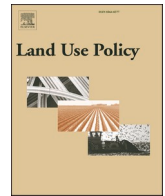


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Community land formalization and company land acquisition procedures: A review of 33 procedures in 15 countries

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ABSTRACT

Indigenous and community lands, crucial for rural livelihoods, are typically held under informal customary tenure arrangements. This can leave the land vulnerable to outside commercial interests, so communities may seek to formalize their land rights in a government registry and obtain an official land document. But this process can be time-consuming and complex, and in contrast, companies can acquire land relatively quickly and find shortcuts around regulatory burdens. This article reviews and maps 19 community land formalization and 14 company land acquisition procedures in 15 countries in Africa, Asia and Latin America. Comparing community and company procedures identifies multiple sources of inequity.

1. Introduction

As global demand for foods, fuels, minerals, fibers, and other natural resources grows, land acquisitions are on the rise around the world (World Bank, 2017). Companies and investors are increasingly seeking to acquire land for long periods of time. As this competition intensifies, land that communities, including Indigenous Peoples (hereafter communities) hold under customary tenure arrangements¹ is vulnerable to acquisition by powerful political and economic elites, particularly if the land rights are not entered in a government registry or cadaster and the government has not issued the community an official document, such as a land certificate or title (Alden Wily, 2011a, 2011b, 2011c; Anseeuw et al., 2011).

While customary tenure systems historically provided communities

with tenure security, the growing threats are leading to new insecurity (Chimhowu, 2019; Alden Wily, 2011b). Many communities across Africa, Latin America, and Asia are applying for formal land rights to integrate their customary rights into official legal systems and to protect their lands. The stakes are high, given that more than 50 percent of the world's land is community land and as many as 2.5 billion people depend heavily on these lands for their livelihood (Pearce, 2016). Even where formalization is not needed for legal recognition, communities are registering their land to "double-lock" their rights (Alden Wily, 2017). While formalization is not a guarantee of tenure security and can bring challenges (e.g., property taxes), for many communities facing growing threats to their customary land, the benefits now outweigh the costs.

Globally, national laws recognize just 10 percent of land as belonging

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¹ Community (including indigenous) land is defined as land (and natural resources) collectively held and governed by a community, regardless of recognition under national statutory law. Community land may include both common resource areas or land that the community has allocated to individuals, households, or subgroups.

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to communities, and another 8 percent is designated by governments for community use (RRI, 2015). Further, not all legally-recognized community land is registered and documented. Community land formalization is rarely a government priority (RRI, 2017). In many countries, national laws do not recognize collectively-held land or establish a formalization procedure (Alden Wily, 2017). Where such procedures are in place, the law is often poorly implemented (RRI, 2015). Many governments consider community land, especially the common property (e.g., forests, pastures, and wetlands), to be vacant, idle, and underused (Alden Wily, 2011a; De Schutter, 2011). For many officials, the promise of economic growth and foreign exchange trumps community land rights and justifies allocating this land to companies for investment purposes (Anseeuw et al., 2011).

Formal land documents can help communities convince others of their legal rights, ensuring that they will be recognized and respected by others. They can be used as evidence of legal possession in a court of law where they commonly carry more weight than oral testimony on customary rights. Land titles can also provide communities critical leverage in negotiations with outside investors (Knight, 2012).

Documented community land can also open opportunities for accessing project finance using channels other than credit. Governments and banks fund against the viability and profitability of projects and consider documented community land to be more secure than customarily held land (Ding et al., 2017). In Mexico, the government supports community forest enterprises, but communities with any outstanding land rights issues are not eligible to participate in such government programs (Bray et al., 2006; Guerra, 2015).

Tenure security creates incentives for community members to make land-related investments by providing them with high expectations of rights over the returns (Bledsoe, 2006; Deininger, 2003; Deininger and Feder, 2009). Coupled with other measures (e.g., payments for ecosystem services), tenure security can promote long-term investments by communities in land stewardship that generate positive environment and development outcomes. In Bolivia, Brazil, and Colombia, the average annual deforestation rates on titled indigenous lands in the Amazon are two to three times lower than in similar forestlands not titled to Indigenous Peoples (Blackman and Veit, 2018). In the Peruvian Amazon, formalizing indigenous lands significantly reduces forest clearing and disturbance (Blackman et al., 2017).

Such investments can, in turn, enhance the productivity of the land, boost farmer income, and discourage unsustainable practices (Byamugisha and Fulgence, 2013; Knight, 2012; World Bank, 2018). In Mexico, India, Nepal, and other countries, many communities with documented land rights have established forest-based enterprises that produce benefits for local producers and restore ecosystem services for society (Hodgdon and Monzón, 2017; Hodgdon et al., 2013).

Understanding the challenges and opportunities for improving community land formalization procedures is central to securing customary lands and protecting rural livelihoods worldwide. To this end, this research was designed to better understand procedural pathways for communities and companies, and to assess whether communities and companies are treated differently in the formalization process, and why. This article provides the findings of a review of 33 community and company procedures for acquiring formal land rights in 15 countries.

2. Methods

Data was collected on 19 community land formalization procedures in 15 countries—five each in Africa, Asia, and Latin America (Fig. 1).²

² A community or company procedure is defined as a process that registers land rights in government records and grants the community or investor a unique legal document. Procedures were treated separately if recorded in a different registry or conveyed via a different legal instrument.

