentina (Forestry)¹⁷³



Nicaragua (Forestry and Mining)¹⁷⁴

entre el Gobierno de Nicaragua y la Asociación Nicaragüense de Reforestadores (CONFOR). Actualmente existen más de 3.5 millones de hectáreas de tierra aptas para plantaciones forestales con valor comercial como teca, caoba; y especies forestales no maderables tales como hule y cacao, entre otras.

Superficie de Áreas de Reserva Minera	1,510,432.93	15,104.33	11.59
Superficie Disponible para la Actividad Minera	7,109,200.90	71,092.00	54.53
Superficie del Espacio Terrestre de Nicaragua	13,037,347.00	130,373.47	100.00





Privatizing State Land

In April 2019, the Board of the US Millennium Challenge Corporation (MCC) approved a five-year compact for Sri Lanka. The compact offers the Sri Lankan government US\$480 million over a five-year period to undertake both transportation and land management projects, including US\$67 million for mapping and digitizing state lands in order to “promote land transactions that could stimulate investment and increase its use as an economic asset.”¹⁷⁵ In Sri Lanka, the state formally owns an estimated 85 percent of the country’s 6.6 million hectares of land. 1.38 million hectares of state land are allocated to farmers through permits or grants.¹⁷⁶ The proposed MCC compact would shift control of millions of hectares away from the state towards private interests.

The MCC is a US government entity created by Congress in 2002, with the mission of “reducing poverty through growth” in developing countries that are committed to “good governance, economic freedom and investing in their citizens.”¹⁷⁷ In practice, poverty alleviation has taken a back seat to promoting private sector growth.¹⁷⁸ This has translated to countries shifting their policies in adherence to a neoliberal economic framework – including the privatization and commodification of land – in exchange for sub-

stantial financial grants.¹⁷⁹ An early review of MCC compacts in several countries across Africa found that these policy shifts allowed investors to acquire land at bargain prices to facilitate large-scale industrial agriculture at the expense of smallholder farmers.¹⁸⁰

When Sri Lanka was considered for an MCC compact in December 2016, a feasibility study was undertaken by the Center for International Development at Harvard University. According to this study, “the difficulty of the private sector in accessing state-owned land for commercial purposes” was one of the major binding constraints to economic growth. Furthermore, the study noted that the “process of acquiring rights to develop land is slow and unclear, resulting in government’s inability to meet the demand for land needed for new private sector investment, including for export-oriented FDI [foreign direct investment].”¹⁸¹ Fully adopting the findings of the study, the MCC compact contains a comprehensive Land Project, with a stated objective of “lasting improvements to the country’s land governance framework [to] promote land transactions that could stimulate investment and increase its use as an economic asset.”¹⁸²





Pilavu protest to demand land back from military occupation, Northern Province, February 2017 © Tamil Guardian

The MCC compact aims to improve access to land for the private sector through five interventions under the Land Project. The Parcel Fabric Map and State Land Inventory Activity will initially map and record state lands in seven target districts¹⁸³ that cover 28 percent of Sri Lanka's land and potentially extend outside the target districts to cover 67 percent of all land.¹⁸⁴ Creation of this map will be accompanied by digitizing paper titles, converting permits and grants to state land into "absolute land grants,"¹⁸⁵ a computerized appraisal system for land valuation, and establishing a land policy research group.

Civil society has denounced the proposed compact and pressured the Sri Lankan government to reject it. Summarizing these concerns, the Alliance for Economic Democracy (AED)¹⁸⁶ submitted a formal rejection of the compact in a letter endorsed by 53 civil society groups, academics, and local leaders. The AED warns that the Land Project will not address poverty and instead result in "land grabs by creditors, the transfer of prime land to multinational corporations, [and] the loss of livelihoods for local farmers."¹⁸⁷

"Indebted rural communities (many of them small producers) would be forced to use land granted to them as collateral to pay off their loans, leading to land grabs by creditors, the transfer of prime land to multinational corporations, [and] the loss of livelihoods for local farmers."¹⁸⁸

