

Held, Legally Recognized, Documented, and Not-Recognized Community Land

Findings from 14 Countries

BRIEFING SERIES
Goal 10: A Closer Look

The New York Declaration on Forests (NYDF) is an international pledge to halt global deforestation. It sets out ten ambitious goals related to protecting and restoring forests. In 2018, the NYDF Assessment Partners published the NYDF Goal 10 Assessment Report, *Improving Governance to Protect Forests: Empowering People and Communities, Strengthening Laws and Institutions*. This three-part Briefing Series takes a more detailed look at key findings from the assessment to highlight and present additional research on progress towards Goal 10.

This brief, *Held, Legally Recognized, Documented, and Not-Recognized Community Land: Findings from 14 Countries*, was produced by the NYDF Assessment Partners in collaboration with LandMark.

Key Messages

- **Community land is a common and, in many countries, significant form of landholding.** Thirteen of the 14 research countries - all except Paraguay - have at least a quarter of their land area held by communities. Fifty-seven percent of the total national land of the research countries is occupied or used by communities. This is consistent with estimates that 50 to 65 percent of global land area is community land.
- **The amount of held community land varies considerably by country.** More than 80 percent of national land in Democratic Republic of Congo (DRC) and Australia, and 70 percent of mainland Tanzania is held by communities. In contrast, just over three percent of the land in Paraguay is held by communities.
- **Most held community land in the research countries is recognized as such under national laws.** At least some community land is legally recognized in all 14 research countries. Overall, 36 percent of these countries' national land and 63 percent of the held community land is legally recognized. This is significantly higher than global estimates of 18 percent of the world's land being legally recognized, which may be due to the inclusion in this research of Australia, Canada, Brazil and Mexico - four of the five countries with the largest amounts of legally recognized community land in the world.
- **A significant amount of held community land is documented with a formal land title or certificate.** Thirteen of the 14 research countries have at least some documented community land. Thirty-three percent of the total national land, 58 percent of the total held community land, and 92 percent of the total legally recognized community land is documented.
- **Still, a considerable amount of community land is not recognized by the government and held only under customary tenure arrangements.** This "not-recognized" community land accounts for 21 percent of national land and 37 percent of held community land in these countries. This land is often less secure and more vulnerable to being taken from communities than legally recognized and documented community land.
- **Progress in securing community lands varies considerably across countries.** Of the 14 research countries, Australia, Canada, and Brazil have the most held, legally recognized, documented, and not-recognized community land. In Tanzania, Kenya, Zambia, and the Philippines, all held community land is recognized under national laws, and in Mexico and Paraguay more than 90 percent of the held community land is legally recognized. In Mexico, Tanzania, and the Philippines, most community land is also documented. In contrast, little community land in DRC, Indonesia, and Cambodia is legally recognized or documented. In Kenya, only a small amount of community land is documented and in Zambia, no community land is documented.

Introduction

Community land is critical to the wellbeing of 2.5 billion people.¹ Community land is held in a collective manner by Indigenous Peoples and other local communities (hereafter communities),^{ai} often under customary tenure arrangements. It is found on all continents except Antarctica, with Africa having more community land than any other region.² Community land is a primary source of livelihood and income, establishes social identity and security, and has cultural and spiritual significance.³ It also generates significant social, economic, and environmental benefits (e.g., climate mitigation) for society.⁴

Despite its importance, the precise amount of community land is not known for most countries. Many governments do not collect this information or do not make it available to the public. Experts estimate that 50 to 65 percent of the world's land is

Box 1. Definitions

Held Community Land. Community land that is currently occupied and/or used by communities, including Indigenous Peoples. It is held and managed in a collective manner by communities, regardless of recognition under national statutory law. In this brief, community land refers only to currently held land and not to historically held land which communities may still claim but is not occupied or used.

Legally Recognized Community Land. Held community land that is recognized as such under national law.

Documented Community Land. Held community land for which a formal land title, certificate, or other official document has been issued by the government to the community.