National laws were reviewed for all community procedures, and implementation for 6 procedures (Table 1). In addition, 14 company land acquisition procedures for agricultural, oil palm, forestry, tourism, or general economic purposes were examined in 12 research countries. The relevant laws were reviewed for all company procedures and practice was investigated for 6 procedures (Table 2). All 33 procedures examined are established in law and administered by the government.

The community procedures analyzed are the most common or, in some cases, the only legally established procedures for registering and documenting new community or preexisting customary land rights in the research countries. All procedures provide communities with a large, but not complete bundle of land rights. For example, no procedure provides communities with commercial use rights over high-value natural resources on or below their land (unlike company procedures). Further, some formalization procedures do not provide communities with rights in perpetuity, while others do not provide them with the rights to sell or lease their lands. A few procedures (e.g., Indonesia and India) focus on formalizing community tree and forest rights but were included in this research because they also grant significant land rights.

All company land acquisition procedures examined are administered by the government, including the principal procedures for acquiring government and community land. While the granted bundle of rights varies by procedure, all provide companies with some commercial use rights. The research did not examine private market transactions to purchase or lease privately held land (e.g., willing seller, willing buyer transactions), compulsory land acquisition by the government and the subsequent transfer of this land to companies, and illegal paths or procedures that are not established by law.

Data collection focused on eight key formalization issues (Box 1). To help ensure consistency in data collection across informants, procedures, and countries, multiple indicators for each issue were developed and scored. Three issues - number of steps, cost in dollars, and cost in time - are also used by the World Bank for measuring property registration in the annual *Doing Business* reports (World Bank, 2018).

Data was collected by reviewing the literature on community and company procedures, and all relevant national (or federal) laws prior to December 2017, including the constitution, statutes, regulations, and court rulings of relevant cases, to the extent they were available. Sub-national laws and government policies and statements that are not legally binding were not reviewed. Data was also collected by interviewing national and international experts on community and company procedures.

In addition, field research was conducted in Peru, Tanzania, and Indonesia, involving semi-structured individual and group interviews with stakeholders (e.g., government and company officials, local civil society organization [CSO] and non-governmental organization [NGO] leaders, and researchers). Site visits were also conducted to meet with community leaders and villagers with experience in land formalization.

3. Key findings

This section provides key data findings for community and company procedures.

3.1. Community land formalization procedures

3.1.1. Preconditions and steps

Often, communities must meet certain legal preconditions before the formalization process can start. Preconditions typically include requirements regarding the nature of eligible communities, such as indigenous status, or mandatory ties to the land. Ten of the 19 community procedures are reserved for Indigenous Peoples, one for *Quilombola* communities (Afro-Brazilian communities), and the remaining eight apply to communities defined more broadly in national laws.

Communities must demonstrate historic ties to the land in 12 procedures with several defining what constitutes a historic link in light of

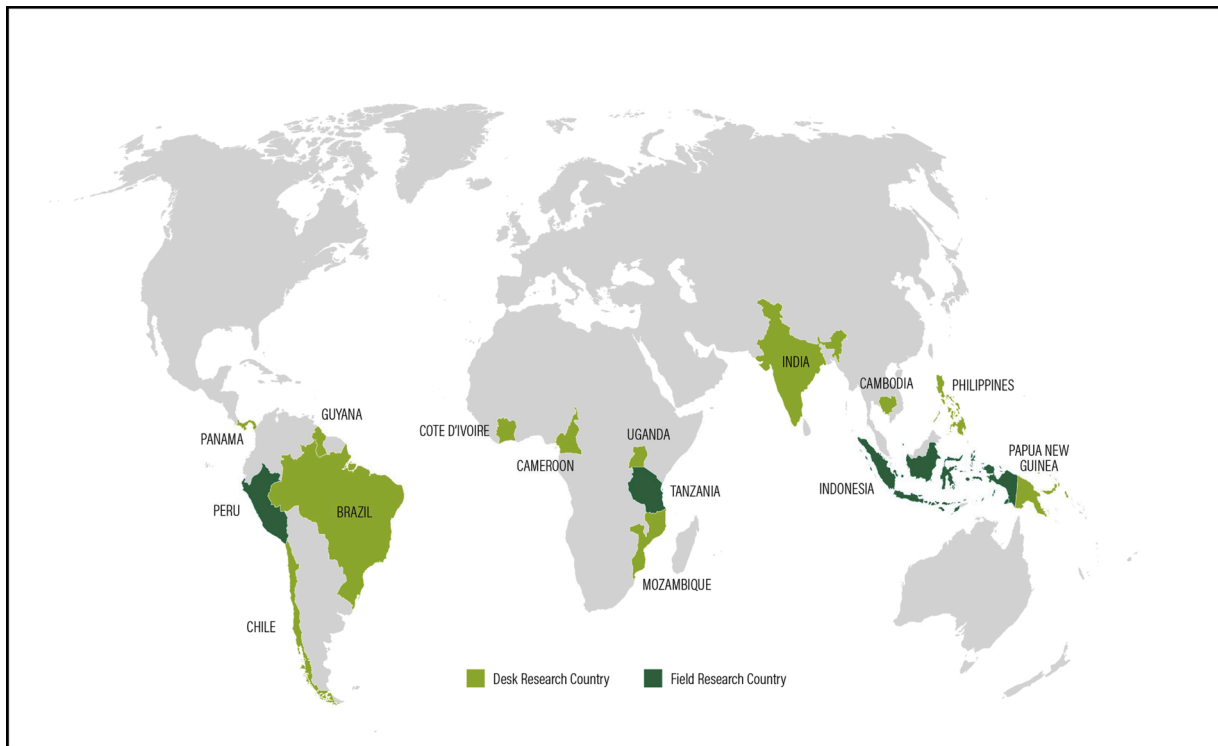


Fig. 1. Map of Research Countries.