– Alliance for Economic Democracy. "Why the MCC Agreement Should Be Opposed." December 19, 2019

These concerns are informed in part by the past failures of the Sri Lankan government in adequately protecting people's land rights. For instance, following the 2004 devastating tsunami that claimed over 30,000 lives and displaced an additional 800,000 in Sri Lanka,¹⁸⁹ the government implemented "buffer-zones"¹⁹⁰ along "high risk" coastal areas. As a result, thousands were displaced from their land along the coast, losing access to farmland and fishing vital to their livelihoods. While some were resettled,



landlessness remains an issue for some of the displaced. A human rights assessment of the tsunami response found that it further displaced people from coastal lands while allowing commercial interests, such as agribusiness and luxury hotels, to return, revealing that the policy was not centered on concerns over future safety.¹⁹¹

Additional fears remain surrounding the impact that the Land Project could have on disenfranchised groups considering the history of dispossession in Sri Lanka.¹⁹² The MCC compact grants the government power to determine which state lands are underutilized and available for investment and those currently “in active use.”¹⁹³ The Land Project could be very well used to legitimize past illegal land seizures at the expense of the formerly dispossessed populations.

Initial shifts away from traditional land governance systems in the country occurred under colonial rule as market-led policies supported the commercialization of land and creation of large plantations.¹⁹⁴ This shift in land-use subsequently resulted in economic and social changes as the British brought in Tamil laborers from Southern India to work on the export-oriented coconut, tea, and coffee monocultures.¹⁹⁵ Following independence, the Citizenship Acts of 1948 and 1949 disenfranchised nearly one million Tamil laborers of Indian origin, stripping them of citizenship rights despite their presence on the island for multiple generations.¹⁹⁶

Over half a century later, dispossession and disregard for land rights continues. 11 years have passed since Sri Lanka’s bloody civil war that killed an estimated 200,000 and displaced over a million people ended.¹⁹⁷ In 2016, the Oakland Institute documented how a “silent” conflict was being waged across the island, with tens of thousands of government troops occupying the northern and eastern provinces and the army controlling large swaths of land, including for various business ventures such as five-star hotels and resorts. The report revealed dispossession and marginalization of Sri Lanka’s Tamil population through violence, “development schemes,” repressive laws, and a “government-orchestrated colonization of the northern and eastern parts” of the island, traditionally the Tamils’ homeland.¹⁹⁸ Considering the government’s resistance to reconciliation and resettlement, the Land Project poses a real threat of formalizing past dispossession.

While the outgoing cabinet approved the MCC compact in October 2019, the new President Rajapaksa, who promised to discard the MCC compact during his campaign, has changed his stance upon winning the election. Under US pressure, the government announced that a sub-committee had been appointed to revisit and review the MCC compact at the end of 2019.¹⁹⁹ The committee is expected to release its recommendations on whether to approve the compact at the end of June 2020.



Sigiriya fortress in the northern Matale District © The Oakland Institute



A New Land Rush Emboldened by Bolsonaro

Since coming into power in January 2019, far-right leader Jair Bolsonaro has brought massive threats and destruction to Indigenous peoples and to the Amazon.²⁰⁰ The world's largest rainforest plays a critical role in absorbing carbon dioxide and helps keep global temperatures from rising. Bolsonaro's justification to expand the exploitation of the Amazon follows the World Bank's doctrine of putting "economically valuable" land to "efficient" use by the private sector.²⁰¹

JAIR BOLSONARO ON INDIGENOUS LANDS²⁰²



Brazilian President Jair Bolsonaro

"There is no [I]ndigenous territory where there aren't minerals. Gold, tin and magnesium are in these lands, especially in the Amazon, the richest area in the world. I'm not getting into this nonsense of defending land for Indians."

"Where there is Indigenous land, there is wealth underneath it."

"All those reserves stymie our development."