Not-Recognized Community Land. Community land that is held only under customary tenure arrangements but not recognized as such under national law or documented.

community land.⁵ Little is also known about how much community land is recognized under national laws or documented with a land title or certificate (**Box 1**). A 2015 study of 64 countries, comprising 82 percent of global land area, found that 10 percent of the world's land was legally recognized as belonging to communities, and another 8 percent was designated by governments for communities.^{ii,6} The percentage of the world's land that is documented community land is less than the 18 percent that is legally recognized. That means an estimated 32 to 47 percent of the world's land is not legally recognized, not documented, and held only under customary tenure systems (hereafter, "not-recognized" community land).

As competition for land intensifies to meet the global demand for foods, fuels, minerals, fibers, wood products, and other products,⁷ there is greater urgency to understand the extent of community land and how much is secure. While not a silver bullet for tenure security, legal recognition and documentation can help protect community land.⁸ Tenure security, in turn, creates important incentives for community members to make land-related investments. Coupled with other measures (e.g., payments for ecosystem services), tenure security can promote long-term investments in land stewardship by communities that generate positive environmental and development outcomes.⁹

The importance of community land and tenure security are recognized in many international environmental and development instruments, including the New York Declaration of Forests (NYDF). Goal 10 of the NYDF mandates the 197 public and private endorsers to "strengthen forest governance, transparency and the rule of law, while also empowering communities and recognizing the rights of indigenous peoples, especially those pertaining to their land and resources [emphasis added]."

ⁱ Communities are groupings of individuals and families that share common interests in a definable local land area. They may be formally recognized as a community and structured via state institutions or exist informally. Community identity is based on self-definition, with some qualifications where this risks exclusion of vulnerable or minority members (Knight 2010). This research uses a flexible definition of community to capture this principle of self-definition as well as the variety of communities defined under domestic law as landholding entities. Indigenous People are a subset of communities that have distinct social, cultural, or economic characteristics, practicing in part or in full their own customs or traditions. Whether a group of persons is considered to be indigenous is based on self-identification (ILO Convention 169). For the sake of brevity, references to communities and community lands in this report should be read to incorporate both community and indigenous land rights.

ⁱⁱ Land is owned by or designated for communities depending on the bundle of granted or recognized rights including access, withdrawal, management, exclusion, and alienation (RRI 2015). Community-owned land is land where community tenure is unlimited in duration; communities have the legal right to exclude outsiders; and communities are entitled to due process and compensation in the face of potential extinguishment of some or all of their rights. Designated land is governed under tenure regimes that recognize some rights on a conditional basis, but not all the rights under ownership. While communities have some level of control exercised through use, management, and/or exclusion rights over land, they lack the full legal means to secure their claims to those lands.

In 2018, the NYDF Assessment Partners - a coalition of more than 25 nongovernmental organizations, research organizations, and think tanks – undertook an in-depth assessment of progress on Goal 10. As part of the assessment, LandMark, the global platform on indigenous and community land,¹⁰ collected the best available data on the amount of held, legally recognized, documented, and not-recognized community land in 14 countries. The research countries constitute 28 percent of the world’s land and include five of the ten countries with the largest amount of forest (Figure 1).

Data were collected from March to October 2018, principally by reviewing the literature and interviewing community land rights experts in the research countries. The literature and country experts often provided ranges of the amount of community land. Only the midpoints of the ranges and their percentages of national land and held community land are presented herein.ⁱⁱⁱ

This policy brief provides the principal research findings and the key messages derived from the findings. It targets government agencies responsible for community lands, development assistance agencies, local and international civil society

organizations concerned with land rights, as well as communities.

Community land is a common and, in many countries, significant form of landholding.

Communities hold land in all 14 research countries. In total, more than 2 billion hectares or 57 percent of the total national land of the research countries is community land that is currently occupied or used by communities (Figure 1). This figure is consistent with global estimates that 50 to 65 percent of the world’s land is community land.