Table 1
Community Land Formalization Procedures Reviewed.

COUNTRY	PROCEDURE	REVIEW OF LAW	REVIEW OF PRACTICE
Brazil	Collective Land Titling of <i>Quilombolas</i>	•	
Brazil	Indigenous Territories	•	
Cambodia	Collective Land Title	•	
Cameroon	Land Title	•	
Chile	Art. 20(b) Land Transfer	•	
Côte d'Ivoire	Land Certificate	•	
Guyana	Amerindian Land	•	•
India	Community Forest Rights	•	
Indonesia	Customary Forest	•	•
Mozambique	Delimitation	•	•
Mozambique	Demarcation	•	
Panama	Indigenous Community Land Title	•	
Peru	Native Community Land Title	•	•
Peru	Usufruct Contract for Classified Forestland	•	•
Philippines	Certificate of Ancestral Domain	•	
Papau New Guinea	Registered Customary Land	•	
Tanzania	Certificate of Village Land	•	•
Uganda	Certificate of Customary Occupation	•	
Uganda	Group Freehold	•	
	TOTAL	19	6

Source: WRI.

challenging evidentiary or other requirements. In Guyana, the community must consist of at least 150 persons and have existed for 25 years. In Chile, communities must possess a specific, historic government document.

In 12 of the 19 procedures, communities must form a legal entity or obtain government certification that they constitute a community. This

Table 2
Company Land Acquisition Procedures Reviewed.

COUNTRY	PROCEDURE	REVIEW OF LAW	REVIEW OF PRACTICE
Cambodia	Economic Land Concessions	•	
Cameroon	Provisional Concessions on National Land	•	
Côte d'Ivoire	Emphyteutic Lease	•	
Guyana	State Land Grant or Lease	•	•
Indonesia	HGU Land Use Right/Palm Oil Plantations	•	•
Indonesia	HTI/Industrial Forests	•	•
Mozambique	DUAT Acquisition for Economic Purposes	•	•
Panama	Concessions for Tourist Investment	•	
Peru	Rights to Forests on Classified Agricultural Land	•	•
Philippines	Lease of (Public) Alienable and Disposable Land	•	
Papau New Guinea	SABL	•	
Tanzania	Granted Right of Occupancy/Derivative Right	•	•
Uganda	Freehold Land from District Land Board	•	
Uganda	Grant/Leasehold from ULC	•	
	TOTAL	14	6

Source: WRI

requirement varies in complexity but often, involves completing an application, electing a village council, and drafting bylaws.

In practice, meeting preconditions can be burdensome, time consuming, and sometimes disqualifying for communities. Often government policies or priorities create new preconditions beyond those required in law.

The number of steps and involved government agencies mandated by law varies by procedure (Table 3). Typical steps include submitting the application; notifying other agencies, the public, or neighbors; a field

Box 1**Eight Key Community Land Formalization and Company Land Acquisition Issues**

PRECONDITIONS AND STEPS. * The eligibility criteria and preconditions to formalize land rights and the various steps and government agencies involved in the procedures.

COST IN TIME. The cost in time to formalize land rights, including reasons for variations.

COST IN MONEY. The cost in money to formalize land rights, including reasons for variations.

LAND SIZE. The minimum and maximum amount of formal land set in the law and any floors or ceilings that exist in practice.

RIGHTS DURATION. The duration in time of the formal land rights in law and practice (e.g., granted in perpetuity or a set term).

RIGHTS GRANTED. The bundle of formal land rights granted in law and practice under each reviewed procedure.

RIGHTS MAINTENANCE. Affirmative obligations to maintain the formal land rights over time (e.g., property taxes and environment and development conditions).

RIGHTS REVOCABILITY. Actions that may result in the formal land rights being revoked or extinguished and the government entity with the authority to limit or extinguish the formal land rights.

* A **precondition** is a requirement that must be completed prior to the formalization or land acquisition process and is not part of the procedure itself or linked to the formalization or acquisition of land rights. In the methodology for this report, a precondition is distinct from a step. Thus, obtaining general recognition of indigenous status is a precondition, but if the recognition requires a showing of landholdings or is established for land management purposes, it is a step.

A **step** is any interaction between two separate entities, including between the entity acquiring the land, the person the land is acquired from, government agencies, consultants, and lawyers. This means that interactions between government agencies or offices are considered separate steps. Intra-community interactions or internal company actions are not considered separate steps.

visit or technical verification; surveying and/or boundary agreement with neighbors; settling opposition to the application or disputes; entry into an official registry; and issuance of a deed or certificate.

All procedures require mapping or surveying, of varying degrees of technicality, except Chile (with no implementing regulations). Further, all 19 procedures require some level of screening for third-party claims via public notice followed by contestation periods, government verification for such claims, or alternate forums for oppositions to be brought.

In practice, communities must complete additional steps in the 6 community procedures examined (no data was collected on demarcation in Mozambique) (Table 4). Implementing authorities can add steps in the form of non-binding guidelines or project-specific plans. Many extra steps fill gaps in the law and may have been designed to reduce the discretion of officials.

