

# Reference Guide for Risk Assessment in relation to LAND

Commissioned by the Organizing  
Committee of the Land Governance  
Multi-Stakeholder Dialogue



**LAND GOVERNANCE**  
MULTI STAKEHOLDER DIALOGUE

## Reference Guide for Risk Assessment in relation to LAND 2017

This reference guide for risk assessment in relation to land issues was initiated by APG and commissioned by the Organizing Committee of the Land Governance Multi-Stakeholder Dialogue (LG MSD). The Organizing Committee of the Dialogue is formed by representatives of the **Dutch Ministry of Foreign Affairs, Rabobank, Both ENDS, Oxfam Novib, Utrecht University, ACTIAM, FMO** and APG.

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Daniela Schoorl

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# LAND GOVERNANCE

## MULTI STAKEHOLDER DIALOG

### Introduction

A reference guide with useful sources of information and contact details of experts who can say more about economic activities related to land, may serve as a welcome additional instrument for professionals in financial institutions in due diligence and investment monitoring.

The goal of this reference guide is to provide investment officers with a convenient overview of available information on general land-related topics to consider. This document provides contact data and hyperlinks on a wide variety of information sources, in order to provide the reader with the opportunity to acquire more in-depth knowledge on a particular topic. Further it provides information on some land-related laws for a number of countries. For more in-depth country specific land-related information the **Land Portal** and its **Land Book** can be consulted. The Land Portal is a platform on land, offering extensive information on a great variety of land-related topics. Next to the Land Book, providing land-related information organized by country and theme, the Land Portal contains a large collection of open access publications, laws and regulations and multimedia items that can be accessed for free (see **Land Library**). It further provides a platform for debating land issues either in online discussions or by sharing news, events or blog posts (see **Land Debate**). The platform is a source of information and a place to exchange suitable for use alongside this guide.

This reference guide for risk assessment can be used by financial institutions such as asset managers and banks for review of their investments, for instance projects finance and general lending. Due to its broad set-up, however, this guide may also be used by companies or other parties interested in land related institutional investment.

The information provided within the guide is designed to give institutional investors a condensed overview of relevant issues to consider when making an investment. The contact data and hyperlinks included in the guide can be used to gather more context as well as subject-specific information and facilitate the consultation of experts on both the local context and the type of investment.

Like all investments, investments in land-related economic activities require careful consideration of a wide range of social, political, legal and environmental issues. Specific items to keep a close watch on include the impact of such land-related economic activities on the rights of those who depend on the lands for their existence as well as the potential changes of landscapes and its biodiversity. Conflicting claims between companies and local communities need careful review. A 2013 report states that in the agricultural sector alone, a production value of \$5 billion was at risk due to conflicting land claims.

Sound investments in land-related economic activity are necessary and desirable as they can contribute to the international development agenda, specifically the **Sustainable Development Goals (SDGs)**. Examples of such desirable land-related investments may be found in the field of economic development, beneficial for eradicating poverty (SDG1) and promoting decent work & economic growth (SDG8); agriculture, as it can contribute to achieving zero hunger (SDG2); infrastructural development towards sustainable cities (SDG11); industry and innovation (SDG9); clean water & sanitation (SDG6); renewable energy (SDG7), protection, restoration and promotion of sustainable use of terrestrial ecosystems (SDG15), etc.

To protect investments in land-based activities, it is important to effectively regulate land governance, in a context where necessary adjustments and transitions of complex systems (economies, peoples, countries, organizations, ecosystems, and climate change) promote sustainable development. Against this background the FAO Committee on World Food Security (CFS), after extensive consultation with all interested parties, had the **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security** (hereinafter VGGT) drawn up in May 2012. With the establishment of this set of principles and broad support from various parties, the international agenda focus is now shifting towards realization and implementation of agreed policies and guidelines.

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## Set up of the reference guide

The goal of this reference guide is to provide investment officers with a convenient overview of available information about general land-related topics to take into consideration. This document briefly touches upon these issues and provides hyperlinks to a wide variety of information sources in order to provide the reader with the opportunity to acquire more in-depth knowledge on a particular topic. For information on specific countries we refer to the land portal. The Land Portal's **Land Book** contains detailed land-related information on a number of relevant countries.

This reference guide discusses land-related issues that are considered relevant in terms of investments by institutional investors. The guide starts with a brief overview of sectors and business activities in which at times land-related issues become prevalent and which might be impacted on by land-related events. In addition, the most important international guidelines and principles regarding land are introduced, as well as a number of general information sources. Moreover, the situation of human rights defenders and the role of the Netherlands embassies are discussed.

Finally, for a selected number of countries the reader is provided with additional information. This information consists of general facts about the country, an overview of the most relevant land related laws along with a list of useful contacts, varying from online databases to local experts and civil society organizations. The countries are organized by continent and include Asian, European and North- and South-American countries.

*NB/ Disclaimer: this guide only deals with part of the issues relating to the issue of land governance; it is recommended to undertake an in-depth case study into a specific location in order to truly comprehend land issues that are occurring.*



## Sectors

The following sectors are examples of business activities that may need to consider land-related issues. In order to achieve sustainable and inclusive development, the risks related to these investments need to be taken into account, specifically in the field of land-governance.

Conducting due diligence is not only important for financial institutions and companies investing directly in land, but also when an investment is only linked to land issues through its supply chain. Several organizations have developed guidance and helpful tools on due diligence procedures with respect to land governance. Examples include the **VGGT Technical Guide for investors on Responsible Governance of Tenure** by the FAO, the **VGGT White Paper on Due Diligence Procedures with respect to Land Governance** by Solidaridad and ABN AMRO, and the **Respecting Land and Forest Rights Guide** by the Interlaken Group.

The following sectors in particular could contribute to the achievement of the Sustainable Development Goals. The overview below lists specific items with regard to land governance in these sectors that are relevant to consider.

### Infrastructure & industry

As stated in SDG 9, “Infrastructure provides the basic physical systems and structures essential to the operation of a society or enterprise and industrialization drives economic growth, creates job opportunities and thereby reduces income poverty”. Hence, investments in infrastructure and industry, for example in the development of urban areas, ports, Special Economic Zones (SEZ’s) and irrigation schemes, provide opportunities to facilitate development.



In case the construction of infrastructure and industry requires conversion of land and /or displacement of people, it is important to assess the impact on the local communities. For instance if the targeted land provides communities with a livelihood and is used for purposes such as agriculture. An inclusive consultation process and compensation scheme can help mitigate the risk of disputes.

### **Agriculture**

A sustainable and resilient agricultural sector is essential when aiming for food security for the rapidly growing global population; SDG 2 aims to achieve zero hunger, a process that requires efficient and innovative agricultural production. In order to increase productivity and the profits of farmers, to develop and implement new technologies and to cope with climate change, investments in agriculture are desirable.

In cases where investments in the agricultural sector include the expansion of large-scale agribusinesses, one should keep a close watch on the impact on the environment, local communities, their livelihood and possible opposition. Setting aside land for growing food for local consumption, utilizing out-grower schemes, or improving access to local markets, for example, are strategies that might help to mitigate these risks.

### **Forests**

Forests are highly valued ecosystems for various reasons: as a livelihood for forest-dependent communities, for their ability to store carbon which contributes to climate change mitigation, but also for their economic value,

for example in the timber or palm oil industry. These commercial uses of forests, primary or planted, in particular may be faced with various risks, especially deforestation. Halting deforestation is an important aim of SDG 15, which calls for sustainable forest management. This requires balancing the various values contained by forests, both environmentally as well as socially. Investments in conservation efforts are important and highly desirable in the context of climate change mitigation and the protection of essential ecosystems and the rich biodiversity the planet contains. Also in the case of forest investments, one should carefully assess the impact of the business activities on the communities that live or rely on the land. Therefore it is necessary to involve all users of the forests in conservation projects, as some cases indicate that conservation projects can negatively impact on the way of living of indigenous communities and pastoralists who depend on the forests for their livelihood. Therefore, the timber and palm oil industry should assess such impact in case their activities require deforestation. Efforts have been made towards more sustainable production through various initiatives, such as the **Forest Stewardship Council (FSC)**, the **Programme for the Endorsement of Forest Certification (PEFC)** and the **Roundtable for Sustainable Palm Oil (RSPO)** who provide guidelines for responsible business conduct.

## Mineral resources

The extraction of mineral resources (e.g. metals, fuel) can contribute to the economic development of a country and increase employment opportunities at local level. As articulated in SDG 12, the challenge is to make the production and consumption of these resources more sustainable.

In particular, where mining activity requires the conversion of large amounts of land, this could have a far-reaching impact on natural resources in the mining area. Apart from the impact on the livelihood of communities, one should assess the environmental impacts such as possible pollution of land and water.

## Renewable energy

Renewable energy, derived from hydro-dams, sun, wind, biofuels and other renewable sources, is a rapidly growing industry. Investments in these sectors are desirable as they can contribute to achieve SDG 7, which aims to ensure access to affordable, reliable, sustainable and modern energy for all.

In particular, for hydro and solar activities one should assess the impact on communities and their lands. For instance, the construction of hydro-dams and the expansion of biofuel production can require displacement and the loss of agricultural land. This requires fair consultation and compensation processes. Solar (especially on rooftops) and (offshore) wind energy often put less pressure on natural resources as they often require and impact on only minimal amounts of land and water. However, it needs to be noted that renewable energy projects can also carry risks, e.g. the **Lake Turkana Windpower Project** in Kenya has been opposed by local cattle farmers in court due to alleged unlawful land acquisition.



## Land related issues

### Indigenous rights & land

Indigenous peoples protect up to 65% of the earth's land surface, yet only 10% is formally recognized as owned by Indigenous Peoples and local communities (WRI, 2015). Tenure security is an important issue for indigenous groups, as they are often highly dependent on land for their livelihood. Furthermore these indigenous communities are often minority groups within a country, causing a risk of unequal power relations, which goes against SDG 10; reducing inequalities between and within countries.

However, the rights of these indigenous groups and their ability to claim rights differ per country. An important legal principle adopted by most of the countries discussed in the range of standards that this reference guide refers to is the FPIC principle, articulated in the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. The FPIC principle requires the 'free, prior and informed consent' of indigenous communities in case a project requires their displacement or impacts on their land tenure security in any other way. Although the FPIC principle is receiving increasing attention of the international community, the implementation in practice often remains a challenge. A number of organizations and initiatives such as the **FAO**, **RSPO** and **FSC** have developed guidelines on how to properly integrate FPIC in business processes.

## Women & land

The relation between women and land differs per country, but in many developing countries there is a persistent gender inequality, which results in the lack of access to land by women. In order to achieve SDG5, which aims to achieve gender equality and to empower women and girls, it is important to be aware of the patriarchal land-ownership structures present in many societies. The importance of achieving land rights equality is highlighted by a 2004 **FAO report** on gender inequality in India, which indicates that when women direct the use of income from productive land, they tend to spend it on meeting the basic nutritional, welfare, and educational needs of their children and family, whereas men show a tendency to spend the money more on personal goods and to fulfill individual desires. Hence, the FAO states that gender equality in lands rights is 'both a livelihood objective in itself and a powerful means of eradicating poverty' and hence can 'positively and significantly influence the welfare of next generations of a country'.

## Human rights defenders

### Human rights defenders under pressure

Research by civil society organizations shows that activists are increasingly under threat for standing up for the rights of people living on disputed land. **Recent 2017 research from Thisisplace.org** shows that the number of murders taking place over land resources is higher than ever. These human rights defenders are increasingly exposed to intimidation, threats, legal persecution and violence, especially when it comes to cases of land acquisition. In 2016, more than 1,000 citizens in 25 countries were murdered, harassed, imprisoned or intimidated while fighting for their communities' rights, according to **Front Line Defenders**. This number is most likely an underestimation, as it does not include remote areas. According to **globalwitness**, in 2016 200 individuals lost their lives defending their land, forest and rivers. Some companies have started legal proceedings against civil society organizations that campaigned against their projects. In 2017 this was the case with organizations that campaigned a racketeering case against the Dakota pipeline (USA) in which the pipeline company claimed these organizations persuaded people to act based on materially false and misleading claims and mounted sham campaigns<sup>1</sup>.

To ensure sustainable business practices and long term successful projects that correspond with the needs of local communities, it is key to have effective stakeholder consultation and participation (such as FPIC) to ensure that all interests are considered. Such effective processes require the establishment of a safe environment where people can speak up and share concerns. To this end, local and national authorities and business may take measures to engage local organizations and the people that work with them. To ensure that investors stay properly informed about concerns related to companies and specific projects, it is important

<sup>1</sup> <https://www.scribd.com/document/356943987/Energy-Transfer-Partners-Lawsuit#>

to have an environment where human and environmental rights defenders and journalists can freely express themselves.

## **Approaching local experts and organizations**

Given the pressure that human rights defenders are working under, approaching such organizations requires care. In particular, local organizations may sometimes be less well connected to international networks. Such organizations may be less experienced in engaging with international companies or investors and/or participating in multi-stakeholder dialogues.

