

DEALING WITH DISCLOSURE:

IMPROVING TRANSPARENCY IN DECISION-MAKING OVER LARGE-SCALE LAND ACQUISITIONS, ALLOCATIONS AND INVESTMENTS

EXECUTIVE SUMMARY



global witness

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This report was researched and written by Global Witness with substantial input from the International Land Coalition and the Oakland Institute.

The surge in large-scale commercial interest in land by domestic, international, private and public actors has prompted a wide variety of stakeholders to consider how such investments may contribute to, rather than erode, local development priorities. The emerging body of evidence points to the significant risks of negative impacts on: access to and control over natural resources, household economies, food security, human rights, and the environment. Decision-making around such allocations and investments is frequently done in secret and without the knowledge or consent of communities affected, who are consequently unable to hold governments or commercial investors to account. Such a lack of mechanisms or political will to ensure transparent, accountable and equitable decision-making in the acquisition and allocation of land concessions, undermines governance and the democratic process. It fosters an environment where high-level corruption between political and business leaders prevails, where elite capture of natural assets becomes the norm, where human rights are routinely abused with impunity, and where investment incentives are stacked against companies willing to adhere to ethical and legal principles.

Global demand for land is predicted to remain high, especially in frontier markets struggling with inadequate governance frameworks, tenure rights or rule of law, where the majority of the population are rural and dependent on land for their livelihoods. Policy-makers are looking to transparency as a means of leveraging improved State and corporate behaviour, and empowering affected communities to hold them to account. However, in-depth understanding of the opportunities such leverage provides is yet to emerge; a gap this report aims to fill.

Transparency is defined as the relationship between three rights: the right to access information; the right to participate in decision-making; and the right to challenge such decisions. Improving transparency enables people likely to be affected by a decision.

To understand the potential impacts it will have on their lives. It helps empower them to gain better respect for and protection of their rights. It enables citizens to know what a resource is worth and how much of it they are entitled to, and to be able to input into decision-making about how it should be managed. Transparency enables governments to better

understand the trade-offs of land and natural resource use options available to them, to make the best choice in terms of policy and allocation of resources, and to negotiate better deals on behalf of their people and natural wealth. Meanwhile there are considerable dividends for private sector parties from improving transparency, disclosing information and applying free, prior and informed consent during all stages of land allocation and commercial investment.

Despite recognition in principle of the importance of transparency and disclosure within international instruments, the majority remain discretionary and those that are binding lack the detail to be effectively enforced. Nevertheless, the momentum within debates around contract transparency and commercial confidentiality in the extractive industries and forest sectors can inform dialogue about large-scale commercial agri-business.

Experience from other natural resource sectors demonstrates the importance of identifying very specific entry points at which specific information disclosure will have a wider impact on transparency, and subsequent accountability.

Developing transparency initiatives before such targeted entry points have been identified risks creating a mechanism which is not fit for purpose.

In response, this report consolidates existing knowledge and policy recommendations relating to the type of information which needs to be made available, when, and by whom, in order to strengthen protection of local rights during all stages of decision-making around land and natural resources, including commercial investor interest. The report is based on a desk review of more than a hundred documents and interviews held with civil society experts. It compiles examples of best practice, as well as field level experiences, which can help further understanding of the opportunities and challenges for improving transparency.

Given the continued importance of secure land tenure for the world's most vulnerable communities and the role secrecy plays in driving bad land management,

this report calls for the adoption across all land and natural resource decision-making of a precautionary principle of "if in doubt, disclose".

Namely moving from an international norm in which States and business enterprises operate opaquely, to one in which they automatically disclose all information, unless it can be proven beyond doubt why such disclosure would harm commercial competitiveness or not be in the public interest.

Decisions made during the acquisition and allocation of land for commercial investments, were identified in the literature and disaggregated into four stages. Diagram 1 presents a hypothetical sequence of events.

Transparency and information disclosure have a specific and time-bound potential for empowerment in different ways throughout each stage.

Actors involved at each stage play specific roles in terms of facilitating or hindering transparency and disclosure.