Bolsonaro rose to power after a campaign that promised to expand the exploitation of the rich natural resources found in the Amazon and halt the demarcation of Indigenous lands.²⁰³ He also promised to arm ranchers the takeover of lands for cattle ranching.²⁰⁴ According to the Yale School of Forestry and Environmental Studies, with some 200 million heads of cattle raised in Brazil, the cattle industry is responsible for up to 80 percent of the forest clearings – about 45 million hectares of forest have been converted to cattle pasture since the late 1990s.²⁰⁵



*With some 200 million heads of cattle raised in Brazil, the cattle industry is responsible for up to 80 percent of the forest clearings.*²⁰⁶

– Yale School of Forestry and Environmental Studies

Once in power, Bolsonaro tried to turn these campaign pledges into reality. Asserting that Indigenous land claims and reserves are barriers to economic growth,²⁰⁷ he attempted to move the responsibility of identifying and demarcating Indigenous lands from FUNAI, the Brazilian ministry focused on Indigenous affairs, to the Ministry of Agriculture.²⁰⁸ This move aimed to halt hundreds of demarcation processes established to protect the land rights and the livelihoods of Brazil's Indigenous People.²⁰⁹ He also threatened to revisit all demarcations completed within the past ten years²¹⁰ and greatly reduced funding for both FUNAI and IBAMA, the agencies responsible for environmental monitoring and enforcement in Brazil.²¹¹ These moves ignore that Indigenous and community managed lands can be both sustainable and productive. Between 2004 and 2015, Brazil increased agricultural production while reducing deforestation by granting land and resource rights to Indigenous Peoples and customary communities, alongside a strong network of protected areas, land use planning, and enforcement.²¹²

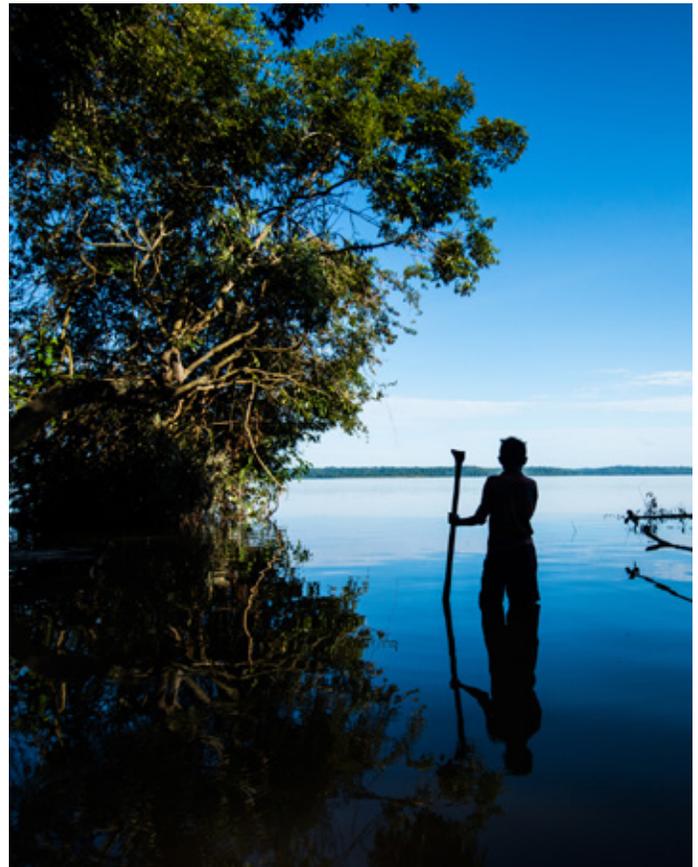
While Bolsonaro's attempts to undermine FUNAI were overturned by Congress,²¹³ his administration continues to pursue efforts to access Indigenous territories. For instance, the Ministry of Agriculture²¹⁴ and the Ministry of Mines and Energy intend to change national legislation to open up Indigenous territories to further exploitation by agribusiness and mining.²¹⁵