Furthermore, in approaching these organizations or local experts one should be sensitive to the fact that relationships may be tense due to former conflicts. It is recommended to approach local actors through Dutch or international NGOs with connections to local NGOs through for instance the organizations' country offices or partner organizations. When required, Dutch and international NGOs can play a facilitating role, especially when they have experience in working with human and environmental rights defenders. Consulting the Dutch embassy, to see if and how to be put in contact with other critical NGOs or consultants, can help to acquire a clear and balanced overview of the local context in which one might want to invest.

It is recommended to take into account the limited financial means of many local organizations and the risks under which they operate; new regulations often force civil society organizations to deal with strict administrative and legal requirements. They often face public accusations for being a potential threat to national security or face restrictions in accessing (foreign) funding. If local CSOs are consulted, it is advised to offer appropriate compensation for the time, effort and inconvenience suffered by these organizations. Setting up an independent fund or small grant facility that distributes these compensations is an example of such a solution<sup>2</sup>. Also mutual expectations should be communicated early and clearly. Refraining from doing this might result in loss of credibility in a country, which may increase the risk of opposition, violence and conflict.

## **Suggested sources**

To stay informed about the risks related to land and the effects of land acquisition on local communities and human and environmental rights defenders, the following sources may be consulted:

- **Landrightsnow**
- **Civicus monitor**
- **International Center for Not-for-Profit Law (CNL)**
- **Environmental Justice Atlas**
- **UN High Commissioner for Human Rights (OHCHR)** – country representatives of the OHCHR can provide information on the local situation of human rights defenders.

<sup>2</sup> Such as Global Greengrants Fund: <https://www.greengrants.org/>



## The role of embassies

Embassies can play a meaningful role in supporting companies and investors in operating in a responsible and sustainable manner. Because of their local presence, local networks and broad scope of work, embassies typically have access to knowledge on opportunities and challenges in their countries, including local expertise of civil society organizations. For most embassies, promoting corporate social responsibility has become an essential part of their work. As a result, they are eminently situated to support companies and investors by providing them with information on the local context, as well as on actual and potential environmental and human rights risks.

Furthermore, embassies are well placed to support private actors by integrating corporate social responsibility issues in their economic diplomacy activities. For instance, land-based investments require investors to engage with a variety of stakeholders. Embassies can function as mediators in connecting them with local government authorities as well as with civil society organizations and other stakeholders. Moreover, an important part of the embassy's work is to engage in dialogue with national governments in order to promote an enabling environment for responsible investments.

Given the key role of embassies in disclosing local information and connecting relevant stakeholders, investors should seek contact with local embassies in countries of their operating portfolio companies or potential investment opportunities. Sound information on local context, as well as early engagement with relevant stakeholders, can help ensure that investments have a positive impact on local communities and contribute to the broader economic development of the country.

This reference guide provides contact details of the embassies in the country sections.



## Guidelines on land

The overview below lists international standards that define best practice conduct regarding land related business activities.

- The **Equator Principles** are a risk management framework for financial institutions that aims to provide a minimum standard for due diligence to support responsible risk decision-making. The Equator Principles are based on the IFC's Performance Standards.
- The **Committee of World Food Security (CFS) Principles for Responsible Investment in Agriculture and Food Systems (RAI)**. The RAI principles are a set of ten voluntary principles related to investments in agriculture and food systems. They emphasize that responsible investment in agriculture and food systems is essential for enhancing food and nutrition security.
- The **Food and Agricultural Organization (FAO)'s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)**. The FAO Voluntary Guidelines (VGGT) envisage promoting secure tenure rights and equitable access to land as a means for eradicating hunger and poverty, supporting sustainable development and enhancing the environment. To support the implementation of the Voluntary Guidelines,

the FAO has prepared a series of **technical guides** for a range of actors. Guide No. 7 is developed specifically for investors. In addition, the Interlaken Group with support from the Rights and Resources Initiative (RRI) has produced a **guide** to support companies, which aim to align their operations with the VGGT.

- **International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability.** The IFC Performance Standards have become a globally recognized good practice in dealing with environmental and social risk management. Performance Standard 5 is devoted specifically to land acquisitions and involuntary resettlement, while Performance Standard 7 addresses issues and risks related to indigenous peoples.
- **The OECD Guidelines for Multinational Enterprises.** These recommendations by governments to multinational enterprises are non-binding principles and standards for responsible business conduct in a global context. Although not specifically aimed at land-related issues, the OECD Guidelines provide a comprehensive set of recommendations, which address many issues relevant to land-related investments.
- **The OECD and FAO have also developed guidance for enterprises to observe standards of responsible business conduct in the agricultural supply chains.** These standards include the OECD Guidelines on Multinational Enterprises, the RAI Principles and the VGGT.
- **PRI's Guidance for Responsible Investment in Farmland.** The Principles for Responsible Investment (PRI) initiative is a UN-supported international network of investors. The PRI are voluntary and aspirational. The PRI Guidance for Responsible Investment in Farmland report highlights emerging good practices and responses to the PRI's Reporting & Assessment Framework.
- **UN Declaration on the Rights of Indigenous Peoples (UNDRIP).** UNDRIP outlines the human rights of indigenous people, among which 'free, prior and informed consent' (article 19) and the right to own, use and develop their traditional lands, territories and resources (article 26). It is also an important guide for the proper implementation of other conventions and agreements on human rights which affect indigenous people.
- **The UN Guiding Principles on Business and Human Rights.** These principles provide a set of guidelines for States and companies to prevent and address the human rights impacts of businesses. The principles emphasize the responsibility of enterprises to respect human rights through their activities and business relationships and to address harms that do occur.



## General sources & initiatives

The following list provides tools, networks, and initiatives that support businesses in implementing responsible and sustainable business practices.

- **Atlas of Environmental Justice**

The Atlas of Environmental Justice is a practical and intuitive online platform to search for conflicts across 100 fields with the option to filter by commodity, company, and type of conflict.

- **BankTrack**

BankTrack is an international tracking, campaigning and NGO support organization mainly aimed at financial institutions and private sector investments.

- **Civicus Monitor**

The Civicus Monitor is a tool specifically designed to track and rate respect for civic space, such as threats being posed to human rights defenders.

- **CSR Risk Check Tool**

The CSR Risk Check Tool is aimed at companies that export to, import from or have production facilities in foreign countries. This tool was developed using 721 sources (research, reports) and including 3900 CSR risks.

Sources used per risk sector (e.g. land use & property rights) are mentioned. The tool can be used when searching for specific products or when searching for risks per country.

- **EU study on Land Grabbing & Human Rights**

This study analyses the global land rush within a human rights framework, examining the implications of land deals involving EU-based investors and their impact on communities living in areas where the investments are taking place.

- **Global Land Tool Network**

GLTN is an alliance of global, regional and national partners contributing to poverty alleviation through land reform, improved land management and security of tenure, particularly through the development and dissemination of pro-poor and gender sensitive land tools.

- **GRAIN**

GRAIN is a small international non-profit organization that supports small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems. The organization is involved in research and analysis, advocacy and lobbying activities. GRAIN developed the website [farmlandgrab.org](http://farmlandgrab.org), which reports news about land grabbing worldwide.

- **Housing & Land Rights Network**

International network aiming to increase the visibility of housing and land rights violations by providing data, publications and news updates on these issues.

- **ICCO cooperation**

International NGO ICCO offers Fair & Sustainable Advisory Services (FSAS) to organizations and companies working in developing countries. FSAS always works together with local experts when providing advice. The focus is on cooperation between businesses, civil society organizations and (semi) governments.

- **Interlaken Group**

The Interlaken Group is an informal network of individual leaders from influential companies, investors, CSOs, government and international organizations. The purpose of the Group is to expand and leverage private sector action to secure community land rights. Together they develop, adopt and disseminate new tools and advance new “pre-competitive” mechanisms to accelerate private sector learning on responsible land rights practices.

- **International Aid Transparency Initiative (IATI)**

The IATI standard aims to make information about aid spending easier to see, use, and understand. On this map, one can see which NGOs are working on which projects in which places in the world.

### ● **International Land Coalition**

ILC is a network organization (without governmental partners), which aims to realize land governance for and with people at country level, responding to the needs and protecting the rights of those who live on and from the land. The National Engagement Strategy Platforms (NES) are national multi-stakeholder platforms through which partner and civil society organizations aim to influence the formulation and implementation of land-related policies and legal frameworks.

### ● **LANDac, the Netherlands Land Academy**

LANDac is a partnership between Dutch organizations and their Southern partners working on land governance for equitable and sustainable development.

### ● **Land Alliance**

Land Alliance is a think-and-do tank, which is committed to finding solutions for complex development challenges in relation to land. The organization tests new approaches to defining and managing rights, manages and shares knowledge, expertise and best practices around the world, mobilizes local action, and seeks to build and enhance long-term capacities.

### ● **Land Mark**

Land Mark is a global data tool developed by the World Resource Institute. It provides detailed maps on national and community levels indicating the areas of land formally and informally claimed by (indigenous) communities. This tool also provides information on the legal security of community and indigenous land rights per country.

### ● **Land Matrix**

The Land Matrix is an online public database on land deals. As a global and independent land monitoring initiative, the Land Matrix aims to promote transparency and accountability in decisions over land and investment, by collecting and visualizing data and information on large-scale land acquisitions.

### ● **Land Portal**

Land Portal has developed a Land Book, which presents comprehensive country and thematic pages with linked open data on land governance from diverse sources around the world, such as FAO, IFPRI and the World Bank.

- **Land Rights Now**

Land Rights Now is a global initiative in which a coalition of various NGOs and civil society organizations call for action to secure indigenous and community land rights.

- **Land Wise**

Land Wise is an online resource network that aims to strengthen women's land rights around the world by providing access to relevant and reliable information, such as legal materials, information about relevant customary practices and explanatory materials.

- **Landesa**

The rural development institute Landesa aims to empower women and men by supporting them in achieving and claiming land rights. Furthermore, Landesa has a Responsible Investments in Property and Land (RIPL) program, which provides practical guidance for communities, governments and investors to achieve more socially responsible land-related investments.

- **International Center for Not-for-Profit Law (ICNL)**

ICNL's Civic Freedom Monitor provides up-to-date information on legal issues affecting civil society and civic freedoms – the freedoms of association, expression and peaceful assembly.

- **Observatory of Mining Conflict in Latin America (OCMAL) & Observatory Environmental Conflicts in Latin America (OLCA)**

The OCMAL and the OLCA register information about the social and environmental conflicts related to mining in Latin America in an online database by country.

- **Rights and Resources report on overlapping land claims in emerging markets**

Using geospatial data from 12 emerging market economies (EMEs), this analysis attempts to guide investors in emerging markets by shedding light on a difficult problem: overlapping land claims that diminish the value and viability of industrial concessions, referred to as "land tenure risk".

- **UN High Commissioner for Human Rights**

The respective country representatives of this UN body can provide information on the local situation of Human Right Defenders in a country.



## **Country Information & Contact Details of Local Experts**

The following part provides a per-country overview including a number of general facts, the most relevant laws and regulations on land, as well as a list of institutions and organizations, relevant for gathering land-related information that companies and investors might need.

The countries included are Argentina, Chile, Brazil, Romania, Poland, India, the Philippines, Indonesia, non-peninsular Malaysia, Canada, the United States, and Australia. These countries have been selected based on their geographic spread as well as their relevance for investments by institutional investors. The country information includes information available during the period of writing this document, thus the most recently available data in 2016 and 2017.



# South America

## Argentina

### Country facts



Argentina is the second largest country in Latin America. The country is characterized by rich plains in the Pampas zone in North-Argentina, flat plateaus in the Southern Patagonia region, the Andes Mountains along the Western border and a long-stretched coastline along the Eastern border.

A large majority of 91.8% of the Argentinian population lives in urban areas; 1/3 of the population lives in Buenos Aires. Only 8.2% of the population inhabits rural areas (FAO, 2015). Especially southern Patagonia remains sparsely populated.

Even though only a small percentage of the population inhabits rural areas, the land distribution is relatively unequal; 2% of farms control 50% of Argentina's land, while 57% of the farms control 3% of the land (IFAD, 2011).

Figure 1: Map of Argentina (data from *EIU, 2017*)



## Land tenure

Argentina has implemented various land tenure regulations throughout history. Table 1 provides a historical overview of the most important land tenure policies and legislation. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Argentinian laws please consult the **Sistema Argentino de Información Jurídica (SAIJ)** (in Spanish).

The current situation regarding land governance and tenure security in Argentina is depicted in Table 2. This table indicates that only 5.5% of the country is held or used by indigenous communities. There is a lack of land tenure security regarding the legal status and formal documentation of indigenous communities.

**Table 1: Historical overview land-tenure legislation/policy in Argentina**

1871	<b>Argentina's Civil Code</b> - formed the foundation of the systems of civil law in Argentina between 1871 and 2015.
1985	<b>Law No. 23.302</b> - concerned with indigenous policy in terms of legal personhood, land rights, biodiversity and multiculturalism. This Law is also concerned with legal support to indigenous communities.
1994	<b>Revised Constitution of Argentina</b> - empowers Congress to decide on the use and sale of national lands. However, since 1994 it also states that Congress should 'respect' community possession and ownership of lands indigenous communities traditionally occupy, but this is only a legislative directive and not a right.
2000	<b>ILO Convention 169</b> – ratified by Argentina.
2006	<b>Law No. 26.160</b> - implemented after the ratification of ILO Convention 169 in an attempt to comply with Article 14.2 to prevent forcible eviction of indigenous groups on ancestral lands. This law was only temporarily in effect until 2013.
2007	<b>UN Declaration on the Rights of Indigenous Peoples</b> - adopted by Argentina.
2015	<b>Civil and Commercial Code</b> - introduced to replace the former Civil Code of Argentina from 1871.
2016	<b>Advisory and Participatory Council of Indigenous People of Argentina</b> - created by decree by the Argentinian president Macri to protect and promote indigenous rights. This was, amongst others, due to the continuous effort of legal reformers proposing the inclusion of indigenous land rights as a form of property right in Argentina's Civil Code.