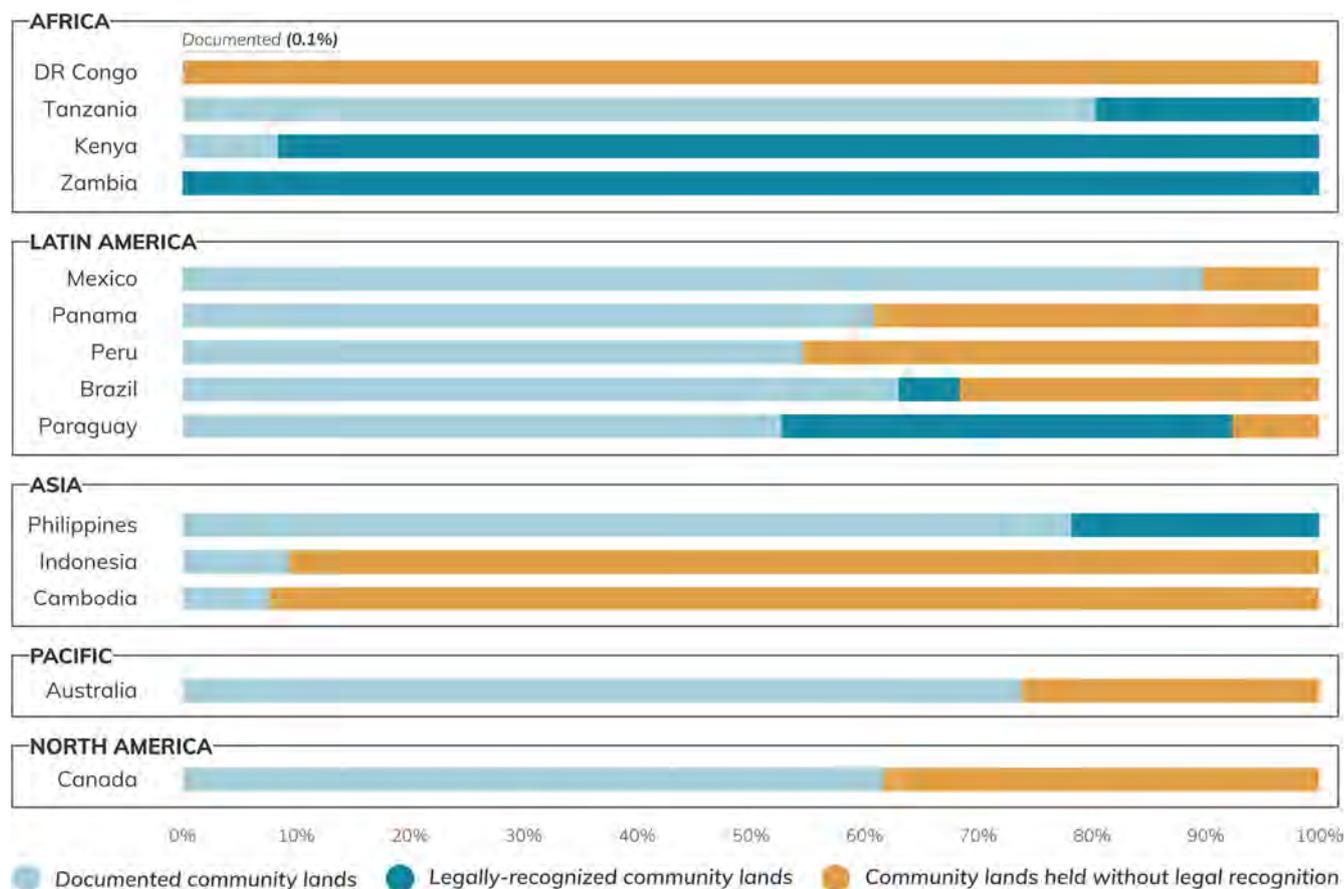
The amount of held community land varies considerably by country (Figure 2, next page). Of the 14 research countries, Australia and Canada have the most national land held by communities, followed by Brazil and the Democratic Republic of Congo (DRC). These four countries have 80 percent of the total held community land in the research countries. Paraguay, Panama and Cambodia have the smallest amount of held community land. In the past, however, community land covered much of the land area of these and other research countries (Box 2, next page).