More specifically, this research identifies the following four entry points within decision-making around land and natural resource use allocation, where greater access to information and transparency would improve people's ability to defend their rights and to hold governments and business enterprises to account:

1. Transparent land and natural resource planning – ensuring recognition of rights as a pre-requisite before land and resources can be allocated to commercial investors
2. Free, prior and 'informed' consent – ensuring people have influence over decision-making around land and natural resources which will affect them
3. Public disclosure of all contractual documentation – ensuring people have access to fully disclosed information on the investment deal including risks and impacts

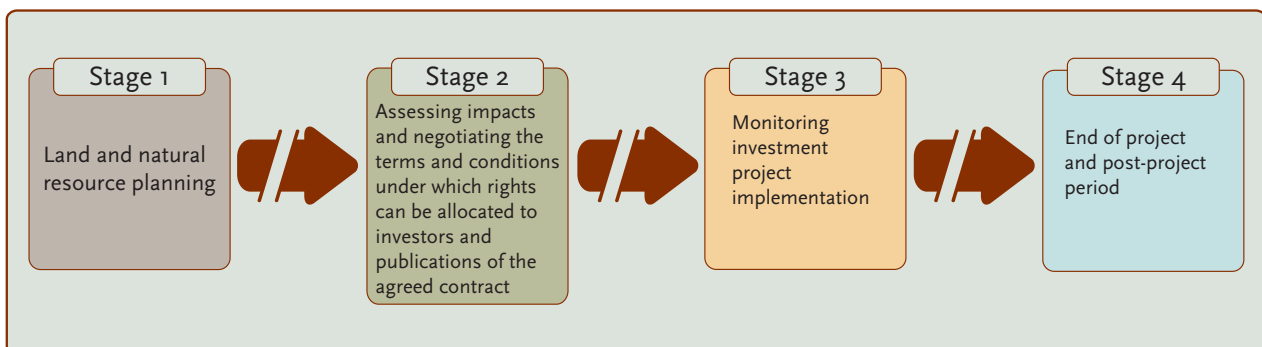
4. Multi-stakeholder initiatives, independent oversight and grievance mechanisms – ensuring people have access to reliable and independent mechanisms for oversight and grievances

Each entry point is shining a light on a specific stage in the broader decision-making process and each being complimentary with the other three (Diagram 2). These entry points are embedded within higher-level human rights, safeguards and principles and therefore should be viewed as a step towards enjoyment of such rights and in no way replace their significance. Each of these is a response to a specific governance challenge relating to secrecy and opacity in the way land deals are currently done. Beyond these four, a range of additional options for future policy work and campaigning were compiled including: impact assessments, public disclosure on current land holdings, the role of transparency and disclosure in the post-project period, and extra-territorial obligations of States over overseas business enterprises.

A civil society workshop at which this initial research was presented identified a gap between the rapid developments being made within the 'transparency and accountability' agenda at an international and conceptual level, and the experiences of communities whose livelihoods are being devastated by bad land and natural resource decisions on the ground. For example,

The above entry points for transparency will not effect change if they are simply viewed as technical solutions.