In painting Indigenous groups as “barriers” to development, Bolsonaro has created an “us versus them” mentality among other Brazilians. This rhetoric has resulted in land invasions and spikes in violence against Indigenous People and land rights activists. According to Amazon Watch, there has been a 150 percent rise in illegal land invasions since Bolsonaro took power.²¹⁶ Brazil's Pastoral Land Commission reported at least a dozen deaths in the first quarter of 2019 alone.²¹⁷ In the following months, more Indigenous individuals, including tribal leaders,²¹⁸ land activists,²¹⁹ farmers,²²⁰ and even a 15-year old boy from the Guajajara tribe,²²¹ were killed, bringing the total number of reported deaths to 19. Within the first two weeks of 2020, five deaths were reported.²²² The onset of the COVID-19 pandemic

has added a new dimension to the danger posed by land invasions, threatening Indigenous communities that were previously protected by their isolation.²²³

The increase in land invasions has also been attributed to the scaling back of enforcement measures – fines, warnings, and the destruction of illegal equipment – that previously helped safeguard protected areas around the country. According to a *New York Times* investigation, “enforcement actions by Brazil's main environmental agency fell by 20 percent during the first six months [of 2019], compared to the same period in 2018.”²²⁴ Additionally, since Bolsonaro took office, “the number of fines issued to environmental criminals fell 29 percent and the collective value of the fines fell by 43 percent.”²²⁵ These drops mean that vast stretches of the rainforest can be torn down with less resistance and fewer penalties from the nation's authorities.²²⁶

Bolsonaro's appointments to key ministries pose further threats to Indigenous groups. Shortly after his inauguration, Bolsonaro appointed Tereza Cristina Corrêa da Costa Dias as head of the Ministry of Agriculture. Tereza Cristina belongs to one of Brazil's most powerful agribusiness families and has a long history of pushing for the privatization of public lands, as well as violence against Indigenous



A Mundurucu man in the Tapajós river, next to Sawré Muybu Indigenous Land, home to the Mundurucu people, Pará state, Brazil in February, 2016
© Victor Moriyama / Greenpeace



communities.²²⁷ According to Amazon Watch, she is one of the loudest political voices calling for Indigenous lands to be turned over to agribusiness and mining.²²⁸ Advising Tereza Cristina on land reform is Nabhan Garcia, a large landowner and cattle rancher with a history of organizing armed militias to intimidate members of Brazil's landless peasants movement.²²⁹

In July 2019, Marcelo Xavier da Silva, a federal police officer with strong connections to agribusiness, was appointed as the president of FUNAI.²³⁰ In 2017, he worked on a congressional inquiry that attacked FUNAI and, during land disputes in Mato Grosso do Sul, called on federal police to take "persecutory measures" against Indigenous groups.²³¹ These appointments further reflect Bolsonaro's belief that public lands, regardless of their ability to sustain ecosystems, are merely "an obstacle to agribusiness,"²³² echoing the World Bank's development doctrine based on the claim that "expanding agribusiness" is crucial to agriculture reaching its "full potential."²³³

Bolsonaro's appointment of Marcelo Xavier da Silva has already drastically shifted FUNAI's priorities. In April 2020, FUNAI passed Instrução Normativa (IN) 9/2020, a declaration that opens 9.8 million hectares of unregistered Indigenous land to outsiders, allowing them to obtain certificates to their land claims.²³⁴ Previously, certificates

were unavailable in areas that had an ancestral Indigenous claim, regardless if the process to fully recognize the land was still ongoing. With the new law, invaders can receive certificates from FUNAI and use these to file official land claims. The move has been widely criticized for opening legal pathways to further land grabbing within Indigenous territories.²³⁵

While some of Bolsonaro's most egregious plans to change the legislative playing field around Indigenous lands have stalled, destruction continues at an unprecedented pace. Deforestation has increased markedly since Bolsonaro took power, likely because of the spike in illegal land invasions noted above. According to Brazil's National Space Research Institute (INPE), deforestation in the Brazilian Amazon between January and September 2019 totaled 760,400 hectares – an 86 percent increase from the same period in 2018.²³⁶ Over the first three months of 2020, an area equal to the size of New York City was cleared.²³⁷ Bolsonaro, however, insists deforestation statistics are "a lie."²³⁸