The total number of steps communities navigate highlights the complexity of land formalization processes. Often, however, one step in the process or one institution (often a government agency) is responsible for the procedure breaking down in practice. Interagency politics and inaction by specific administrative departments are common sources of delays. Where third parties have competing claims to the land, the process can breakdown, as the procedures generally do not establish workable disputes resolution mechanisms.

In other cases, problems result from the lack of crucial implementation regulations that establish a framework for formalization. Some countries lack key government institutions. Capacity and coordination issues are also common both for communities and the responsible government agencies.

3.1.2. Time and expense of the formalization process

For all 19 community procedures examined, the law does not establish overarching time frames within which the procedure must be completed. However, legally-mandated deadlines are imposed for certain steps in most procedures, commonly related to notice requirements, or timelines within which oppositions or contestations must be made. Time frames on entry of rights into a registry or on signatures of approval are rare and, where they exist, not consistently established.

In practice, the time to complete the formalization procedures varies significantly among communities within a country, and across countries

(Table 5). Overall, completing the procedures take from around a year to 30 years or more. Boundary disputes with neighbors, competing claims to the land from third parties, or opposition from concession holders for mining, forestry, or other purposes are common and significant sources of delay.

Lack of government capacity or prioritization is problematic. Authorities may have insufficient budget, qualified personnel, or requisite supplies. Lack of political will, commitment from local and/or national authorities, and accountability for government staff are further concerns. Technical requirements, such as a soil analysis in Peru required to determine what legal category the land should be classified as, are particularly time-consuming and costly. Communities sometimes struggle to meet requirements, due to a lack of literacy, translation issues, or intra-community divisions.

Regarding expenses, no procedure has detailed provisions in law on the costs of formalization, although 14 of the 19 procedures provide general allocation of costs among parties. The often-high costs of land surveying are more likely to be allocated to the government. Where communities bear the costs of formalization, the law often establishes some nominal fees.

In practice, costs vary. In Tanzania, the cost of obtaining a Certificate of Village Land ranges from US\$500 to \$1000 per community [Byamugisha and Fulgence, 2013](#). In Peru, the cost for titling agricultural land ranges from \$1000 to \$13,000. In Mozambique, delimitation costs in the early 2000s ranged from \$2000 to \$8000 and between 2010 and 2012 they averaged around \$13,000 [De Wit and Norfolk, 2010](#); [Quan et al., 2013](#)). The cost of boundary demarcation, technical requirements and resolving conflicts where rights overlap are often high, especially where communities are remote.

Financing typically comes from a combination of governments, international organizations, CSOs, NGOs, and communities themselves. Even where under the law governments bear responsibility for paying costs, communities often have expenses in practice and are reliant on donor organizations to meet them.

3.1.3. Duration of the rights, requirements to maintain them, and revocability

The rights granted to communities are mandatorily of unlimited

Table 3
Steps in Community Land Formalization Procedures in Law.

PROCEDURE	NUMBER OF STEPS	NUMBER OF GOVERNMENT AGENCIES	COMMENTS*
Brazil: Indigenous Territories	18–21	8	
Brazil: Quilombola Collective Titles	15–21	6	Open-ended steps
Cambodia: Collective Land Title	11–25	5–9	
Cameroon: Land Title	12–17	8–9	Open-ended steps
Chile: Article 20 (b) Land Transfer	6	2	Missing implementing regulations
Côte d'Ivoire: Land Certificate	14–15	9	
Guyana: Amerindian Land Title	10–12	3	Significant ambiguities in the law. Open-ended steps
India: Community Forest Rights	13–22	5	
Indonesia: Customary/Adat Forest	12	12	Some steps governed at the regional level
Mozambique: DUAT Delimitation	7	1–2	
Mozambique: DUAT Demarcation	10	5	
Panama: Indigenous Collective Land Title	11–18	5–6	
Peru: Native Community Land Title	19	7	
Peru: Usufruct Contract of Forestland	20	8	Implementing regulations are enacted at the regional level
Philippines: Certificate of Ancestral Domain	54–61	19	Open-ended steps
PNG: Certificate of Title to Customary Land	10–13	5–6	
Tanzania: Certificate of Village Land	3	2	Implementing regulations do not provide more detailed steps Open-ended steps
Uganda: Certificate of Customary Occupation	14–16	5	Open-ended steps
Uganda: Group Freehold	15–17	5	Open-ended steps
Average (low and high)	14.4–17.6	6.3–6.7	
Median (low and high)	12–17	5–6	

Note: *Open-ended steps refer to steps that could continue indefinitely.

duration for 17 of the 19 procedures. Only under group freehold titles in Uganda and land certificates in Côte d'Ivoire are the rights not in perpetuity.

Of the 19 community procedures, only Côte d'Ivoire mandates affirmative obligations on communities to retain the recognition of their rights, requiring that the land be under an agricultural or other operation (a "*mise en valeur*" condition). For the three procedures in Guyana and Uganda, government has the discretion to impose conditions as it sees fit. No country requires the regular submission of land-use or

development plans.