**Table 2: Current land tenure security Argentina (data from LandMark, 2015 & 2016)**

Groups targeted by legal framework	Indigenous peoples
% Country area held or used by indigenous peoples and communities	<b>5.5%</b> - (2.9% formally recognized, 2.6% not formally recognized)
Average Score Land Tenure Security (1= highest, 4= lowest)	<b>3,5</b>
Legal status (1=highest, 4= lowest)	<b>3</b> - The Constitution "empowers Congress to" respect and protect indigenous community land rights, but this provision has not been implemented in federal legislation.
Formal documentation (1=highest, 4= lowest)	<b>3</b> - Law No 23.302 of the Argentinian Constitution provides a registration process for indigenous communities to register their lands. However, there is criticism on the accessibility of these procedures for all groups.
Right to Consent Before Land Acquisition (1=highest, 4= lowest)	<b>4</b> - The State can expropriate collectively-owned land for a public purpose, and does not need to consult or obtain consent from indigenous communities.

# Contacts

## Websites / internet databases on land governance in Argentina

- **Conflictos Mineros** - information on mining conflicts in Latin America.
- The **Economist Country Profile** shows the build-up of the Argentinian GDP.
- **IFAD: The issue of land in Argentina** – The paper extensively identifies central issues around land tenure and management in Argentina and discusses the conflicts and dynamics of land use, holdings and concentration.
- **Rights and Resources case study Argentina** – Using geospatial data, this analysis attempts to guide investors in emerging markets by providing information on overlapping land claims.

## Ministry of Foreign Affairs

- **Agricultural Counsellor** aims at improving cooperation between the Netherlands and Argentina on agriculture, agri-business, food, fisheries, nature conservation, agricultural research and education. Information is offered to Dutch companies who aim to expand their activities in Argentina and to companies who aim to start operating in the market.
- **Embassy of the Kingdom of the Netherlands in Argentina** – Email: [bue-ea@minbuza.nl](mailto:bue-ea@minbuza.nl).
- The Ministry of Foreign Affairs' **department for the Western Hemisphere**.
- The Ministry of Foreign Affairs' regional department in **Buenos Aires**.
- **Netherlands-Argentina Centre of Commerce** (Cámara de Comercio Argentino-Holandesa) – Email: [info@ccah.org.ar](mailto:info@ccah.org.ar).
- **RVO Argentina** - Rijksdienst voor Ondernemend Nederland / Netherlands Enterprise Agency. RVO encourages entrepreneurs in sustainable agrarian, innovative and international business. This site offers extensive information on the do's and don'ts in Argentina, and on laws and legislation.

## Local expert and civil society organizations

- **CELS** (Centre for Legal and Social Studies) monitors human rights in Argentina. This report by CELS is in Spanish; see chapter 2 on violations of land rights.
- **El Paraná No Se Toca** is a social movement with as principal objective the conservation of the Paraná Delta, with extensive knowledge of the Delta, the soy industry as well as foreign investments in Argentina. Spanish speaking, contact the **Western Hemisphere Department**.
- **Both ENDS** is a Dutch-based NGO, working together with environmental justice groups from poor and developing countries towards a sustainable, fair and inclusive world. Both ENDS gathers and shares information about policy and investments that have direct impact on people and their livelihood, engages in joint advocacy, stimulates the dialogue between stakeholders and promotes and supports sustainable local alternatives. Both ENDS collaborates with partner organizations in Argentina on human rights and environmental issues within the agriculture, infrastructure and energy sector.
- **Fundación Amigos de la Tierra Argentina** - Amigos de la Tierra Argentina is a member of the international network Friends of the Earth. Its members are working on issues related to the environment, nature, social justice and human rights on a national level. Each of them has a national network of smaller NGOs and can establish contact with them. Email: [amigosdelatierra@arnet.com.ar](mailto:amigosdelatierra@arnet.com.ar).
- **FUNDAPAZ** is an NGO working towards sustainable rural development together with indigenous communities and farm families in the North of Argentina; in the Chaco region, which covers 22% of the country's territory and 200,000 indigenous peoples.
- **OCMAL (Observatory of Mining Conflicts in Latin America)** registers information about mining conflicts, mining projects and mining companies. (Website in Spanish only)
- **OLCA (Observatory Environmental Conflicts in Latin America)** advises communities in conflict to enhance their management capacities with regard to environmental and civil rights. (Website in Spanish only)
- **The Dutch Soy Coalition** publishes extensive documents on soy and the consequences of its large-scale production. Moreover, members of the Coalition coordinate and maintain working relations with civil society organizations and farmer organizations in soy producing countries. The secretariat of the Coalition is hosted by Dutch NGO Both ENDS, and can be **contacted** for further networking with **local NGOs in (among others) Argentina**.



## Brazil

### Country facts



The landscape in Brazil is characterized to a large extent by the Amazon basin (49% of its territory), but it also hosts extensive grassland and wetland ecosystems.

A large majority of 85.7% of the Brazilian population live in urban areas, whereas 14.3% live in

rural areas (FAO, 2015). The population lives mainly in the South-Eastern cities of Sao Paolo, Brasilia and Rio de Janeiro.

The land in Brazil is unequally distributed; 1% of the population owns 45% of all land in Brazil.

Figure 2: Map of Brazil (data from EIU, 2017)

## Land tenure

Brazil has implemented various land tenure regulations throughout history. Table 3 provides a historical overview of the most important national and international land tenure policies and legislation. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Brazilian laws please consult **Portal da Legislação** (in Portuguese).

When looking at the LandMark score of land tenure security of Brazil, the country is doing relatively well compared to other countries in Latin America in terms of securing land tenure security as depicted in Table 4. However, also in Brazil the enforcement of the FPIC principle is not fully covered by the legal framework and hence it is questionable to what extent this principle is implemented in practice.

**Table 3: Historical overview land-tenure legislation/policy in Brazil**

<b>1973</b>	<b>Law 6001</b> – the ‘Indian Statute’, aiming to demarcate all indigenous lands to integrate indigenous people into society and to offer protection for the indigenous populations by the National Indian Foundation (FUNAI). Article 18 indicates that ownership of indigenous territories remains with the federal government. Permanent possession and the exclusive right to use natural resources is guaranteed.
<b>1988</b>	<b>Constitution of Brazil</b> – Article 231 recognizes the rights of people living on traditionally occupied lands. However, this article also allows the National Congress to grant authorization to third parties to explore resources such as water, including for energy generation, and subsoil minerals on an exceptional basis, following consultation with affected communities. Communities have the right to receive part of the revenues from the mining of their lands.
<b>1993</b>	<b>Decree 1775</b> – changed the steps required to demarcate indigenous lands. The decree was highly controversial, as it was said to make it more complicated to claim indigenous land and consequently allows for more interference from commercial interests.
<b>2002</b>	<b>ILO Convention 169</b> – ratified by Brazil.
<b>2003</b>	<b>Decree 4887</b> – regulated the procedure for granting property titles to Quilombo communities over the lands they occupy. The decree was elaborated by a multidisciplinary expert group in consultation with a range of civil and Quilombo organizations.
<b>2007</b>	<b>UN Declaration on the Rights of Indigenous Peoples</b> – adopted by Brazil.
<b>2010-2016</b>	In 2010, President Silva puts the <b>breaks on foreigners’ purchase of agricultural land</b> as it threatened national sovereignty. Foreign investors needed to form partnerships with Brazilian companies and accept minority stakes if they wanted to invest in land. These limitations of foreign land ownership were attempted to be <b>lifted in 2016</b> and expected to unleash a new wave of land-related investments. However, the final decision has not yet been taken*.

\* August 2017

**Table 4: Current land tenure security Brazil (data from LandMark, 2015 & 2016)**

Groups targeted by legal framework	Indigenous peoples
% Country area held or used by indigenous peoples and communities	<b>23.3%</b> - (23.3% formally recognized, no data for not formally recognized)
Average Score Land Tenure Security (1= highest, 4= lowest)	<b>1,8</b>
Legal status (1=highest, 4= lowest)	<b>2</b> - The Constitution of Brazil recognizes possession rights of the lands traditionally occupied. This includes lands where communities live on a permanent basis, those used for productive activities, and those necessary to protect communities' well-being. Areas occupied by the remaining Quilombo communities are also recognized.
Formal documentation (1= highest, 4= lowest)	<b>2</b> - Recognition of the rights of indigenous and tribal groups to the possession of their lands is not subject to demarcation. However, it is necessary to formalize the land title to reinforce the rights.
Right to Consent Before Land Acquisition (1=highest, 4= lowest)	<b>3</b> - Congress authorizes exploitation of water and mineral resources in IP's lands. Communities will participate in hearings during the decision process.

Furthermore, a study of **Global Witness** indicates that there is only limited room for opposition; 50 of the 185 deaths of land and environmental defenders across 16 countries in 2015 took place in Brazil, mainly in the Northern states of Maranhao, Para and Rondonia. Most deaths in Brazil were attributed to plantations or large ranches on land that has been claimed by rural communities. Although the Brazilian land tenure framework seems promising, it is unclear to what extent communities can claim these rights in practice.

## Contacts

### Websites / internet databases on land governance

- **Conflictos Mineros** - information on mining conflicts in Latin America.
- **International Land Coalition - Land Governance in Brazil - A Geo-historical review (2011)**
  - This 60-page report offers a geo-historical review of land governance in Brazil by analyzing key paradoxes regarding land use and agricultural policies, e.g. failure to adopt policies favorable to small farmers despite the fact that the majority of the farmers are small scale ones. It also includes an extensive analysis per region on e.g. type of landowners, type of crop, infrastructure, human rights violations etc.

- **Land Rights and Soda Giants (2017)** – A paper by Oxfam reviewing Coca-Cola and PepsiCo's land assessments in Brazil (available in English and Portuguese, contact Oxfam Country Office for more information).
- **Terrenos da Desigualdade: terra, agricultura e desigualdade no Brasil rural (2016)** – contains countrywide data on land inequality and looks at the correlation between high levels of land concentration and low levels of human development at the municipal level (only available in Portuguese, contact Oxfam Country Office for more information).
- **Tim Boekhout van Solinge – The Illegal exploitation of natural resources** – Tim Boekhout van Solinge (Utrecht University) specializes in green criminology, in particular illegal logging and other harmful forms of deforestation. He coordinates an international project funded by the Netherlands Organization of Scientific Research (NWO) in Brazil and Colombia. This paper offers an overview of problems caused by illegal logging in the Amazon.

## Ministry of Foreign affairs

- The **Agricultural counsellor** for Brazil supports Dutch companies in their international ambitions in the agrarian sector.
- **Embassy in Brazil** – The Dutch embassy in Brazil.
- **NBSO Brazil** - The Netherlands Business Support Office (its two offices are in Belo Horizonte and in Porto Alegre). NBSO is mainly active in Minas Gerais and in the three Southern states. NBSOs can be found in regions that offer opportunities for Dutch companies but without embassy or consulate. They help identify opportunities, market information, business partners and market advice per sector.
- **RVO Brazil** – RVO (Rijksdienst voor Ondernemend Nederland / Netherlands Enterprise Agency) has a **department and sector database on Brazil** which identifies opportunities for export as well as in-depth information per department on the economy, natural resource extraction and (foreign) companies active. These extensive reports also indicate the overlap with the Dutch top sector policy, and opportunities for Dutch businesses in diverse sectors.

## Local expert and civil society organizations

- **ActionAid Brazil** – Action Aid's country office. Action Aid is an international NGO that works on fighting poverty and injustice. In Brazil, ActionAid works with local and national partners and with poor farmers on issues such as land reform and trade justice.

- **Both ENDS** is a Dutch-based NGO, working together with environmental justice groups from poor and developing countries, towards a sustainable, fair and inclusive world. Both ENDS gathers and shares information about policy and investments that have a direct impact on people and their livelihood, engages in joint advocacy, stimulates the dialogue between stakeholders and promotes and supports sustainable local alternatives. Both ENDS collaborates with partner organizations in Brazil on human rights and environmental issues within the agriculture, infrastructure and energy sector.
- **The Dutch Soy Coalition** publishes extensive documents on soy and the consequences of its large-scale production. Moreover, members of the Coalition coordinate and maintain working relations with civil society organizations and farmer organizations in soy producing countries. The secretariat of the Coalition is hosted by Dutch NGO Both ENDS, and can be contacted for further networking with local NGOs in (among others) Brazil.
- **Grassroots International** works around the world to help small farmers and other small producers, indigenous peoples and women win resource rights: the human rights to land, water and food.
- **Minority Rights Group International** is an international human rights organization that focuses on rights for ethnic, national, religious and linguistic minorities and indigenous peoples around the world. The organization also provides information on Brazil's indigenous peoples.
- **Movement of Landless (MST)** is a social movement, which has been active in Brazil for a long time aiming to reinforce land rights for peasants.
- **Oxfam Country Office** – located in São Paulo, Tel: +55 11 3028 04400



## Chile

### Country facts



Chile is a long-stretched country that is geographically relatively isolated compared to the rest of Latin America. The country's landscape is largely mountainous; the Andes and the Nevado Ojos del Salado in the Atacama region make up a large part of the country. The central region of Chile is characterized by fertile valleys and low coastal mountains.