2019 saw an outbreak of massive fires in the Amazon, which threatened multiple Indigenous groups, including the Kaapor and the Munduruku people.²³⁹ While fires – mostly set by people engaged in agriculture and ranching – are not uncommon at that time of year in the region, the total area burned as of September 2019 sat just under



A Karipuna boy diving in the Jacy-Paraná river near the Panorama village in October, 2017 © Tommaso Protti / Greenpeace





Cattle grazing in an area of the Amazon in November, 2015 © Bruno Kelly / Greenpeace

600,000 hectares – an increase of 97 percent compared to the same period in 2018.²⁴⁰ This destruction is directly related to Bolsonaro’s rhetoric of expanding the exploitation of the Amazon’s natural resources for the sake of economic growth.²⁴¹ Bolsonaro, meanwhile, accused NGOs of setting the fires²⁴² and initially angrily refused international aid to help combat them.²⁴³

Ignoring these disastrous outcomes, Bolsonaro signed Executive Decree MP 910 in early 2020, which claims to help small farmers register their land and access land titles

that can be used as collateral for loans. However, the law’s “autodeclaração,” or the “self-declaration” of ownership, will allow large-landowners and agribusiness who had seized Indigenous and communal land before December 2018, illegally and otherwise, to claim it as their own, thus legitimizing their land grab with legally recognized ownership. The decree, should it be approved by Congress, is estimated to “lead to the registration of some 300,000 properties, 86 percent of them in Amazonia.”²⁴⁴ This could amount to the privatization of 240 million hectares of federal and state lands.²⁴⁵



Missing Evidence of the Developmental Impact of Private Titles

For the past century, the practice of removing customary or community tenure in favor of market-led concentration of individualized ownership has consistently been part of Western-led development ideology.²⁴⁶ While support for private land titling briefly waned in the 1980s after continued failures,²⁴⁷ it has regained prominence in recent decades, particularly following the publication of *The Mystery of Capital* by Hernando de Soto, a Peruvian economist, in 2000.

In his book, de Soto claims that formalizing private property rights will unlock the capital potential that is currently held by the poor informally. According to his theory, granting individual ownership titles will provide the tenure security necessary for impoverished farmers to invest their labor and capital into improving their land while being able to leverage their newly formalized asset to secure credit.²⁴⁸

Despite largely focusing on urban slum dwellers and basing his theory around little solid evidence,²⁴⁹ de Soto's work was received with enthusiasm by Western governments and international institutions such as the World Bank.²⁵⁰ In the two decades since the release of *The Mystery of Capital*, there has been a surge in development aid funding dedicated to land governance. Over the past twenty years donors have spent billions on projects focused on "improving" land governance, with much focus on Africa.²⁵¹ The Bill & Melinda Gates Foundation, USAID, and The UK Department for International Development (DFID) have additionally financed the World Bank's Enabling the Business of Agriculture (EBA) program, the latest mechanism to encourage governments to formalize private property rights (see Box 4).²⁵²



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Glowing media coverage for Peruvian economist Hernando De Soto whose claims have now largely been debunked



BOX 3: HERNANDO DE SOTO'S DOCTRINE OF UNLOCKING "DEAD CAPITAL"

Peruvian economist Hernando de Soto is widely known for his work on property rights and poverty. De Soto argues that the absence of formal property rights prevents the poor from obtaining credit to expand their business, accessing legal remedies to conflict, and benefitting from globalization.²⁵³ He estimated that nearly US\$10 trillion exists worldwide in so-called "dead capital" that could be unlocked through the provision of formal property rights.²⁵⁴

Unfortunately, what de Soto referred to as "unlocking dead capital" is realized in the formal privatization of existing communal land in order to exploit and extract in the name of "development." Inherent within this concept is the disregard for existing systems, which supply livelihoods and sustenance to large majorities of communities, while sustaining the natural environment for the benefit of future generations. Conversely, the existing capital managed by Indigenous and communal governance systems is considered "dead" and "locked" by those who operate within a western mindset of property ownership, which mistrusts systems that are not uniform and thus cannot be easily overcome, managed, and traded. However, as demonstrated by the Oakland Institute,²⁵⁵ incorporating communal land into a formal economy often only benefits those at the top who draw from the existing assets of those at the bottom, which they refer to as "dead capital" until it becomes their own.