It is common, however, for laws to include requirements related to environmental, conservation, or land use, without clearly establishing that the rights will be revoked if they are not met. For example, many countries have legal provisions that, while not constituting explicit conditions, penalize landholders who do not develop or use their land. There is significant ambiguity in the law, however, as to what requirements may result in revocation of rights if violated. For 8 procedures, the law is silent as to whether or how the rights may be revoked (implying irrevocability but without necessarily establishing it). The remaining 11 variously have provisions allowing for revocation if a condition of the right has been violated, the land is abandoned or left undeveloped, or there was fraud or mistake in the allocation process.

In practice, the rights for all 6 procedures examined are granted for the full duration specified in law (in perpetuity). And except for Guyana (Almás et al., 2014), the research did not identify any instances of rights being revoked once they were granted. There are examples of rights being lost through other means, however, such as when a village is subdivided in Tanzania which invalidates the prior Certificate of Village Land (Schreiber, 2017).

3.1.4. Scope of the rights granted

In law, the rights granted to communities may be limited geographically, or in terms of which rights may be exercised over the land. No community procedure had a numeric acreage ceiling or cap placed on how much land can be formalized. However, 7 of the 12 procedures which require a showing of historic status or land use link this requirement specifically to the land that may be formalized. This means the amount of land may be restricted to that for which communities can meet the evidentiary requirements of historic use. Similarly, some procedures exclude certain types or legal classifications of land, or land that has been granted or leased to third parties. For example, 5 of the 19 procedures either exclude classified forested land or classified non-forest land (these are legal categories that may or may not correspond with actual geography).

In practice, government officials impose unofficial caps or arbitrary criteria restricting the size of land granted in 5 of the 6 procedures examined for practice. In Indonesia, Guyana, and Mozambique, officials have refused to process applications that they consider too large, arguing the area exceeds community management capacities. There are also problems in translating maps that communities prepare to the government cadaster.

The ability of communities to take and use natural resources (withdrawal rights) is restricted. Many natural resources, including minerals, hydrocarbons, water, and other high-value natural resources are the property of the state or are public resources held in trust by the government. In law, most communities are granted only general management rights. With some exceptions, however, subsistence rights to water and forests are protected for communities while rights to wildlife for subsistence purposes show greater variation and are fully guaranteed in only 6 procedures. Seven procedures allow for subsistence use of certain minerals for building resources (e.g., sand and gravel). Rights to hydrocarbons are not granted to any communities on a subsistence or commercial basis through the formalization of land rights.

Commercial rights to trees (forests), water, wildlife, minerals, and hydrocarbons almost universally require further government approval or licensing. The complexity of licensing requirements varies significantly among countries but permits and requisite forms are typically not well adapted for collective entities (as opposed to individuals or companies). Commercial uses of mineral resources, even at an artisanal level, is not possible or almost always requires meeting significant licensing requirements, such as technical plans, fees, or forming a company or cooperative.

Finally, alienation rights are inconsistent across procedures. In law, 5 of the 19 community procedures grant communities full rights to sell their land, 10 procedures did not give them any rights, and 4 procedures

Table 4
Steps in Community Land Formalization Procedures in Practice.

PROCEDURE	STEPS		GOVERNMENT AGENCIES		KEY BARRIES TO COMPLETING THE PROCESS
	LAW Column2	PRACTICE Column3	LAW Column4	PRACTICE Column5	
Column1 Guyana: Amerindian Land	10–12	37–44 (Guidelines) 29–32 (actual practice)	3	8–9	Column6 <ul style="list-style-type: none"> • Resolving conflicting concessions • Demarcation errors and disagreements over maps • Institutional disputes • Process restarts when a request is changed • Obtaining recognition as a community from the local legislative body • Lack of technical regulations at the national level • Boundary harmonization and settling land disputes • Translating participatory map to the technical map • Issuance of certificate • Resolving overlaps with concessions/productive forests • Completing registration in various cadastres • Soil analysis (potentially simplified by new laws) • Confusion over institutional responsibility • Lack of implementing regulations and guidelines • Resolving boundary conflicts • Delays in issuing documents/misplaced documents • Obtaining district level approval • Surveying (lack of capacity/expense)
Indonesia: Customary/ Adat Forest	12	17	12	21	
Mozambique: DUAT Delimitation	7	9	1–2	2	
Peru: Native Community Land Title	19	28	7	12	
Peru: Usufruct Contract of Forestland	20	33	8	15	
Tanzania: Certificate of Village Land	3	18	2	5–6	

Note: For Guyana Amerindian Land, recent nonbinding guidelines have been developed but not yet implemented.

Table 5
Community Land Formalization Procedures in Practice.

PROCEDURE	COST IN TIME	COST IN \$ (USD)	SIZE OF LAND	DURATION OF RIGHTS	REVOCABILITY
Guyana: Amerindian Land	Up to ~30 years outstanding claims (since 1960s)	No Data	259–8,288 ha (limited data)	Unlimited	1 report: extinguished arbitrarily
Indonesia: Customary Forest	4–15 years	No Data	No Data	Unlimited	None reported
Mozambique: Delimitation	2–3 years	2,000–13,329	<10–500,000 ha	Unlimited	None reported
Peru: Native Community Land	Up to 20+ years 10–25 years	1,000–13,000	19–452,735 ha	Unlimited	None reported
Peru: Usufruct Contract	(same as above) plus 30 days–1 year	No Data	No Data	Unlimited	None reported
Tanzania: Certificate of Village Land	1–3 years outstanding claims: 5+ years	500–1,000	39–5,172 ha	Unlimited	None reported

Source: Field research led by CIFOR, AsM Law Office, UCRT, and RRI. Comments by APA/FPP. Sources: [Amerindian Land Titling Project Board, 2016](#); [Atkinson et al., 2016](#); [Almås et al., 2014](#); [Byamugisha and Fulgence, 2013](#); [De Wit and Norfolk, 2010](#); [Donovan et al., 2012](#); [Fairley, 2012](#); [Ghebru et al., 2015](#); [GOG/OP, 2010](#); [Knight et al., 2013](#); [TFCG, 2015](#); [Quan et al., 2013](#), and [Schreiber, 2017](#).

allow alienability with conditions or additional procedures. Four procedures fully grant communities the right to lease land, 6 procedures disallow leasing, with the remainder allowing leases in some circumstances.