Figure 1. Status of community lands across 14 countries



ⁱⁱⁱ All data and findings of this research are presented in an unpublished research report (October 2018) submitted to the NYDF Assessment Partners - *Held, Recognized, Documented, and Claimed Indigenous and Community Land in 14 Countries* by Fabrice Dubertret and Peter G Veit. Some findings are also presented in *Improving Governance to Protect Forests: Empowering People and Communities, Strengthening Laws and Institutions – New York Declaration on Forests Goal 10 Assessment Report* (NYDF Assessment Partners 2018).

Figure 2. Held, Legally Recognized, Documented, and Not-Recognized community land as percentage of national land



More than 80 percent of national land in DRC and Australia, and 70 percent of mainland Tanzania (hereafter Tanzania), is held by communities. In five research countries - Zambia, Peru, Canada, Kenya, and Mexico - more than 50 percent of national land is held community land. Thirteen of the 14 research

countries – all except Paraguay - have at least a quarter of their land area held by communities.

The amount of held community land changes over time. In some places, community land is expropriated by government or acquired by outsiders, while in other areas, community land is being individualized by community members. For example, today, all customarily held community land has been lost in Rwanda. Elsewhere, communities in both the South and North are taking steps to reconstitute the community land they once held but were displaced from or otherwise lost. For example, efforts are under way in Scotland to reconstitute community land and strengthen collective tenure systems.

Most held community land is recognized as such under national laws

Legal recognition does not guarantee tenure security, but community land that is not so recognized is vulnerable to being taken from the communities. A recent review of national laws in 100 countries found that 55 countries have strong legal provisions for community landholding.¹¹ In the other 45 countries, there are no discernible provisions for community landholding, or the provisions are weak.

Box 2. Indigenous land in Paraguay

Historically, Indigenous Peoples held much of the land of Paraguay. In 1825, the government issued a decree mandating all citizens to present titles to the lands they occupy. Lands without titles were declared state property. The decree allowed the government to take "legal" possession of all indigenous land, although it did not lead to an immediate occupation of this land. This, however, changed in the late 1800s. To pay for Paraguay's debt following its defeat in the 1865-70 War of the Triple Alliance with Uruguay, Brazil, and Argentina, the government sold large tracts of land to foreigners, mostly Argentines. It sold more land to pay for reparations and to promote colonization as a security measure after the 1932-35 Chaco War with Bolivia. Later, during the General Alfredo Stroessner regime from 1954 to 1989, the dispossession of Indigenous Peoples was also a fundamental policy. As a result, Indigenous Peoples hold today just over three percent of the national land.

At least some community land is legally recognized in all 14 research countries. In total, about 1.3 billion hectares of land in these countries is community land that is recognized as such under national laws. This represents 36 percent of the countries' total national land and 63 percent of the total held community land (**Figure 1**). This figure is double the estimated 18 percent of the world's land that is recognized under national laws as being owned by or designated for communities.¹² This difference may be due to inclusion in this research of Australia, Canada, Brazil and Mexico - four of the five countries with the largest amounts of legally recognized community land in the world.^{vi}

The amount of legally recognized community land varies by country (**Figure 2**). Australia, Canada, Brazil, and Mexico have the most legally recognized community land in absolute terms and together account for 84 percent of the total recognized community land in the research countries. Four countries - DRC, Cambodia, Paraguay and Panama - each have less than 2 million hectares of legally recognized community land.

When comparing the proportion of held community land that is legally recognized, the picture changes. Tanzania, Kenya, Zambia, and the Philippines provide legal recognition of all held community land, while in Mexico and Paraguay over 90 percent of community land is recognized under national laws. Despite the large areas of recognized community land, significant shares of held community land in Australia, Canada, and Brazil lack legal recognition. In other countries, only small proportions of community land have been recognized - less than 10 percent in Cambodia and Indonesia, and just one-tenth of 1 percent of held community land in DRC.¹³

A significant amount of held community land is documented with a formal land title or certificate.