Only 10.5% of the population in Chile lives in rural areas and a majority of 89.5% inhabits urban areas (FAO, 2015). Most of the urban population is located in the capital Santiago in the central region of Chile. The far Northern

region and the extreme Southern region of Chile are relatively under populated. Indigenous peoples make up about 4.6% of the total population.

Figure 3: Map of Chili (data from *EIU, 2017*)



## Land tenure

Chile has implemented various land tenure regulations throughout history. Table 5 provides a historical overview of the most important land tenure policies and legislation. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Chilean laws please consult the **Library of the National Congress of Chile** (in Spanish).

The land tenure security of Chile today is depicted in Table 6. Despite the land tenure regulations in place in Chile, there is still room for improvement, especially regarding the formal documentation of land rights and the implementation of the FPIC principle.

## Contacts

### Websites / internet databases on land governance

- **Assessment of Chile's land tenure system** written by Jorge Espinoza, Chair of Land Management at the Technical University of Munich from 2012-2014.
- The Chilean government has a **committee for foreign investment (CIE Chile)**, which promotes the Chilean investment climate and informs foreign investors on opportunities in Chile. Sectors identified are: renewable energy, mining, infrastructure, tourism, food industry and financial services.

**Table 5: Historical overview land-tenure legislation/policy in Chile**

<b>1962-1973</b>	<b>Chilean land reform</b> – initially the land-redistribution of state-owned land and land of latifundistas (landlords) to peasants. After the 1973 coup, a counter-reform was initiated resulting in a neo-liberal agrarian model that led to privatization of indigenous and peasant land.
<b>1967</b>	<b>Law No. 5 on Agricultural Communities</b> – primary national law providing communities with rights to own, use and enjoy lands held in common. However, the law establishes limitations on these ownership rights and it is unclear whether communities can use these lands for non-agricultural purpose. The law does not state whether agricultural communities have a right to give consent prior to acquisition by governments or outsiders.
<b>1980</b>	<b>Constitution of Chile</b> – does not explicitly grant rights to indigenous peoples.
<b>1993</b>	<b>Law No. 19.253 (Ley Indígena No. 19.253)</b> – primary national law governing the rights of indigenous peoples, including the right to hold indigenous land titles.
<b>2007</b>	<b>Native Forest Law</b> – regulates the use of native forests and promotes sustainable forest management.
<b>2007</b>	<b>UN Declaration on the Rights of Indigenous Peoples</b> – adopted by Chile.
<b>2008</b>	<b>ILO Convention 169</b> – ratified by Chile, however supposedly slow implementation and no full implementation of the indigenous right to consultation prior to acquisition of land.
<b>2013</b>	<b>S.D. No. 40</b> - regulation governing the environmental impact assessment system and containing rules governing the “consultation” of indigenous peoples with regards to investment projects that are subject to an environmental impact assessment. However, this Regulation has been criticized by the <b>International Work Group for Indigenous Affairs</b> for failing to meet the standards established in ILO Convention 169.

**Table 6: Current land tenure security Chile (data from LandMark, 2015 & 2016)**

<b>Groups targeted by legal framework</b>	<b>Indigenous Communities</b>
<b>% Country area held or used by indigenous peoples and communities</b>	<b>3.1%</b> (3.1% formally recognized, no data on non-formally recognized)
<b>Average Score Land Tenure Security</b> (1= highest, 4= lowest)	<b>2,4</b>
<b>Legal status</b> (1=highest, 4= lowest)	<b>2</b> - Indigenous communities are recognized by Law 19.253 as the legal owners of their land (Article 12). However, these rights are subject to certain limitations, such as approval by the National Indigenous Development Corporation on matters relating to registration.
<b>Formal documentation</b> (1=highest, 4= lowest)	<b>3</b> - Article 10 of Law 19.253 establishes procedures by which a community may be registered in Chile. Indigenous people must present an authorized copy of the community's constitution to the respective national or regional government office. However, there are no explicit provisions ensuring that procedures will be accessible and affordable for indigenous communities.
<b>Right to Consent Before Land Acquisition</b> (1=highest, 4= lowest)	<b>3</b> - There are limited rights ensuring the process of consent prior to acquisition of land; FPIC has not been fully recognized by Chile's national laws.

- **Conflictos Mineros** - information on mining conflicts in Latin America.
- **Council of National Corporation of Indigenous Development (CONADI)** – A national organ of Chile concerned with the development and the protection of rights of indigenous communities.
- KPMG Global Mining Institute – **Country mining guide for Chile.**

## Ministry of Foreign affairs

- The **agricultural counsellor in Argentina** is also responsible for Chile.
- The **Chile-Netherlands Chamber of Commerce** was initiated in 2004 and aims at strengthening bilateral business relations between the two countries. Currently, Dutch companies such as Rabobank, Philips and Randstad are connected to the ‘Cámara’.
- Besides **the embassy in Santiago de Chile**, there are 8 honorary consulates in Antofagasta, Concepción, Iquique, Puerto Montt, Punta Arena, Temuco, Valdivia and Valparaíso. The embassy also offers information and advice on doing business in Chile.
- **RVO Chile** (Rijksdienst voor Ondernemend Nederland / Netherlands Enterprise Agency) has written about the **do’s and don’ts** of doing business in Chile, and has published a number of market **reports**.

## Local expert and civil society organizations

- **Comite Nacional Pro Defensa de la Fauna y Flora (CODEFF)** - CODEFF is a member of the international network Friends of the Earth. Its members are working on issues related to the environment, nature, social justice and human rights on a national level. Each of them has a national network of smaller NGOs, and can establish contact with them.
- Information on the history of the **Mapuche Minorities** in Argentina and Chile and their current situation by **Minority Rights Group International**.
- **OLCA** (Observatorio Latinoamericano de Conflictos Ambientales) - OLCA works with Dutch NGO Both ENDS on the Project Drynet: a global initiative providing a future to drylands. Drynet is the first worldwide civil society organizations project that helps to strengthen local organizations in order to put desertification on the policy agenda.



## Europe

### Romania Country facts



Romania's landscape is characterized by the Carpathian Mountains in the center, the Danube River on the border with Serbia and Bulgaria, its Delta in the Black Sea, and large forest areas. The natural landscape consists in almost even parts of mountains, hills and plains.

The population is fairly evenly distributed throughout the country. The urbanized population has been relatively steady over the last years representing approximately half of the country's total population.

The land distribution in Romania is relatively unequal. According to the Transnational Institute, more than 99% of the farms are individual or family subsistence plots with an average size of 3.5 hectares. The remainder are farms with legal status with an average size of 191 hectares. The gap between these small-scale farms and large-scale exploitation has grown over the last years (TNI, 2013 & 2015).

Figure 4: Map of Romania (data from *EIU, 2017*)



## Land tenure

Romania has implemented various land tenure regulations throughout history. Table 7 provides a historical overview of the most important national and international land tenure policies and legislation. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Romanian laws please consult the **World Legal Information Institute**.

## Contacts

### Websites / internet databases on land governance

- European Commission report on **farming structures**
- The Transnational Institute (TNI) has written a chapter on Romania in the paper **Land Concentration, land grabbing and people's struggles in Europe**. The tone of this chapter is very negative; it should be read critically.
- Extensive FAO report on **Land Reform in Eastern Europe**.
- **National Agency of Cadastre and Land Registration**
- FAO country profile **Romania**

### Ministry of Foreign affairs

- The **embassy** in Bucharest

**Table 7: Historical overview land-tenure legislation/policy in Romania**

<b>1945-1989</b>	Romania became a communist state after World War II. Ceausescu, the country's head of state from 1967 to 1989, and his communist party created <b>State Farms and Agricultural Production Cooperatives</b> . In 1989, state farms and cooperatives accounted for 90% of the used agricultural area, most of them in large scale production units. Urban industrialization was promoted.
<b>1991</b>	After the fall of the communist regime in 1989, the government initiated a <b>land restitution program</b> under Law 18/1991 which sought to return land resources that were in the hands of the state to its pre-collectivization owners. This process of de-collectivization led to fragmentation and privatization of land.
<b>2000</b>	Parliament passed a <b>second land restitution law</b> (Law 1/2000)
<b>2005</b>	Parliament passed a <b>third land restitution law</b> (Law/247/2005)
<b>2014</b>	Romania <b>lifted the moratorium on land sales to foreign investors</b> . This restriction on land purchases by foreign parties prevented investors within the EU from acquiring large amounts of cheap farmland. Since the moratorium on the sale of land has been lifted, foreign investors can compete on the same terms as nationals for agricultural land.

- **Agricultural counsellor** for Romania in Bucharest. In March 2016 the counsellor **presented a report on Romania** and its business opportunities in the fruit and vegetable sector, as well as on **animal production**.
- **Holland Trade in Romania**, about doing business in Romania
- The **Netherland's Romanian Chamber of Commerce**
- Regional departments' contacts responsible for Romania. (**Romanian Embassy Department Europe**).
- **RVO Romania** – Rijksdienst voor Ondernemend Nederland/ Netherlands Enterprise Agency.

### **Local expert and civil society organizations**

- **ActiveWatch** is a human rights organization working for free communication for public interest.
- **Eco Ruralis**, a Romanian NGO in support of organic and traditional farmers. Especially active on land governance: "We will aid the capacity of peasants to collectively defend themselves against unfair and unequal actions taken by corporations and governments".
- Information on **Roma** from Minority Rights Group International.



## Poland

### Country facts



Poland is a country located in central Europe. Poland is a lowland country, characterized by an unbroken plain spreading from the coast to the Baltic sea in the North to the Carpathian Mountains in the south.

Approximately 60% of the population live in urban areas, and this figure has been fairly stable over the last few years. The population is concentrated in the major urban areas Warsaw, Krakow, and Gdansk.

According to **EUROSTAT** data (2012), the number of small agricultural holdings has dropped in favor of larger farms. In 2010, farms owning more than 100 hectares represented 0.6% of Poland's total holdings, but occupied 21.6% of the utilized agricultural area (UAA). The 8% largest farms (i.e. with 20 hectares or more) represented almost 50% of the country's UAA. 55% of the agricultural holdings owned less than 5 hectares.

Figure 5: Map of Poland (data from *EIU, 2017*)

## Land tenure

Poland has implemented various land tenure regulations throughout history. Table 8 provides a historical overview of the most important national and international land tenure policies and legislation. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Polish laws please consult **Prawo** (in Polish) or the World Bank's **Doing Business**.

<b>1919</b>	A bill was passed <b>limiting individual holdings of land</b> to 150 acres with exceptions in regions where the conditions justified different regulations.
<b>1920</b>	<b>Act of 24 March 1920</b> on the purchase of agricultural property by foreigners requires the latter to have a permit for buying agricultural land.
<b>1921-1939</b>	Poland launches a <b>land reform program</b> aiming at a more rational, equitable land distribution among owners. It had been widely recognized that the current, unequal distribution of farm land needed correction.
<b>2001</b>	An <b>Environmental Protection Law</b> was passed, establishing conditions for the protection of environmental resources and the release of substances or energies into the environment as well as the costs of the use of the environment.
<b>2003</b>	The <b>Agrarian System Restructuring</b> , an act on the management of agricultural systems, prevents farming land from being purchased by foreigners or by nationals with no farming education and grants leaseholders a preemption right. It further gives the Ministry of State Treasury the right to intervene in land price determination and real estate transactions.
<b>2004</b>	When joining the EU in May 2004 the country gained a <b>twelve-year protected period</b> during which foreigners needed a special permit to purchase agricultural land.
<b>2016</b>	Poland's Lower House of Parliament passes legislation imposing <b>restrictions on foreigners</b> wanting to purchase agricultural land. This change in legislation is in anticipation of the end of the abovementioned 12-year moratorium on selling agricultural land to foreigners.

# Contacts

## Websites / online data or information

- Changes in agricultural land ownership in Poland after 1989.
- FAO on land rights in Poland.

## Ministry of Foreign affairs

- The **Agricultural Counsellor** for Poland – In **this presentation**, the current counsellor Martijn Homan (2016) elaborates on the dairy and agricultural sector.
- Netherlands-Poland **Chamber of Commerce**.
- The Dutch Ministry of Foreign Affairs' regional department, **Department Europe**.
- The **Dutch embassy** in Warsaw – The economics department specializes in the Dutch **top-sector policy** on agrifood, energy, logistics and water.

## Local expert and civil society organizations

- **International Coalition to Protect the Polish Countryside (ICPPC)** - ICPPC promotes and protects the Polish countryside's natural and cultural biodiversity by raising public awareness of the importance of the small family farm in creating an ecologically sensitive, long-term solution to the countryside.
- **Polski Klub Ekologiczny** - Polski Klub Ekologiczny is a member of the international network Friends of the Earth. Its members are working on issues related to the environment, nature, social justice and human rights at national level. Each of them has a national network of smaller NGOs, and can establish contact with them. Email: biuro\_pkezg@pkezg.pl.