The global influence of de Soto and his theories cannot be overstated. His work has been praised by Margaret Thatcher, Milton Friedman, George W. Bush, and Ronald Reagan.²⁵⁶ He served as an advisor to leaders and politicians in numerous countries, including the Philippines, Mexico, and Egypt.²⁵⁷ He was called "the world's greatest living economist" by Bill Clinton; co-chaired the Commission for the Legal Empowerment of the Poor with former US Secretary of State Madeline Albright in 2008;²⁵⁸ and is credited as providing the original inspiration for the Bank's *Doing Business* rankings.²⁵⁹

Despite the fact that de Soto's theories have largely been debunked, his rationale for private titling continues to gain traction. Officials from Zambia's Ministry of Lands and Natural Resources, for instance, cited de Soto's work to justify their above-mentioned land titling project.²⁶⁰ More recently, de Soto has found prominence in the blockchain community, particularly amongst land titling start-ups. In 2016, blockchain technology company BitFury announced a partnership with de Soto, who is on their advisory board and is supporting the company's pilot land titling program in Georgia.²⁶¹ In December 2017, de Soto also signed a MOU with Overstock.com, its subsidiary Medici Ventures, and former-CEO Patrick Byrne as an individual, to create De Soto Inc.²⁶² According to its terms, de Soto was to receive US\$20 million, plus US\$500,000 annually in compensation as Chairman of the company, which was to help "five billion people over five years" through blockchain-based land titling.²⁶³ This partnership appears to have been short lived with reports of it ending in 2018.²⁶⁴ Regardless, de Soto's theories, while largely devoid of any supporting evidence, continue to influence development projects in a manner that risks further marginalization of smallholder farmers in the Global South.

But the evidence that private titling helps address poverty and spur development is far from conclusive.

A central pillar of de Soto's theory – that titling land can facilitate access to credit – has been largely disproven, as banks remain unwilling to lend to the poor.²⁶⁵ A comprehensive literature review found "no support" for a link between secure tenure and access to credit.²⁶⁶ Conversely, the ability to use land as collateral makes it possible for banks to legally take over the land if farmers experience a difficult harvest year and are unable to pay back their loan or mortgage – a phenomenon all too common amidst today's climatic realities.²⁶⁷ Essentially, people are encouraged to buy into a system that does little to serve them in the best

of times and creates legal means of stealing their land when hardship arises.

Another commonly advanced myth is that creating individual property rights will create land markets that will help overcome inequalities in access to land.²⁶⁸ This rings untrue, as the "creation" of land markets has been repeatedly found to solidify existing inequalities in access to land. A 2009 study published by the World Bank itself showed that land markets "cannot be counted on alone to redistribute land from large to small farmers."²⁶⁹ As seen around the world over the past century, land markets are in fact purposefully designed to restrict poor people from accessing land.²⁷⁰ Within a market system where land is



nothing more than a commodity, corporations and wealthy individuals can price farmers and herders, who rely on land for their livelihoods, out of the markets.²⁷¹

It is important to question what evidence supports the massive amount of policy support private titling programs have received. A comprehensive review of available research, conducted by several land tenure experts, examined the impact secure tenure has had on smallholders. It could only identify a few context specific cases where increased investment into agricultural land followed land tenure reforms.²⁷² Drawing from a wide array of studies, the authors concluded “available evidence provides a weak basis for establishing the general effectiveness of land tenure reform” and that across Africa, efforts to convert customary systems into private property “rarely occurred historically without considerable social and economic displacement.”²⁷³ A 2020 USAID review of available evidence on land and resource governance noted a lack of rigorous evidence, impact evaluations, and long-term studies in the sector and acknowledged major knowledge gaps.²⁷⁴