In practice, communities are not always able to exercise management and exclusion rights to the full extent allowed by law. Many communities are unable to exclude third parties from entering their land or to effectively control high-value natural resources targeted by external interests through legal and illegal means. This is linked to a lack of protection for the right to free, prior, and informed consent (FPIC).

Subsistence natural resource use rights, however, are generally protected the same in practice and law with some exceptions, typically due to encroachment by third parties or restrictions near conservation areas. In other cases, communities enjoy some resource rights for subsistence use even where the law is ambiguous or disallows such use, principally due to lack of enforcement of laws.

Commercial use of natural resources, however, is less likely to be exercised in practice than in law because of the difficulties obtaining the requisite licenses. Most communities that obtain this authorization and meet compliance requirements do so because of support from donor organizations ([CIFOR, 2016](#)).

Alienation rights are protected more or less in practice as compared to the law. Informal leasing, for example, occurs in Peru on a looser basis than the law provides. In contrast, in Mozambique, leasing is allowed by the law but does not commonly occur because implementing regulations

have not been developed ([Cabral and Norfolk, 2016](#); [Rose, 2014](#)).

3.2. Company land acquisition procedures

3.2.1. Preconditions and steps

There are legally-mandated preconditions for companies in all countries, such as registering with an investment agency. In several countries, foreign investors must meet specific certification requirements or are barred from accessing the procedure. Further, for most of the 13 company procedures surveyed for this issue, companies can only access land in specific legal or geographic categories. In the Philippines, only alienable lands of the public domain may be subject to agricultural concessions.

In practice, companies find ways around restrictive preconditions related to nationality, such as registering a domestic subsidiary. Further, companies do not always meet preconditions associated with legal land classification because the classifications do not always reflect reality on the ground.

The number of procedural steps that companies face, and the number of government agencies involved are generally higher where national laws impose environmental licensing requirements as part of the land acquisition procedure or where community consultations are required ([Table 6](#)). Technical requirements, such as land valuation, soil maps, and land clearing permits, add further complexity.

Ten of the 13 procedures involve applications to government, while

Table 6
Steps in Company Land Acquisition Procedures in Law.

	NUMBER OF STEPS	GOVERNMENT AGENCIES	NUMBER OF STEPS THAT INCLUDE ENVIRONMENTAL LICENSING	NUMBER OF STEPS INVOLVING SOME LEVEL OF COMMUNITY CONSULTATIONS ^a	DOES PROCEDURE INCORPORATE STEPS TO ENSURE FPIC?	COMMENTS ^b
Cambodia: Economic Land Concession	14–17	5–7	5–6 steps	0 steps	No	Open-ended steps
Cameroon: Provisional Concessions on National Land	5–7	5	0 steps	0 steps	No	?
Guyana: State Land Grant or Lease	6–7	3	0 steps	0 steps	No	?
Indonesia: HGU Land Use Right/Palm Oil Plantations	19–26	22	8 steps	2 steps	No	?
Indonesia: HTI/ Industrial Forests	14	9	8 steps	0 steps	No	?
Mozambique: DUAT Acquisition for Economic Purposes	11–15	8–13	0 steps	2–3 steps	Yes, but legal ambiguity	Open-ended alternative steps
Panama: Concessions for Tourist Investment	19	10	7 steps	0 steps	No	Open-ended alternative steps
Papua New Guinea: Special Agriculture Business Lease	3	2	0 steps	1 step	No	Missing implementing regulations
Peru: Rights to Forests on Classified Agricultural Land	28	11	5 steps	0 steps	No	Open-ended alternative steps
Philippines: Lease of Agricultural Land of the Public Domain	9–33	4–10	0 steps	0–19 steps	Yes, if land is an ancestral domain	Open-ended steps
Tanzania: Granted Right of Occupancy/ Derivative Right	4–14	2–5	0 steps	0–5 steps	Yes, but legal ambiguity	Open-ended alternative steps
Uganda: Freehold Land from District Land Board	8–13	4	0 steps	0 steps	No	Open-ended steps
Uganda: Grant/ Leasehold from ULC	5–7	2	0 steps	0–1 step	No	Open-ended steps
Averages (Low and High)	11.2–15.6	6.7–7.9				
Median (Low and High)	9–14	5–7				

Notes: a) Community consultations are noted here even if they do not rise to the level of free, prior, and informed consent. However, they are not included if only the presence or participation of a leader or local authority is required or if only a general opportunity for oppositions to be expressed is given. This also does not count consultation steps required as part of environmental licensing (i.e., consultations on the environmental impacts of a project). b) Open-ended steps refer to steps that could continue indefinitely.

two procedures also incorporate a bidding process. Twelve procedures presume government ownership of the land in question, and except for any requisite community consultations, the burden of verifying third-party claims lies with the government. Only 6 company procedures, incorporate community consultation around land issues, and only 3 require companies to engage in FPIC procedures. In Papua New Guinea and Tanzania, if the land has customary owners, it must first be acquired by the government, which then leases it to the investor. No procedure requires resettlement of people living on the land prior to the acquisition.