# Asia

## India

### Country facts



India is a peninsular country characterized by the Himalayan mountain range in the North and North-East, desert in the North-West and large rivers, various plains and plateaus throughout the rest of the country.

Although India is facing rapid urbanization and 32.7% of the population lives in urban areas, a majority of the Indian inhabitants still lives in rural areas (FAO, 2015).

Figure 6: Map of India (data from *EIU*, 2017)



## Land tenure

India has implemented various land tenure regulations throughout history. Table 9 provides a historical overview of the most important national and international land tenure policies and legislation. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Indian laws please consult the **India Code** or the **LIofIndia Databases**.

Indian legislation offers a framework for the protection of land rights and rights to natural resources. However, there are some limitations; inequality in wealth and political power can decrease opportunities of civil society groups and the community members they represent to claim and secure their rights.

Furthermore, the fundamental land law in India, the LAA, was considered controversial. A detailed **scientific analysis** shows that this law is contested, as 'public purpose' has never been defined or properly explained. The LAA has been replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act in 2013.

Some limitations of land tenure security in India today are reflected in the LandMark scores depicted in Table 10. These indicate that there is still a lot of room for improvement regarding land tenure security. Especially regarding the formal documentation of tribal and community lands India is lacking; only 0.04% of the country area is formally held or used by forest dwellers, scheduled tribes or scheduled castes.

**Table 9: Historical overview land-tenure legislation/policy in India**

1894	<b>Land Acquisition Act (LAA)</b> – enacted by the British, stating that the government has the right to expropriate private property for public use with payment of compensation.
1950	<b>The Indian Constitution</b> - 5 <sup>th</sup> schedule provides protection to tribal people (the indigenous communities, also known as Adivasis) living in scheduled areas from alienation of their lands and natural resources by non-tribals. - 6 <sup>th</sup> schedule provides protection for Adivasis and their tribal lands.
1986	<b>Environmental Protection Act</b> – promotes the protection and improvement of the human and natural environment and the prevention of hazards to human beings, other living creatures, plants and property.
1988	<b>National Forest policy</b> – building on a National Forest Policy from 1952 it was issued to underscore community participation, containing directives on, amongst others, farm forestry, management of forests, rights and concessions, tribal communities, education and legal and financial support.
2007	<b>The Land Acquisition Bill</b> – aims to amend the LAA of 1894. Public purpose is defined as projects that are 'useful to general public' and carried out by companies or private individuals. This new version faced a lot of criticism from civil society groups, arguing that it is pro-industry and anti-public purpose as local communities become more vulnerable to the expropriation of their land. This bill is no longer applicable.
2007	<b>UN Declaration on the rights of Indigenous Peoples</b> – adopted by India.
2007	<b>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act</b> – recognizing and vesting forest rights and occupation for tribes and forest dwellers who have resided on forest land for generations but whose rights could not be recorded.
2008	<b>Forest Rights Act (FRA)</b> – recognizes the land rights of communities having lived in forests for generations.
2013	<b>The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act</b> – this Act specifically addresses the rights of Indian citizens in the case of land acquisition, rehabilitation and resettlement. It replaces the LAA from 1894.
2016	<b>Compensatory Afforestation Management &amp; Planning Authority Bill (CAMPA Bill)</b> - The controversial CAMPA Bill proposes to establish central and state authorities to spend forest diversion compensation funds. However, <b>critics</b> say that there is little democratization or accountability which may have ominous consequences for the hard-won rights of forest-dwelling and tribal communities.

**Table 10: Current land tenure security India (data from LandMark, 2015 & 2016)**

<b>Groups targeted by legal framework</b>	<b>Communities (specific privileges for Scheduled Tribes, Scheduled Castes and forest dwellers)</b>
<b>% Country area held or used by indigenous peoples and communities</b>	<b>11.0%</b> (only 0.04% formally recognized)
<b>Average Score Land Tenure Security</b> (1= highest, 4= lowest)	<b>2,4</b>
<b>Legal status</b> (1=highest, 4= lowest)	<b>2</b> - Under the FRA 2006, Scheduled Tribes and other traditional forest dwellers are granted the right to live in and hold forest land. However, these rights do not extend beyond forest lands. Traditional forest dwellers must have primarily resided for at least three generations prior to Dec. 13, 2005 to obtain rights.
<b>Formal documentation</b> (1=highest, 4= lowest)	<b>3</b> - Registration is free. The FRA 2006 provides that the Gram Sabha (traditional village institutions) must receive and decide on claims to community forests, and prepare a map delineating the area of each claim.
<b>Right to Consent Before Land Acquisition</b> (1=highest, 4= lowest)	<b>2</b> - Depending on the acquisition project, 70-80% of affected families must consent to land acquisitions. The procedures for gathering consent are not clearly established.

## Contacts

### Websites / internet databases on land governance

- **Country Partnership Strategy for India database** – data per state.
- **FAO** – country indicators India.
- **FAO** – a document on women’s land rights in India.
- **ILC** – provides news and resources on land rights issues in India.
- **Land Deal Politics Initiative (LDPI)** is a research initiative on land grabbing, also in India.
- **Landwise** provides various (legal) documents on land rights in India.
- **Ministry of Tribal Affairs** – information on tribal affairs in India (also per state).

## Ministry of Foreign affairs

- Agricultural Department – Email: [NDE-LNV@minbuza.nl](mailto:NDE-LNV@minbuza.nl), Tel: +91(0)1124197605.
- Netherlands Business Support Offices (NBSOs)
  - NBSO Chennai – Email: [info@nbsochennai.org](mailto:info@nbsochennai.org), Tel: +91 44 2860 1640.
  - NBSO Ahmedabad – Email: [info@nbsoabad.org](mailto:info@nbsoabad.org), Tel: +91 79 2656 4711.
  - NBSO Hyderabad - Tel: +91 40 4203 0788.
- Netherlands Consulate General in Mumbai – Email: [BOM-EA@minbuza.nl](mailto:BOM-EA@minbuza.nl), Tel: +91(0)2222194200.
- **Netherlands Embassy New Delhi**
  - Economic Department – Email: [NDE-EA@minbuza.nl](mailto:NDE-EA@minbuza.nl), Tel: +91(0)1121197618.
- NFIA (For Indian investments in The Netherlands) – Email: [INFO@nfia-india.com](mailto:INFO@nfia-india.com), Tel: +91(0)1124197627.
- **RVO India** – information on doing business in India. Email: [klantcontact@rvo.nl](mailto:klantcontact@rvo.nl), Tel: +31(0)88 042 42 42.
- Science & Technology – Email: [DELHI@nost-india.org](mailto:DELHI@nost-india.org), Tel: +91(0)1124197675.

## Local expert and civil society organizations

- **Both ENDS** is a Dutch-based NGO, working together with environmental justice groups from poor and developing countries, towards a sustainable, fair and inclusive world. Both ENDS gathers and shares information about policy and investments that have a direct impact on people and their livelihood, engages in joint advocacy, stimulates the dialogue between stakeholders and promotes and supports sustainable local alternatives. Both ENDS collaborates with partner organizations in India on human rights and environmental issues within the agriculture, infrastructure and energy sector, and sustainable land use.
- **Ekta Parishad** – Indian people’s movement dedicated to the principles of non-violent action, aiming at social and land reform in India.
- **FIAN** – international human rights organization that advocates the realization of the right to adequate food and nutrition. FIAN focuses on issues of food security and land rights, also in India.

- **Foundation for Ecological Security (FES)** works towards conservation of nature and natural resources through collective action of local communities in India.
- **Housing and Land Rights Network India** works for the recognition, defense, promotion, and realization of the human rights to adequate housing and land.
- **Humans Right Watch India** monitors development and violations of human rights, also in relation to land.
- Jawaharlal Nehru University assistant professor **Avinash Kumar** - academic expert on social issues and social discrimination, among others.
- Jawaharlal Nehru University professor **Praveen Jha** - academic expert on land reforms, among others.
- **Landesa** – center for women’s land rights provides insight in difficulties of land acquisition for women in India.
- **Mahila Kisan Adhikaar Manch (MAKAAM)** – a nationwide informal forum of more than 120 women farmer organizations and collectives, civil society organizations, researchers and activists, drawn from 24 states of India, to secure due recognition and rights of women farmers in India.
- **National Alliance of People’s Movements** – national people’s movement in India focused on the assertion of rights, including land rights.
- **Navsarjan Trust** is a grassroots organization dedicated to ensuring human rights for all. Its mission is to eliminate discrimination based on untouchability practices. They also promote equality of status and opportunities to all, regardless of caste, class or gender, and ensure prevalence of the rule of law. Among others, the organization has worked on land rights issues in the state Gujarat in Western India.
- Oxfam Country Office – located in New Delhi, Tel: +91 11 4653 8000
- **Working Group for Women and land ownership** – network in Gujarat working on the issue of agricultural land ownership for women.



# Philippines

## Country facts



The Philippine archipelago consists of more than 7,000 islands, divided into 80 provinces. The country is characterized by mountainous inlands and extensive coastal lowland. The country is vulnerable to natural hazards, especially typhoons and flooding.

A majority of 55.6% of the population lives in rural areas, whereas 44.4% inhabits urban areas (FAO, 2015).

The Philippines is home to an estimated **100 indigenous groups** who account for 3% of the population. Although legislation targeting these groups increased over the past decades,

the implementation of these regulations is still challenging and controversial in many cases.

Figure 7: Map of Philippines (data from EIU, 2017)



### **Land tenure**

Table 11 provides a historical overview of important developments in policies and legislation of tenure over land and related natural resources in the Philippines. For an extensive study on these regulations, their implications for land tenure and a comparison to the VGGT principles, see this extensive **FAO report** (2014). Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Philippine laws please consult the **ChanRobles Virtual Law Library**.

The current situation regarding land governance and tenure security in the Philippines is depicted in Table 12. The LandMark score of 1,5 indicates that the Philippines is doing relatively well in terms of land tenure legislation. In addition, this table shows that Indigenous Peoples are an important group to consider with regards to land-related activities as almost one fourth of the land in the Philippines is formally owned by or designated for these groups. For more information regarding the indigenous and community lands on the local level in the Philippines, visit the **interactive LandMark map**.

**Table 11: Historical overview land-tenure legislation/policy in the Philippines**

1936	<b>The Public Land Act</b> - This act is still the governing law on public lands in the Philippines.
1987	<b>The Philippines Constitution</b> – the constitution explicitly provides for the protection of indigenous rights (for details see pp. 3-5 of this <b>Oxfam report</b> ).
1988	<b>Comprehensive Agrarian Reform Program (CARP)</b> – the CARP was the redistribution of public and private agricultural land to landless farmers or farmworkers in the Philippines, aiming to increase equitable land ownership.
1995	<b>The Philippines Mining Act</b> – allows mining companies to extract timber and water within their concessions.
1997	<b>Indigenous Peoples Rights Act (IPRA, part of Social Reform Agenda (SRA))</b> - IPRA recognizes indigenous peoples' rights to self-determination, provides mechanisms for protection and adopts the FPIC principle (for details see pp. 5-8 of this <b>Oxfam report</b> ). In addition, the IPRA recognizes the private nature of ancestral domains.
2007	<b>UN Declaration on the rights of Indigenous Peoples</b> – adopted by the Philippines.
Pending*	<b>National Land Use Act (NLUA)</b> – a comprehensive legal framework protecting land use rights and avoiding conflicting land laws and claims. Even though many civil society organizations and NGOs lobby for the NLUA, it is still pending waiting on approval by the House of Representatives in the Philippines.

\* June 2017

**Table 12: Current land tenure security Philippines (data from LandMark, 2015 & 2016)**

Groups targeted by legal framework	Indigenous Cultural Communities / Indigenous Peoples (ICCs/IPs)
% Country land formally recognized as owned by or designated for Indigenous peoples & communities	21.4%
Average Score Land Tenure Security (1= highest, 4= lowest)	1,5
Legal status (1=highest, 4= lowest)	1 - Right of ownership by ICCs/IPs to ancestral domains and lands explicitly recognized and anchored in the Constitution (Art. XII, Sec. 5).
Formal documentation (1=highest, 4= lowest)	1 - Clear procedures for delineation and recognition of ancestral domains provided, with self-delineation as a guiding principle.
Right to Consent Before Land Acquisition (1=highest, 4= lowest)	1 - Free and prior informed consent (FPIC) is explicitly required. However, women and other vulnerable groups may still <b>struggle</b> to participate in decision-making processes, because of the patriarchal traditions of many communities, and the lack of regulations and guidelines on how to implement these rights.

Despite the apparent legislation on land tenure security in the Philippines, its implementation and monitoring are challenging. Although the IPRA law also covers the FPIC principle, **Oxfam Novib** states that the implementation in practice is problematic due to systemic weaknesses and implementation failures. Furthermore, the actions of the National Commission on Indigenous Peoples (NCIP) have also been questioned and there is a high degree of distrust in this governmental agency (**Oxfam, 2013**).