Titling community land can provide tenure security, ensuring not only legal recognition but documentary proof of this. However, documentation can be challenging for communities. In some countries national laws do not recognize community land or customary tenure systems, or a documentation procedure has not been established by the government. In others, the procedure is complex and expensive, and the responsible government agencies are under-resourced. In some cases, communities are reluctant to pursue

documentation, as it often involves forfeiting some customary land and customary rights.¹⁴

Thirteen of the 14 research countries have at least some documented community land. Across these countries, the government has issued a land certificate or title to the community for almost 1.2 billion hectares of held community land. This constitutes 33 percent of total national land, 58 percent of total held community land, and 92 percent of all legally recognized community land in these countries (**Figure 1**). There are no good estimates of the percent of the world's land that is documented, but this research indicates that it is likely less than the 18 percent of the world's land that is legally recognized.

Not all legally recognized land is documented. In some countries, such as in DRC, Paraguay, and Indonesia, community land is legally recognized only when it is documented, so all legally recognized land is documented. In others, such as Tanzania, Kenya, and the Philippines, documentation is possible but not required for community land to be recognized. Tanzania and the Philippines have nonetheless documented the majority of their community land, whereas Kenya has only documented a small share. In Zambia, by contrast, there is no process for land to be documented, so no community lands have a government-issued title or certificate.

Still, a considerable amount of community land is not recognized by the government and is held only under customary tenure arrangements.

Community land held only under customary tenure arrangements is often less secure and more vulnerable to being taken from communities than legally recognized and documented community land. Historically, customary tenure systems provided communities with land security,¹⁵ but growing threats, from both outside and within the community, are leading to insecurity. In many places, customary laws and traditional institutions are under threat, weakening, and no longer able to safeguard community land for their members.¹⁶

Almost 750 million hectares of land in the 14 research countries is not-recognized community land: neither legally recognized nor documented. This represents 21 percent of total national land and 37 percent of held community land across these countries (**Figure 1**). The 21 percent figure is lower than the estimated 32 to 47 percent of the world's

^{vi} China has the highest amount of recognized community land in the world and was not included in this research.

land that is held but not legally recognized or documented.

In absolute terms, the countries with the most community land held only under customary tenure arrangements - Canada, DRC, Australia, and Brazil – together account for 87 percent of the total not-recognized community land in the research countries. Interestingly, this list includes the three countries with the greatest amount of legally recognized community land – Canada, Australia, and Brazil – illustrating the significant amount of community land in those countries. DRC, by contrast, is the research country with the least legally recognized community land in both absolute and relative terms.

Aside from DRC, Indonesia and Cambodia also have high proportions of not-recognized community land – over 90 percent in both cases. In no other research country does not-recognized land account for more than 50 percent of held community land, and in Tanzania, Kenya, Zambia, and the Philippines, there is no held community land that is not legally recognized.

Mixed progress in securing community lands.

The findings highlight a number of important differences among the 14 research countries. In all countries except Paraguay, communities hold at least a quarter of national land, and in eight countries more than half of national land is held by communities. However, the extent to which countries recognize and formally document this land varies significantly. National laws in four countries – three of them in Africa – recognize all held community land. In contrast, three countries do not

recognize or have not documented even 10 percent of held community land. Other countries, including large countries with extensive areas of held community land, recognize and have documented significant shares, but still have substantial gaps in absolute terms.

These contrasting stories reflect different national contexts and histories across the research countries, but also different government positions and support to community land. In many countries, community land is not a government priority. In others, once-strong programs to protect community land have stalled. International attention is currently focused on Brazil, one of the first Latin American countries to recognize indigenous rights at the constitutional level. This success, however, has been met with a backlash from a rural agribusiness (*ruralista*) bloc. Now, the anti-indigenous stance of newly elected president, Jair Bolsonaro, threatens to roll back protections for indigenous lands.

In the absence of government support, communities are taking actions to protect their lands. Many are meeting with their government representatives to press for supportive legislation, staging demonstrations, turning to the courts, organizing patrols to monitor their lands for intruders, mapping their lands, and formalizing their customary land rights.¹⁷ Such actions have exposed community advocates to new risks. Clashes with companies and others seeking their land have escalated in recent years and become more violent. In 2017 alone, 207 land and environmental defenders were murdered.¹⁸ There is a need to not only protect community lands but also community land rights advocates.

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To learn more about the NYDF Progress Assessment, please visit forestdeclaration.org.

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