Furthermore, while secure tenure is important, it does not necessarily stem from the introduction of private titles. Without a universal metric, many studies rely on a variety of proxy metrics to gauge levels of tenure security that are not unique to private titles.²⁷⁵ For studies that do specifically measure the impact private titles have on agricultural investment and productivity, positive findings do not provide sufficient evidence to justify a universal shift to private titles.²⁷⁶ In discussing the importance of perception of tenure security, the USAID review acknowledges that “formal titling or documentation is not necessarily required, nor sufficient, to bestow tenure security.”²⁷⁷ Additionally, should one actor benefit from private titles, all other persons and families that relied on the land for their livelihoods and cultural practices lose out as their ancestral and communal claim is replaced with someone else’s legal, individual claim.

The assumption that private titles offer tenure security while customary systems remain insecure is an often-repeated, yet unsubstantiated claim. Evidence refuting the myth that customary systems are inherently insecure has been available for decades. The first USAID country land tenure profiles from 1986 noted: “African countries with relatively good production records over the last twenty years have achieved them under remarkably diverse set of tenure arrangements, in which customary tenure figures prominently.”²⁷⁸ In 2011, The European Union Task Force

on Land stated: “land titling is not always the best way of increasing tenure security, and nor does it automatically lead to greater investment and productivity. In many places, land is held through unwritten, customary means, but it is not subject to insecurity.”²⁷⁹ While research has long shown the value of customary systems, the programmatic focus of major development agencies has failed to reflect these findings.

After years of efforts to privatize land, the World Bank itself recently shifted its rhetoric²⁸⁰ to recognize the importance of customary land. Klaus Deininger, the Bank’s leading land economist stated in March 2019: “In contrast to the then prevailing paradigm of individual titling, research has shown recognition of group rights to often be more effective.”²⁸¹ In another 2019 paper, the Bank acknowledged that “customary land is as much a social system as a legal code and has proven to be highly resilient, continuous and flexible” and that safeguarding these rights should be a “development priority.”²⁸² While this shift in the discourse is a positive step, it remains to be seen if it will mark an actual shift in terms of policy and funding priorities for the institutions (see Box 4).

The consequences of unnecessarily shifting to private titles can be severe. Recent land reform in Rwanda illustrates the insecurity of individualized land rights, as attempts to move complex tenure systems into the cookie cutter mold of private titles have led to dispossession, distress sales, and concentration of land ownership.²⁸³ Attempts to “secure” land rights through titling have also backfired in the Brazilian state of Piau, where a World Bank program completely disregarded communal forms of tenure and implemented an individual title system that opened the door to “legalizing” land grabs, risking dispossession for thousands.²⁸⁴ The impact was so disastrous that the Public Prosecutors Office asked the Bank to suspend the project.²⁸⁵ Similarly in Guatemala, a Bank sponsored land administration project resulted in Indigenous communities in Alta Verapaz losing their land to palm oil companies.²⁸⁶

The lack of evidence of development outcomes, along with these individual examples of detrimental impact on people and communities, makes it clear that the privatization of land, encouraged by financial institutions and a few Western countries, is not about fighting poverty or improving livelihoods. It is just another avenue for further colonization and exploitation of natural resources for the benefits of private interests and corporations that bring fresh threats to people’s livelihoods, environment, and the climate.