Another challenge in the Philippines is the fair benefit sharing of all stakeholders involved in land-related investments; according to the **International Land Coalition**, much is still needed to improve the lives of intended beneficiaries, who continue to live in poverty. Finally, a study of **Global Witness** highlights that there is a lack of freedom to defend land tenure rights in the Philippines; the country ranks third in countries with the highest number of deaths among land and environmental defenders. This again suggests a gap between legislation and practice in the Philippines.

## Contacts

### Websites / internet databases on land governance

- **ANGOC report** – an extensive report from 2014, which provides an overview of land reforms in the Philippines and cases that highlight risks but also good practices of land-related investments throughout the country.
- **Campaign for Land Use Policy Now! (CLUP Now!)** – position paper of a multi-sectoral coalition of POs and NGOs advocating for the enactment of a national land use and management act in the Philippines.
- **FAO** – report on land laws and governance of tenure in the Philippines.
- **Global Witness: Deadly Environment** – report highlighting the cases of violence against environment and land defenders, also in the Philippines.
- **ILC Philippines** provides various documents, updates and contacts regarding land-rights in the Philippines.
- **LandMark** – detailed information on land tenure security and maps of indigenous and community lands, including the Philippines.

- **Minority Rights Group International** provides detailed information on the indigenous communities living in the Philippines.
- **Oxfam America** – briefing paper on FPIC in the Philippines.
- **Rights and Resources report** – information on the overlapping land claims in the Philippines, mainly in the palm oil and the mining sector.

## Ministry of Foreign affairs

- **Embassy of the Kingdom of the Netherlands in the Philippines (in Manilla)** -  
Email: [man@minbuza.nl](mailto:man@minbuza.nl); For Trade & Economic Affairs - Email: [man-ez@minbuza.nl](mailto:man-ez@minbuza.nl).
- **European Chamber of Commerce of the Philippines (ECCP)** – bilateral foreign chamber that promotes European interests in the Philippines as well as Philippine interests in Europe.
- **Philippines-Netherlands Business Council (PNBC)** aims to facilitate and accelerate business activities and to enhance the partnership between the Philippines and the Netherlands.

## Local expert and civil society organizations

- **Both ENDS** is a Dutch-based NGO, working together with environmental justice groups from poor and developing countries, towards a sustainable, fair and inclusive world. Both ENDS gathers and shares information about policy and investments that have a direct impact on people and their livelihood, engages in joint advocacy, stimulates the dialogue between stakeholders and promotes and supports sustainable local alternatives. Both ENDS collaborates with partner organizations in the Philippines on human rights and environmental issues within the agriculture, infrastructure and energy sector, sustainable land use and climate finance.
- **ICCO Philippines** – country office of ICCO, a global NGO working on securing sustainable livelihoods and securing justice and dignity for all. For more information contact [info@icco.nl](mailto:info@icco.nl).
- **The Legal Rights & Natural Resources Center / Kasama sa Kalikasan** - The Legal Rights & Natural Resources Center is a member of the international network Friends of the Earth. Its members are working on issues related to the environment, nature, social justice and

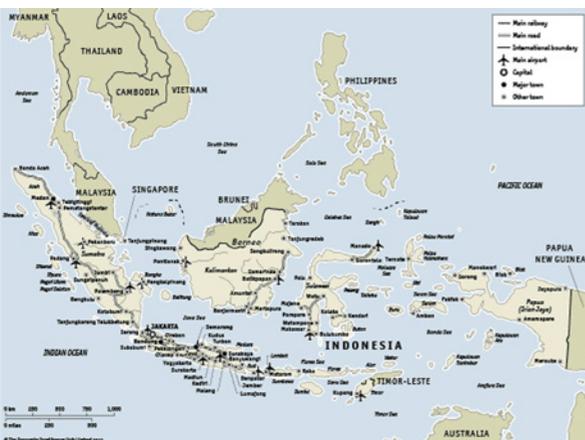
human rights on a national level. Each of them has a national network of smaller NGOs and can establish contact with them. Email: lrcksk@lrcksk.org.

- **National Commission on Indigenous People (NCIP)** – national agency of the Philippines responsible for all regulations regarding Indigenous Peoples.
- **Oxfam Country Office** – located in Manila, Tel: + 63 (02) 929 4470.
- **Oxfam Country Office** – located in Davao City, Tel: +63 (82) 2975974.
- **PAKISAMA** – Philippines coalition of coconut farmers, established with the help of Agriterra.



## Indonesia

### Country facts



Indonesia is an archipelago of nearly 14,000 volcanic islands, characterized by coastal lowlands and interior mountains on the larger islands. The country is one of the most densely forested regions in Asia, however due to rapid deforestation the share of forested land has been decreasing over

the past decades. Due to its geographical characteristics Indonesia is also prone to natural disasters, especially to flooding. The capital Jakarta is the major urban hub in Indonesia with over 20 million inhabitants, a number that continues to increase.

Rapid urbanization has led to a situation in which the majority of the population lives in urban areas (53.7%) and 46.3% inhabits rural areas (FAO, 2015).

There are about 350 recognized ethnolinguistic groups in Indonesia, with the majority living in Papua. These groups, their traditions and laws are often referred to as Adat (local customary practices).

Figure 8: Map of Indonesia (data from EIU, 2017)



## Land tenure

Table 13 provides an historical overview of important developments in policies and legislation of tenure over land in Indonesia. For a more elaborate overview on land governance in Indonesia, see the **LANDac factsheet Indonesia**. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Indonesian laws please consult the **World Legal Information Institute**.

The current situation regarding land governance and tenure security in Indonesia is depicted in table 14 below. This table indicates that although almost one fourth of the country's land is held or used by indigenous people, only 0,5% of this land is formally recognized as land of indigenous communities. Next to the lack of formal documentation, the right to consent before land acquisition is not evident in Indonesian legislation. For more information regarding the indigenous and community lands on the local level in Indonesia, visit the **interactive LandMark map**.

Although the BAL is the most important legislation on land, there are some limitations as documented in this **World Bank report (2012)**: the BAL only covers 30% of the land in Indonesia as the rest is considered forest, the BAL does not recognize communal group rights and other Adat practices, and although the BAL is neutral on gender, the amount of land registered in women's names remains limited.

**Table 13: Historical overview land-tenure legislation/policy in Indonesia**

<b>1960</b>	<b>Basic Agrarian Law (BAL or UUPA)</b> – describes the rights and roles of individuals, private entities and the state regarding land use and rights. Article 5 states that the BAL is also applicable to customary law, as long as it does not conflict with national interest or other regulations. The BAL (or UUPA) is still the most important legislation governing land rights.
<b>1967</b>	<b>Basic Forestry Act</b> – classified 70% of the land in Indonesia as state forest land, making the state the largest landlord. This forest land is not subject to agrarian law (BAL).
<b>1992</b>	<b>Spatial Planning Law</b> – mainly aims at the rational and appropriate utilization of natural resources and man-made resources and at regulating the utilization of protected regions and cultivation regions. An Amendment of <b>2007</b> strengthens the authority of provincial and district governments in spatial planning and addresses the rapid urbanization trend.
<b>2001</b>	<b>MPR Decree No. IX</b> of 2001 on Agrarian Reform and Natural Resources Management, instructs the highest House of legislature, the main House and the President to harmonize laws related to use of land and natural resources to promote human rights, equity and sustainable development.
<b>2007</b>	<b>Law on Water Resources</b> – confirming the state’s control over all water resources in Indonesia and prohibiting the trade of water rights. No specific regulations towards Adat water governance are mentioned, only that it may be recognized by regional regulations.
<b>2007</b>	<b>UN Declaration on the rights of Indigenous Peoples</b> – adopted by Indonesia.
<b>2013</b>	Legal action of Adat communities resulted in a <b>change in the Forestry Act (BAL)</b> , demanding the state to acknowledge the rights of local communities over customary forests.
<b>Pending*</b>	<b>National Land Bill</b> - aims to complement the BAL by including customary rights, regulation of land conflicts, agrarian reform plans and more. Due to a division among stakeholders, the Bill is still pending. Furthermore, some criticism has been articulated as the Bill would lead to further liberalization of agricultural land.

\* June 2017

## Contacts

### Websites / internet databases on land governance

- **Chain Reaction Research (CRR)** – company sustainability risk analyses conducted by the consultancy **Aidenvironment** together with **Profundo** and **Climate Advisors**.
- **LANDAC country factsheet** – comprehensive overview of land governance, food security and IWRM in Indonesia.
- **Land Portal** – resources and news updates on land governance and rights in Indonesia.

**Table 14: Current land tenure security Indonesia (data from LandMark, 2015 & 2016)**

Groups targeted by legal framework	Indigenous (customary) communities
% Country area held or used by indigenous peoples and communities	<b>23% (0.5% formally recognized)</b>
Average Score Land Tenure Security (1= highest, 4= lowest)	<b>2,6</b>
Legal status (1=highest, 4= lowest)	<b>2</b> - The Basic Agrarian Law recognizes “evidently still existent” (Adat customary) land rights. The Constitutional Court recognized indigenous peoples as owners of customary forests. However, the state can convert customary forests to state forest.
Formal documentation (1= highest, 4= lowest)	<b>3</b> - While land registration is a requirement by law, it is unclear whether the law provides clear, simple, accessible and affordable procedures for indigenous peoples and communities to apply for and receive formal entitlement for their collective property rights.
Right to Consent Before Land Acquisition (1=highest, 4= lowest)	<b>3</b> - Indonesia’s expropriation law states that a public consultation on a development plan “shall be held to achieve agreement on the location of the development plan with the Entitled Parties”.

- **ILC Indonesia** – various resources / reports on land governance in Indonesia.
- **Roundtable on Sustainable Palm Oil (RSPO)** – multi-stakeholder platform aimed to transform markets to make sustainable palm oil the norm.
- **Global Forest Watch** – an interactive online forest monitoring and alert system to manage and conserve forest landscapes
- **Participatory Land Use Planning (PULP)** – report on mapping and formalizing customary and communal land rights to resolve and prevent conflicts.

## Ministry of foreign affairs

- **Embassy of the Kingdom of the Netherlands in Jakarta, Indonesia** - Email: [jak@minbuza.nl](mailto:jak@minbuza.nl).

## Local expert and civil society organizations

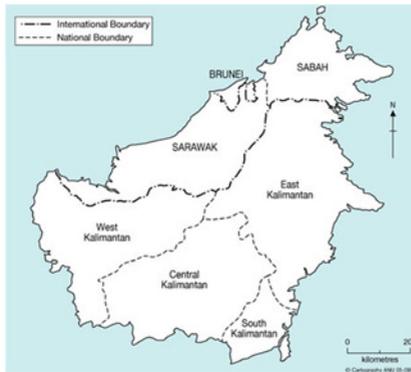
- **AgriProFocus Indonesia** – agri-network where ‘organizations, professionals, resources and knowledge can meet, do business and learn from each other’.

- **Aidenvironment** – a value driven consultancy that provides services and research in sustainable production and trade.
- **Both ENDS** is a Dutch-based NGO, working together with environmental justice groups from poor and developing countries, towards a sustainable, fair and inclusive world. Both ENDS gathers and shares information about policy and investments that have a direct impact on people and their livelihood, engages in joint advocacy, stimulates the dialogue between stakeholders and promotes and supports sustainable local alternatives. Both ENDS collaborates with partner organizations in Indonesia on human rights and environmental issues within the agriculture, infrastructure, mining and energy sector, and sustainable land and water use.
- **Friends of the Earth's** – grassroots environmental network uniting 75 national member groups and 5,000 local activist groups worldwide aimed at creating environmentally sustainable and socially just societies (i.a. **Indonesian Forum for the Environment**).
- **Greenpeace** – involved in protecting the Indonesian peatlands against the palm oil industry among others through publicly criticizing companies contributing to large scale deforestation related to palm oil production.
- **ICCO South-East Asia** – regional office of ICCO in Denpasar, Bali. An overview of their business & human rights program and services can be found in this **flyer**. For more information contact **South-east-asia@icco-cooperation.org** or Kiswara Santi (**Kiswara.Santi@icco-cooperation.org**).
- **IDH Indonesia** – sustainable trade initiative in Indonesia consisting of 8 different sector programs (e.g. palm oil, timber) and 3 landscape programs (Aceh, West-Kalimantan & South Sumatra).
- **Landesa** – rural development institute which provides information and implements projects on land governance in Indonesia.
- **Oxfam** – Oxfam is active in Indonesia and can be contacted through the organization's headquarters in Oxford, UK. Tel: +44 1865 780 100.
- **Wahana Lingkungan Hidup Indonesia (WALHI)** – WAHLI is a member of the international network Friends of the Earth. Its members are working on issues related to the environment, nature, social justice and human rights on a national level. Each of them has a national network of smaller NGOs and can establish contact with them. Email: **informasi@walhi.or.id**.



## Non-peninsular Malaysia

### Country facts



Non-peninsular Malaysia, also known as East Malaysia, is located on the island of Borneo and consists of three Malaysian states: Sarawak, Sabah and Labuan. Compared to peninsular Malaysia, this region of Malaysia is larger in terms of land surface, but much less populated.