In practice, the number of steps companies complete to acquire formal land rights varies significantly across companies, including across those operating in the same country. Some companies complete the process with fewer steps than the law requires by, for example, abridging community consultations or failing to notify relevant government agencies. Other companies undertake more steps than established in law. This variation appears to depend on company willingness to engage with the requirements of the law or in meaningful community consultations.

3.2.2. Time and expense of the formalization process

National laws contain few provisions governing the time or cost of

the 14 company procedures. As with communities, no procedure has an overall time frame established in law. Step-specific deadlines are also uncommon, with some exceptions. Time frames are typically specified only for notice or publication and for environmental licensing requirements.

In practice, the time it takes companies to acquire formal land rights generally ranges from a few months up to between two years and five years (Table 7). Required environmental permitting and community consultations can be time-intensive. Processing applications and securing the necessary government approvals can also extend the acquisition time. Conversely, some companies find shortcuts by, for example, undertaking inadequate community consultations (e.g., a single meeting or approval from one community leader).

Companies are expected to bear the costs of land acquisitions in all 14 procedures, including the cost of surveying and other technical requirements. They are also generally expected to pay registration fees, although laws incentivizing investment occasionally exempt certain companies from these fees. Procedures that include bidding (Cambodia and the Philippines) require initial deposits as part of the bid. Initial rent payments may also be required.

Data on company financial expenses in practice are not readily available but the data collected suggest high expenses for obtaining land

Table 7
Company Land Acquisition Procedure in Practice.

PROCEDURE	NUMBER OF STEPS	GOV. AGENCIES	COST IN TIME	SIZE OF LAND (HA)	DURATION OF RIGHTS	CONDITIONS
Guyana: State Land Grant or Lease	11–15*	3*	1 year – “much longer”	?	25–50 years	Yes
Indonesia: HGU Land Use Right/Palm Oil Plantations	18–25	24	3–5 years	100,000+	35 years	Yes
Indonesia: HTI/Industrial Forests	13	10	1.5–2 years	150,000+	60 years	Yes
Mozambique: DUAT Acquisition for Economic Purposes	8–13	Insufficient data	3 months – 5+ years	3,56,000	50 years (definitive DUATs)	Yes
Peru: Rights to Forests on Classified Agricultural Land	38	13	30 days – 3 years	?	N/A	Yes
Tanzania: Granted Right of Occupancy/ Derivative Right	9–20			60,000+	99 years	Yes

Note: *Limited sources; data accuracy is limited.

Source: Field research led by CIFOR, AsM Law Office, UCRT, and RRI. Sources: Cabral and Norfolk, 2016; Chiziane et al., 2015; Cleaver et al., 2010; CPI, 2016; Di Matteo and Schoneveld, 2016; German et al., 2013; Ghebru et al., 2015; Hanemann, 2016; IFC, 2016; Makwarimba and Ngowi, 2012; Mandamule, 2017; MITADER, 2018; Mozambique Council of Ministers Resolution 83/(2014); Mei and Alabrese, 2013; Oakland Institute, 2011, and Olenasha, 2013.

rights. They also show that costs vary significantly depending on how long the procedure takes, what licenses and environmental permits are needed, the size and scope of the project, and other factors. Where paid, the cost of bribes may also be significant. These costs, however, should be contextualized by the overall capacity of companies, the tax incentives and other benefits offered to companies, and the possibility of deducting some expenses as business expenses.

3.2.3. Duration of the right, requirements to maintain it, and revocability

By law, most companies may only acquire land rights for limited terms. Seven of the 14 company procedures have a potential life of 50–100 years and four procedures, as well as domestic investors in Uganda, are unlimited (Table 8). The remaining procedures have ambiguous provisions on renewal.

In practice, most concessions in the countries examined were granted for the full duration allowed by law. In Mozambique, companies may continue operating past the expiration of the two- or five-year provisional grants, given lack of government monitoring and capacity to issue long-term definitive grants (Chiziane et al., 2015; CPI, 2016).

National laws impose conditions on all company procedures, except

freehold title in Uganda where imposing conditions is discretionary. Eleven of the 14 procedures include mandatory conditions to develop the land with a majority defining development subjectively around the company's own development plan or contract obligations. The others use objective criteria with development defined in law. Other conditions include payment of rent, completion of technical requirements, implementation of community or small-holder projects, or compliance with environmental or other laws. Violating certain conditions can result in revocation of the right for all 14 company procedures.

In practice, where companies breach conditions of a land grant, revocations of the land rights are inconsistent. Rights are sometimes revoked, often where projects have been abandoned. In some countries, revocations are made in response to public outcry, or are politically driven, instead of being based on systematic monitoring (Chiziane et al., 2015; Land Matrix, 2018; Mandamule, 2017). Governments may also negotiate with companies instead of revoking rights, by reducing concession size or allowing revisions to the development plan.

3.2.4. Scope of the rights granted

Eight of the 14 company procedures do not impose a numeric cap on

Table 8
Duration of Company Land Acquisition Procedures in Law.