DIAGRAM 1: STAGES OF DECISION-MAKING IN ACQUISITION AND ALLOCATION OF LAND FOR COMMERCIAL INVESTMENT PURPOSES

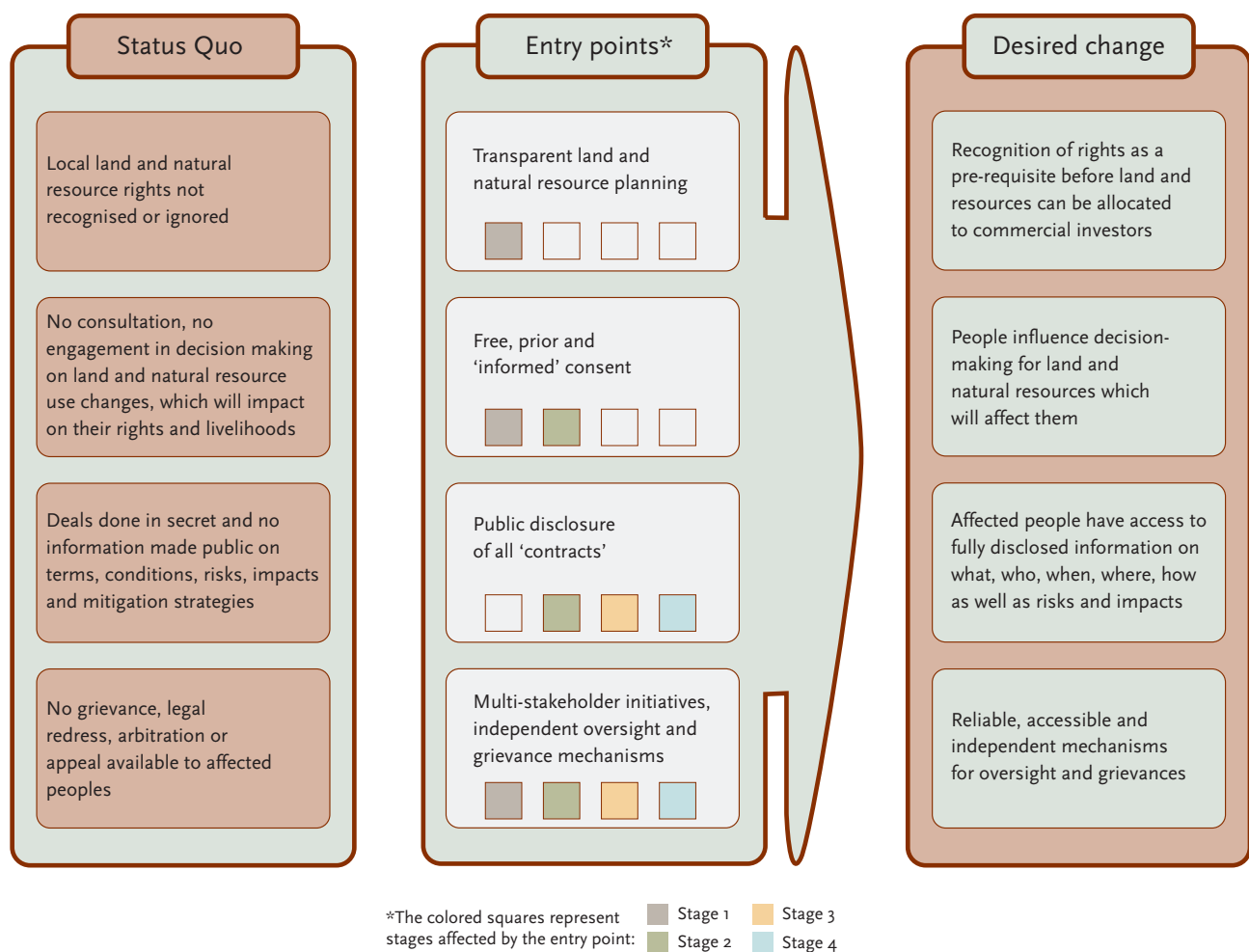


Affected communities need support to be able to know what information they are entitled to, to be able to access such information and to understand and use it to their benefit. Accountability mechanisms need to ensure that communities can operate without fear of reprisal, and that governments respond to demands for improved governance.

The extent to which State and business enterprises improve their transparency and information disclosure, and the extent to which this enables affected communities to better protect their rights and hold decision-makers to account, also depends on leveraging

political will. In order to improve transparency and information disclosure in commercial land allocations and investments, it is critical to balance technical solutions (such as contract transparency) with efforts to tackle lack of political will. This needs to include creating space for civil society to engage in dialogue. Likewise, efforts to strengthen international normative frameworks need to be balanced with improvements to regulatory frameworks and the rule of law. Finally, support and capacity building must be prioritised towards ensuring local communities can take full advantage of opportunities provided for improving transparency and information disclosure.

DIAGRAM 2: HOW CAN TRANSPARENCY CONTRIBUTE TO CHANGE?



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