Non-peninsular Malaysia is characterized by an abundance of natural resources; the lowlands and mountainous inlands are covered with rain-forest and various oil and natural gas reserves have been discovered. Non-peninsular Malaysia is home to various indigenous groups, such as the Dayak and the Dusun, who account for a significant share of the population. When looking at the whole Malaysian population, a large majority of 74.7% lives in urban areas, whereas 25.3% inhabits rural areas (FAO, 2015). Although this is not quite representative for non-peninsular Malaysia, where the share of urban population is slightly lower, the majority still lives in urban areas.

Figure 9: Map of non-peninsular Malaysia (data from *ANU Press*)

**Table 15: Historical overview land-tenure legislation/policy in Malaysia**

1954	<b>Aboriginal Peoples Act</b> – states that aboriginals (Orang Asli's) only have the right to use and occupy territory but not to own it. This act only applies to peninsular Malaysia.
1959	<b>Protected Areas &amp; Protected Places Act</b> – amended in 2006.
1960	<b>Land Acquisition Act</b> – permits the state to expropriate land for public purposes without consulting or obtaining consent from indigenous communities.
1965	<b>Malaysia Land Code</b> – states that the national government is the legal owner of all the land in Malaysia and hence decides upon its use and distribution.
1994	<b>Mineral Development Act &amp; the State Mineral Enactment</b> – provides the government with the power to regulate mineral exploration, mining and inspections and gives the state the power to issue licenses and leases.
2007	<b>UN Declaration on the rights of Indigenous Peoples</b> – adopted by Malaysia.

## Land tenure

Table 15 provides a historical overview of important developments in policies and legislation of tenure over land and related natural resources in Malaysia. For a more elaborate overview of land tenure in Malaysia, see the **FAO country profile**. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Malaysian laws please consult the **World Legal Information Institute**.

The current situation regarding land governance and tenure security in Malaysia is depicted in table 16 below. This table indicates that the legal land tenure security for indigenous communities in Malaysia is relatively small; there is no documentation on land held or used by indigenous people and indigenous communities and there is no federal statute that recognizes indigenous and communal land rights. Finally, there is no recognition of the right to consent before land acquisition as these decisions lie with the state.

Some specific legislation exists for non-peninsular Malaysia. In Sabah, many Native Reserves have been legally established and Native Customary Rights recognized. However, many disputes occur between local customary rules and state norms in rural villages of this region. In Sawarak there are limited native rights and institutions and community forests have been reduced. Although communities have attempted to claim land rights by communal mapping practices, community mapping has been outlawed in 2001 (**FAO Country Profile**).

**Table 16: Current land tenure security Malaysia (data from LandMark, 2015 & 2016)**

<b>Groups targeted by legal framework</b>	<b>Indigenous Peoples (including Aboriginals / Orang Asli's)</b>
<b>% Country area held or used by indigenous peoples and communities</b>	No data on land area; an estimated <b>12%</b> of population are indigenous people
<b>Average Score Land Tenure Security</b> (1= highest, 4= lowest)	<b>3,5</b>
<b>Legal status</b> (1=highest, 4= lowest)	<b>3</b> - The Federal Court and High Court of Malaysia recognized that indigenous communities have a proprietary interest in their ancestral lands. However, there is no federal statute that recognizes indigenous/ community land rights.
<b>Formal documentation</b> (1=highest, 4= lowest)	<b>4</b> - Malaysia has not enacted federal legislation or regulations that allow for indigenous communities to formally receive formal title to their lands.
<b>Right to Consent Before Land Acquisition</b> (1=highest, 4= lowest)	<b>4</b> - No recognition of the right to consent before land acquisition; the Land Acquisition Act dictates that the state can always acquire land for any public purpose which in the opinion of the state is beneficial to the economic development of Malaysia.

## Contacts

### Websites / internet databases on land governance

- **Centre for International Forestry Research (CIFOR)** – non-profit scientific facility that conducts research on the most pressing challenges of forest and landscape management. Many reports on palm oil-related issues in Malaysia.
- **FAO Country Profile** – information on land tenure, related institutions and women's land rights.
- **Forests & Finance** lists Malaysian banks, investors and corporations involved in deforestation practices.
- **CIFOR study** on the local impacts of oil palm expansion in Sabah.

## Ministry of foreign affairs

- **EU-Malaysia Chamber of Commerce (EUMCCI)** – initiator of the SEMSEAM-M project promoting trade between Malaysia and Europe.
- **Malaysian Dutch Business Council (MBDC)** – information and support for Dutch business in Malaysia
- **Embassy of the Kingdom of the Netherlands** in Kuala Lumpur, Malaysia.

## Local expert and civil society organizations

- **Both ENDS** is a Dutch-based NGO, working together with environmental justice groups from poor and developing countries, towards a sustainable, fair and inclusive world. Both ENDS gathers and shares information about policy and investments that have a direct impact on people and their livelihood, engages in joint advocacy, stimulates the dialogue between stakeholders and promotes and supports sustainable local alternatives. Both ENDS collaborates with partner organizations in Malaysia on human rights and environmental issues within the agriculture sector, especially on sustainable land use.
- **Indigenous People's Network Malaysia (JOAS)** – umbrella network for 21 community-based non-governmental organizations that have indigenous peoples' issues as their focus.
- **Sahabat Alam Malaysia** – Sahabat Alam Malaysia is a member of the international network Friends of the Earth. Its members are working with issues related to the environment, nature, social justice and human rights on a national level. Each of them has a national network of smaller NGOs and can establish contact with them. Email: sam\_inquiry@yahoo.com.



# North America

## Canada Country facts



Canada is a country of vast distances and rich natural, primarily fresh-water, reserves. Approximately 20 percent of all fresh water on Earth is from Canadian lakes and rivers. The country is characterized by plains, mountainous areas in the West and lowlands

in the Southeast. Due to permanent permafrost in the North this area is less developed. The landscape in the North is dominated by ice, snow, and glaciers; north of the tree line there are vast areas of tundra landscapes. Canada has inhabitants of many nationalities due to the settlement history of the country. There are Native Americans / Canadians and American Indians living in the country as well. Only 18.2% of the Canadian population lives in rural areas, whereas 81.8% inhabits urban areas (FAO, 2015).

Figure 10: Map of Canada (data from *EIU, 2017*)

**Table 17: Historical overview land-tenure legislation/policy in Canada**

<b>1763</b>	Most land in Canada was considered <b>Crown Lands</b> after the British acquired almost all of French held Canadian territory in the Treaty of Paris. However, the new authorities did not extinguish Aboriginal titles. The prior claim of indigenous peoples on certain lands was recognized.
<b>1868</b>	<b>Rupert's Land Act</b> was passed, allowing the government of Canada to acquire the land controlled by the Hudson Bay Company since 1670.
<b>1872</b>	Under the <b>Dominion Land Act</b> , the Canadian government used its land and natural resources to promote western settlement and railway construction. Settlers were granted land in return for a small registration fee and under condition that they made certain improvements to the land.
<b>1876</b>	The <b>Indian Act</b> defines "reserve" as "a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a [Indian] band" (see Section 18, the Indian Act).
<b>1973</b>	In the <b>Comprehensive Land Claims Policy</b> , the Canadian government set out its plans to negotiate and settle indigenous rights and title claims. This policy was updated in 1986.
<b>1982</b>	<b>Constitutions Act</b> – Section 35(1) of the Constitution Act states that the existing aboriginal and treaty rights of the aboriginal peoples of Canada are recognized and affirmed.
<b>1999</b>	The <b>First Nations Land Management Act</b> was enacted, which allowed First Nations to enact and develop their own laws with regard to land use, the environment and natural resources.

## Land tenure

Canada has implemented various land tenure regulations throughout history. Table 17 provides a historical overview of the most important land tenure policies and legislation. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Canadian laws please consult the **Canadian Legal Information Institute**.

## Contacts

### Websites / online data or information

- **Assembly of First Nations (AFN)** – a national advocacy organization representing First Nation citizens in Canada.
- **Buy or Rent Crown Land in Ontario** – information on what to consider when buying or renting crown land in Ontario.

**Table 18: Current land tenure security Canada (data from LandMark, 2015 & 2016)**

Groups targeted by legal framework	Indigenous Peoples (also known as Aboriginals or First Nations)
% Country area held or used by Indigenous peoples and communities	44.1% (mainly northern, sparsely populated territories)
Average Score Land Tenure Security (1= highest, 4= lowest)	2,6
Legal status (1=highest, 4= lowest)	2 - The Supreme Court, the Constitution Act, 1982, and the Indian Act recognize aboriginal land rights (aboriginal title). But State retains underlying ownership, aboriginal title is a right to occupy and use lands.
Formal documentation (1=highest, 4= lowest)	3 - While the Indian Act establishes a register and the Supreme Court established a three-part test for proving Aboriginal title, there are no clear, accessible, and affordable procedures for formalizing/mapping indigenous community rights.
Right to Consent Before Land Acquisition (1=highest, 4= lowest)	3 - The Supreme Court held that, when expropriating Aboriginal-titled land for a public purpose, the government has a procedural duty to 'consult' with the indigenous populations affected; however, there are no explicit legal requirements for this consultation process.

- **Canadian Aboriginal Minerals Association (CAMA)** – an Aboriginal non-profit organization that aims to increase understanding of the minerals industry, Aboriginal mining, and Aboriginal communities' paramount interests in lands and resources.
- **Canada Forest Ownership** – this page by the Canadian government contains extensive information on forest ownership ranging from forest laws and forest land ownership to aboriginal and forest-based communities.
- **Canadian Forests Website** – Directory of NGOs working in the Canadian forest sector.
- **Canadian Society for Unconventional Resources (CSUR)** – a non-profit organization that encourages the responsible development of Canada's unconventional hydrocarbon resources.
- **FarmCredit Canada (FCC) Farmland Values Report** – a report from 2015 that provides a provincial and national overview of land value trends in Canada.
- **Global Forest Watch Report on Hydropower** – a 2012 study on the impact of Canada's large hydropower reservoirs and dams on climate change and the environment

- **Land Claims Agreements Coalition** – a coalition of organizations that seeks to ensure that comprehensive land claims are respected and properly implemented.
- **LandMark** – detailed information on land tenure security and maps of indigenous and community lands, also in Canada.
- **Ministry of Indigenous and Northern Affairs Canada** – provides detailed information on a wide range of topic related to indigenous peoples, including land claims.
- **National Farmers Union (NFU) report** – an extensive report from 2010 (updated in 2015) on the acquisition of farmland by large agribusinesses and investors.
- **Natural Resources Canada: Surveys, Parcels and Tenure on Canada Lands** – Natural Resources Canada contains elaborate information on, amongst others, land tenure (in chapter 3), land tenure, law and legislation (in chapter 4), public lands (in chapter 6) and crown lands (in chapter 7).

## Ministry of Foreign affairs

- Agricultural Council Canada – Email: [WAS-LNV@minbuza.nl](mailto:WAS-LNV@minbuza.nl), Tel: (+1)2022742716.
- Netherlands Consulate General in Toronto – Email: [tor@minbuza.nl](mailto:tor@minbuza.nl), Tel: (+1)4165982534; Email economic department: [tor-ea@minbuza.nl](mailto:tor-ea@minbuza.nl).
- Netherlands Consulate General in Vancouver – Email: [van@minbuza.nl](mailto:van@minbuza.nl), Tel: (+1)6046846448; Email economic department: [van-ez@minbuza.nl](mailto:van-ez@minbuza.nl).
- **Netherlands Embassy in Ottawa** – Email: [ott@minbuza.nl](mailto:ott@minbuza.nl), Tel: (+1)6132375031.
- RVO Canada – information on doing business in Canada. Email: [klantcontact@rvo.nl](mailto:klantcontact@rvo.nl), Tel: +31(0)880424242.

## Local expert and civil society organizations

- **Friends of the Earth / Les Ami(e)s de la Terre Canada** – Friends of the Earth Canada is a member of the international network Friends of the Earth. Its members are working with issues related to the environment, nature, social justice and human rights on a national level. Each of them has a national network of smaller NGOs and can establish contact with them. Email: [foe@foecanada.org](mailto:foe@foecanada.org).



## United States of America

### Country facts



The USA is a large country consisting of 50 states. It is characterized by vast central plains in the inland states, extensive mountain ranges in the West and in the Alaska region, volcanic geography in Hawaii and hills and low mountains in the East. Furthermore, the USA is home to various dense boreal forests especially in Northern Alaska.

The urban clusters of the USA are mainly located on the East and West coasts. A majority of 81.6% of the population in the USA lives in urban areas, whereas 18.4% inhabits rural areas (FAO, 2015).

The urban clusters of the USA are mainly located on the East and West coasts. A majority of 81.6% of the population in the USA lives in urban areas, whereas 18.4% inhabits rural areas (FAO, 2015).