Logging site in East Sepik © The Oakland Institute

BOX 4: THE EBA AND ITS LAND INDICATOR

The *Enabling the Business of Agriculture* (EBA) program was commissioned in 2013 to support the New Alliance for Food Security and Nutrition, an initiative launched by the G8 to promote private sector-led agricultural development in Africa. It builds upon the “success” of the Bank’s broader *Doing Business* ranking program (which published its first report in 2004) and was initially bankrolled by five Western donors: the Bill & Melinda Gates Foundation and the US, UK, Danish, and Dutch governments.²⁸⁷

The EBA’s goal is to help create “policies that facilitate doing business in agriculture and increase the investment attractiveness and competitiveness of countries.”²⁸⁸ To achieve this, it measures the “legal barriers” for agribusinesses, prescribes reforms across 12 topic areas, including: seeds, fertilizers, trade, and machinery, and then scores countries on their performance in applying said reforms. The scores act as conditions for the provision of international aid and influence the levels of foreign investment in these countries.²⁸⁹

In 2017, the EBA introduced a new set of indicators on land that measured “laws and regulations that impact access to land markets for producers and agribusinesses.”²⁹⁰ Following the introduction of the land indicator, the Oakland Institute released *The Highest Bidder Takes It All*,²⁹¹ detailing how its introduction represented an unprecedented push to privatize public land and facilitate private interests’ access to public land. In 2019, the land indicator was dropped from the EBA report and the Bank announced it was “under review.” Instead, the 2019 EBA included an annex focused on safeguarding land rights with data on best practices surrounding legal recognition of customary land rights and safeguards against expropriation.²⁹²

While the language has shifted, the new safeguards on land rights do not factor into a country’s final score. Given the historical role of the Bank in advancing policies that encourage the expropriation of customary land for corporate interests, actions that follow this statement must be closely monitored. Although the indicator has been removed for now, the damage has been done as the Bank has spent years and millions of dollars creating the enabling environment favorable to the increased privatization of land.



Conclusion

The COVID-19 pandemic has rattled the global economy. As countries hit by the crisis face economic hardship, the relative power of international finance institutions has grown. The IMF leveraging Ukraine's desperate economic situation to create a land market illustrates how this crisis has already been used to advance the privatization of the commons. We cannot afford more structural adjustment programs that ignore the stakes of the climate crisis and move us in the wrong direction.

Instead, the crisis must be used as a catalyst to address the systematic issues surrounding the rampant overexploitation of natural resources that has driven the climate crisis to its current state. While returning to normal is not an option, there is another path forward.

Indigenous lands and waters represent 80 percent of the world's biodiversity, and there is a growing understanding that local and Indigenous communities are effective stewards of these areas. They stand as the final line of defense against land grabbing and the destructive practices of governments and corporations that convert family farms, grasslands, and forests into monocropped industrial plantations, large ranches, and stripped earth mines.

Instead of protecting community rights to land, governments around the world continue to operate on the deeply flawed assumption that "development" can only be achieved through granting corporate interests unfettered access to their resources. This development narrative continues to be revived despite the role it has played in driving the current

climate crisis and the millions of livelihoods it has destroyed through displacement and dispossession. The failure of the neoliberal economic model has never been clearer.

As evidenced in the six case studies, protecting the land rights of local and Indigenous communities has been abandoned in pursuit of land policies designed to attract private investment. The privatization of state and communally held land, done under the guise of "unlocking" land's potential, caters to the needs of corporate interests at the expense of millions of livelihoods. Within a market system where land is nothing more than a commodity, corporations can price people out, resulting in eviction and dispossession, corporate concentration of land ownership, and environmental degradation.

The dire consequences of this ongoing commodification of land must be confronted as a part of any solution to the ongoing climate crisis. Strong action is needed to halt and reverse the privatization of the commons worldwide, and instead, greater focus should be put on supporting and empowering local communities. Proven alternatives exist, and have been implemented successfully all over the world, including in Mali, Kenya, and Mexico, to name just a few.²⁹³ The myth that secure tenure can only stem from private titles must be demolished. Rather than erasing local governance and negating Indigenous autonomy, governments must instead build systems that incorporate a diversity of ownership and tenure systems, and focus on a development path that serves the people instead of one that takes the land away for corporate profits.



Woman punting her canoe through dense floral coverage on Inle lake in Myanmar © FAO / Giuseppe Bizzarri



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