Figure 11: Map of the United States (data from *EIU, 2017*)

**Table 19: Historical overview land-tenure legislation/policy in the USA**

1862	The <b>Homestead Acts</b> , the first one of which entered into force in 1862, provided ownership to land, so-called "homesteads", to its applicants at no cost. The Act enabled individual farmers, including women, to own and operate their own farms. The Homestead Act of 1866 also included black Americans.
1872	The <b>General Mining Act</b> , a United States federal law, authorized and governed prospecting and mining of economic minerals (gold, silver, platinum, etc.) on federal public lands. Before 1872 open mining on public land was illegal under federal law.
1887	The <b>Dawes Act</b> authorized the US federal government to divide tribal lands by partitioning them into individual plots. Only the Native American Indians who accepted the individual allotments would be granted US citizenship. In addition, the Act opened Indian lands to settlement by non-Indians. Land owned by Indians decreased substantially with more than 90 million acres over the next decades.
1898	The <b>Curtis Act</b> was an amendment of the Dawes Act, which extended the provisions of the latter to the Five Civilized Tribes in Indian Territory, who had been exempted from the 1887 Dawes Act.
1946	The <b>Indian Claims Act</b> created the <b>Indian Claims Commission</b> , which offered tribes a mechanism to address their grievances against the federal government. Tribes were offered monetary compensation in case they lost territory as a result of violations of federal treaty promises.
1970	The <b>National Environmental Policy Act (NEPA)</b> was enacted. It required federal agencies to give proper consideration to the environment in their proposed actions prior to making decisions.
1973	The <b>Endangered Species Act</b> , administered by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, is put into force to protect and recover imperiled species and the ecosystems they depend on.
1976	The <b>Federal Land Policy and Management Act (FLPMA)</b> , replacing the Homestead Acts, was enacted to establish a comprehensive public land policy under authorization of the US Bureau of Land Management. The FLPMA declared that public lands would be retained under federal ownership, and mandated multiple resource use and sustained yield for future generations
1976	As an amendment to the Forest and Rangeland Renewable Resources Planning Act of 1974, the <b>National Forest Management Act (NFMA)</b> of 1976 calls for the management of <b>renewable resources</b> on national forest land.

## Land tenure

The United States has implemented various land tenure regulations throughout history. Table 19 provides a historical overview of the most important land tenure policies and legislation. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on US-American laws please consult **Laws and Legal Issues**.

International agreements:

- **ILO-convention 169**: Not ratified
- UN Declaration on the Right of Indigenous People: Not adopted

**Table 20: Current land tenure security in the USA (data from LandMark, 2015 & 2016)**

<b>Groups targeted by legal framework</b>	<b>Indigenous Peoples (Native Americans / Indians)</b>
<b>% Country area held or used by indigenous peoples and communities</b>	<b>6.9% (3.7% formally recognized, 3.2% not formally recognized)</b>
<b>Average Score Land Tenure Security (1= highest, 4= lowest)</b>	<b>2,4</b>
<b>Legal status (1=highest, 4= lowest)</b>	<b>2</b> - Native American legal rights to land may be established by aboriginal possession, by Treaty, by Act of Congress, by executive action, by purchase, or by action of states. However, the government retains broad powers to expropriate.
<b>Formal documentation (1= highest, 4= lowest)</b>	<b>3</b> - Native American groups can be formally recognized by an Act of Congress, administrative procedures established in 25 C.F.R. Part 83, or by US court decision, but there are no clear procedures for assistance and mapping of lands.
<b>Right to Consent Before Land Acquisition (1=highest, 4= lowest)</b>	<b>3</b> - Federal legislation permits the Secretary of the Interior to acquire lands, water rights, or surface rights to lands within existing Native American Reservations without obtaining consent of Native Americans.

## Contacts

### Websites / online data or information

- **Family Farm Defenders** – a non-profit organization, which supports sustainable agriculture and farmer, rights among others.
- **National Family Farm Coalition** – the website includes a number of reports on U.S. farmland and water grabs.
- **National Indian Law Library of the Native American Rights Fund** – a law library devoted to federal Indian and tribal law. Contains a collection of Indian Law Resources, including information on Native American water and land rights.
- **U.S. Bureau of Indian Affairs** – provides detailed information on a wide range of topic related to indigenous peoples, including land claims.

## Ministry of Foreign affairs

- Netherlands Business Support Office Houston – Email: [pardaans@nbso-texas.com](mailto:pardaans@nbso-texas.com), Tel: (+1)83209004949.
- Netherlands Consulate General in Chicago – Email: [chi@minbuza.nl](mailto:chi@minbuza.nl), Tel: (+1)3127801314; Email economic department: [van-ea@minbuza.nl](mailto:van-ea@minbuza.nl).
- Netherlands Consulate General in Miami – Email: [mia@minbuza.nl](mailto:mia@minbuza.nl), Tel: (+1)7868660480; Email economic department: [mia-ea@minbuza.nl](mailto:mia-ea@minbuza.nl).
- Netherlands Consulate General in New York – Email: [nyc@minbuza.nl](mailto:nyc@minbuza.nl), Tel: (+1)6465572200; Email economic department: [nyc-ea@minbuza.nl](mailto:nyc-ea@minbuza.nl).
- Netherlands Consulate General in San Francisco – Email: [sfn@minbuza.nl](mailto:sfn@minbuza.nl), Tel: (+1)4152912033; Email economic department: [sfn-ea@minbuza.nl](mailto:sfn-ea@minbuza.nl).
- **Netherlands Embassy** in Washington D.C. – Email: [was@minbuza.nl](mailto:was@minbuza.nl), Tel: (+1)2022445300; Email agricultural council: [was-lnv@minbuza.nl](mailto:was-lnv@minbuza.nl).
- Netherlands Office for Science and Technology San Francisco – Email: [info@nost-sv.org](mailto:info@nost-sv.org), Tel: (+1)4152912080.
- Netherlands Office for Science and Technology Washington D.C. – Email: [nost@nost.org](mailto:nost@nost.org), Tel: (+1)2029660728.
- RVO US – information on doing business in US. Email: [klantcontact@rvo.nl](mailto:klantcontact@rvo.nl), Tel: +31(0)880424242.

## Local expert and civil society organizations

- **Friends of the Earth USA** – Friends of the Earth USA is a member of the international network Friends of the Earth. Its members are working with issues related to the environment, nature, social justice and human rights on a national level. Each of them has a national network of smaller NGOs and can establish contact with them.
- Oxfam Country Office – located in Washington, Tel: (In the US) 800 776-9326; (Outside the US) +1 (617) 482-1211.



# Oceania

## Australia

### Country facts



Australia is a vast country characterized by low plateaus with deserts inland and urban hubs and long-stretched beaches in the highly populated coastal areas.

The country has many mineral reserves and a unique and rich biodiversity. However, as Australia is one of the driest continents on earth, it is also particularly vulnerable to the challenges of climate change. Almost all Australian citizens live in urban areas; only 10.6% of the population inhabit rural areas (FAO, 2015).

Figure 12: Map of Australia (data from *EIU, 2017*)

## Land tenure

Australia has implemented various land tenure regulations throughout history. Table 21 provides a historical overview of the most important land tenure policies and legislation. Please note that this is not a complete overview but a selection of laws relevant in this context up until 2017. For more information on Australian laws please consult the **Australian Legal Information Institute Databases**.

**Table 21: Historical overview land-tenure legislation/policy in Australia**

<b>1976</b>	<b>Aboriginal Land Rights (Northern Territory) Act</b> – provides for the granting of Traditional Aboriginal Land in the Northern Territory for the benefit of Aboriginals. It states that the Australian Land Council must consult with traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land. The Land Council cannot transfer or surrender an estate or interest in land unless it has made sure that “the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed grant, transfer or surrender and, as a group, consent to it”.
<b>1978</b>	<b>Mining Act</b> – defines all rights and legislation on mining in Australia. States that all (Australia) Crown land is open for mining.
<b>1986</b>	<b>Aboriginal Land Grant Act</b> – an act that grants land in the Jervis Bay Territory to the Wreck Bay Aboriginal Community. It states that the Council shall protect and conserve natural and cultural sites on Aboriginal Land.
<b>1993</b>	<b>Native Title Act</b> – provides the rules for when and how a native title can be recognized and “claimed” by indigenous groups through native title determinations and what acts of extinguishment give rise to compensation. The Act has been amended in 2016.
<b>1999</b>	<b>Native Title Regulations</b> – make provisions for the native title agreements as foreseen by the Native Title Act (1993).
<b>2005</b>	<b>Aboriginal and Torres Strait Islander Act</b> – This Act concerns self-government and self-sufficiency of Aboriginal persons and Torres Strait Islanders, the economic and cultural development and the use of lands by descendants of original habitants of Australia. The Act establishes the Torres Strait Regional Authority (TSRA), the Indigenous Land Corporation and a corporation to be known as Indigenous Business Australia.
<b>2007</b>	<b>UN Declaration on the rights of Indigenous Peoples</b> – initially rejected by Australia due to concerns that the Declaration places indigenous customary law in a superior position to national law. In 2009, the Declaration was endorsed but not implemented as a binding law pleadable in court.
<b>Pending*</b>	<b>Land Administration Amendment Bill</b> – draft presented in 2016. Termed the “Rangelands reform”, the draft legislation proposed to amend the Land Administration Act 1997 (WA) in a bid to deliver new investment opportunities and improve the sustainability of land use in the Western Australian Rangelands.

\* June 2017

**Table 22: Current land tenure security Australia (data from LandMark, 2015 & 2016)**

Groups targeted by legal framework	Indigenous Peoples (Aboriginals & Torres Strait Islanders)
% Country area held or used by indigenous peoples and communities	<b>74.1%</b> (32.5% formally recognized, 41.6% pending land claims)
Average Score Land Tenure Security (1= highest, 4= lowest)	<b>2,0</b>
Legal status (1=highest, 4= lowest)	<b>2</b> - The High Court of Australia recognized that indigenous communities have rights to their land. A native title is a bundle of rights and not akin to freehold title. Exactly which rights native title can appeal to depends on the nature of the indigenous group's customary use of the land. The fact that native title can be extinguished or suppressed through certain acts further weakens the legal status. But Government retains the right to extinguish native titles under the Native Title Act 1993.
Formal documentation (1=highest, 4= lowest)	<b>1</b> - The law requires the Register of Native Title Claims to include detailed information and a map of the land covered by a claim. Federal law established the Indigenous Land Corporation, which provides financial assistance to indigenous communities to claim native lands.
Right to Consent Before Land Acquisition (1=highest, 4= lowest)	<b>2</b> - The Native Title (Prescribed Bodies Corporate) Regulations 1999 provides that body corporates holding native title rights must consult and obtain consent with holders of native title prior to taking a decision affecting their livelihood. Furthermore, the Native Title Act provides native title holders with a right to negotiate what can and cannot occur on their land, but these holders do not have veto power.

The current situation regarding land governance and tenure security in Australia is depicted in Table 22. The LandMark score of 2,0 reflects the presence of land tenure legislation for indigenous groups in Australia. However, in most cases the state has the power to veto land conversion, especially related to mining. Furthermore, the Aboriginal Land Rights Act is sometimes referred to as a victim of its own success; due to the abundance of land right claims, it will take approximately **90 years** to explore and justify all these claims. For more information regarding the claims of indigenous and community lands on the local level in Australia, visit the **interactive LandMark map**.

# Contacts

## Websites / online data or information

- **Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)** – The AIATSIS is a research, collections and publishing organization that promotes knowledge and understanding of Aboriginal and Torres Strait Islander cultures, traditions, languages and stories, past and present.
- **FAOLEX Australia** – legislation database of the FAO, provides information on a variety of land, agriculture and other legislation.
- **Farmlandgrab** – platform for the global rush for farmland and the peoples' struggles against it. Provides some useful information on farmland investments in Australia.
- **Indigenous Land Corporation** – provides administrative and financial support to indigenous people throughout Australia in order to claim and manage their land.
- **The Australian Market & Social Research Society Limited (AMSRS)** is a non-profit professional membership body of over 2,000 market and social research professionals who are dedicated to increasing the standard and understanding of market and social research in Australia.
- **Torres Strait Regional Authority (TSRA)** is an Australian Government Statutory Authority, which aims to improve the lifestyle and wellbeing of the Torres Strait Islanders and Aboriginal people living in the Torres Strait region.

## Ministry of foreign affairs

- **Netherlands Consulate General in Sydney** – Email: [syd@minbuza.nl](mailto:syd@minbuza.nl), Tel: +61293876644; Email economic department: [syd-ez@minbuza.nl](mailto:syd-ez@minbuza.nl).
- **Netherlands Embassy in Canberra** – Email: [can@minbuza.nl](mailto:can@minbuza.nl), Tel: +61262209400; Email economic department: [can-ez@minbuza.nl](mailto:can-ez@minbuza.nl).
- **RVO Australia** – information on doing business in Australia. Email: [klantcontact@rvo.nl](mailto:klantcontact@rvo.nl), Tel: +31(0)880424242.

## Local expert and civil society organizations

- **Environmental Justice Australia** – Australian NGO focusing on tackling environmental problems and injustice. This NGO has various projects and information on mining operations they oppose through legal actions.
- **Friends of the Earth Australia** – Friends of the Earth Australia is a member of the international network Friends of the Earth. Its members are working with issues related to the environment, nature, social justice and human rights on a national level. Each of them has a national network of smaller NGOs and can establish contact with them.
- **GetUp** – independent Australian community and movement with campaigns against coal-mines and in favor of renewable energy projects.
- **Greenpeace Australia Pacific** – regional office with various environmental campaigns against (coal) mines in Australia.
- **Oxfam Country Office** – located in Melbourne, Tel: +61 (0)3 9289 9444.

**Ministry of Foreign Affairs, The Netherlands, 2017**  
Reference Guide for Risk Assessment in relation to LAND 2017

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