PROCEDURE	MAXIMUM TERM	RENEWAL AND TERM OF RENEWAL	TOTAL TERM IF RENEWAL GRANTED	DEVELOPMENT CONDITION?
Cambodia: Economic Land Concession	50 years (reduced in 2011)	Once, 50 years (possible 99 year cap)	99–100 years	Yes (objective)
Cameroon: Provisional Concessions on National Land	5 years (provisional)	Yes (extended or converted)	No limit	Yes (subjective)
Côte d'Ivoire: Emphyteutic Lease	18–99 years	Yes, unclear time	Unclear	Yes (objective)
Guyana: State Land Grant or Lease	99 years	No; exceptionally 1 year	99–100 years	Yes (objective)
Indonesia: HGU Land Use Right/Palm Oil Plantations	35 years	Once, 25 years	60 years	Yes (subjective)
Indonesia: HTI/Industrial Forests	60 years	Once, 35 years	95 years	Yes (subjective)
Mozambique: DUAT Acquisition for Economic Purposes	2 (foreign) or 5 (domestic) years (provisional)	Definitive, 50 years (renew once)	100 years	Yes (subjective)
Panama: Concessions for Tourist Investment	40–60 years	Once, 30 years	90 years	Yes (subjective)
Papua New Guinea: Special Agriculture Business Lease	99 years	Not specified	Unclear	No
Peru: Rights to Forests on Classified Agricultural Land	No limit	N/A	No limit	Yes (subjective)
Philippines: Lease of Agricultural Land of the Public Domain	25 years	Once, 25 years	50 years	Yes (objective)
Tanzania: Granted Right of Occupancy/ Derivative Right	98–99 years	Yes, no limit	No limit	Yes (subjective)
Uganda: Freehold Land from District Land Board	No limit	N/A	No limit	No
Uganda: Grant/Leasehold from ULC	99 years (foreign); none (domestic)	Not specified (foreign), N/A (domestic)	Unclear (foreign), None (domestic)	No

Source: WRI

the amount of land that investors may acquire (in Tanzania the law instructs a cap to be imposed by as yet unwritten regulations). Five procedures do impose specific caps, ranging from 500 ha for individual citizen investors in the Philippines up to 150,000 ha (in two 75,000-hectare plantations) for industrial forests in Indonesia. Panama restricts tourist concessions from exceeding a certain percentage of the land on an island.

Laws do not always clearly prohibit companies from evading these size limitations by combining multiple concessions or using creative ownership structures, such as shell companies. Only the three procedures in Indonesian and Cambodia restrict companies from combining multiple concessions. In practice, the laws are not effectively enforced. Caps on concession size are avoided by companies applying for multiple concessions or by creating subsidiaries.

In law, full management rights are granted to companies almost universally, excepting environmental and social regulations (restrictions exist on clearing forests in some countries). Exclusion rights are also fully granted in the 14 procedures, although in some instances there are strong easement requirements mandating access to water or other subsistence resources for neighboring communities.

The rights to commercial use of water and wildlife are typically governed by separate legal frameworks but are available subject to a permitting process for most procedures. The granting of forest rights, however, varies significantly; the right is stronger where the underlying procedure is linked specifically to forestry operations. As with communities, investor commercial rights over minerals and hydrocarbons are limited and generally require the company to have the needed expertise and complete the proper licensing processes.

Alienation rights for sale or transfer and for lease or sublease are fully granted in law for 6 of the 14 procedures. Transfer rights are only fully denied for industrial forests in Indonesia, and lease rights are fully denied for the Mozambique procedure and industrial forests in Indonesia. Several procedures allow alienation subject to government authorization. Laws that restrict alienation do not generally prevent the company holding the land rights to transfer shares, leaving a loophole by which companies may effectively transfer land, even where there are legal limitations on alienability.

In practice, companies enjoy strong management, exclusion, withdrawal, and alienation rights. The rights to use and withdraw natural resources on the land are occasionally exercised more freely than provided in law, especially for timber extraction. However, the data also indicate significant variations, depending on the capacities of the company and whether it undertakes good-faith efforts to comply with permitting regulations. Some companies in Mozambique and Indonesia avoid legal restrictions on selling or transferring land by transferring shares in the holding company. Informal extralegal leases are also common in Mozambique.

4. Comparing community and company procedures

The data collected on community and company procedures across three continents yield five significant findings, which highlight the inequality between community and company procedures.

4.1. Community procedures are burdensome and inaccessible

In formalizing customary land rights, communities face complex and sometimes insurmountable legal, technical, and evidentiary requirements. For example, in Indonesia, Indigenous Peoples must first lobby their regional legislature for formal recognition of their indigenous status. In Chile, indigenous communities are not eligible for the procedure unless they possess a specified historic document. And in Uganda, communities must incorporate themselves into an association, elect officers, and write a constitution. In addition, formalization procedures are rarely transparent. Communities are not always able to correct or contest government errors, obtain information, or find out

why applications are delayed or rejected. They also may be excluded from crucial steps in the process such as boundary mapping. Procedures are often complicated by third parties who claim competing rights to the land, or due to border conflicts. These disputes are not well addressed in law or in practice and may effectively halt the process.

4.2. With formalization, most communities must forfeit some customary land, lose certain customary rights, and accept new risks

In most research countries, significant areas of customary land may be excluded in certificates or titles granted to communities. For example, some communities cannot formalize any forested land, while others must exclude areas of land claimed by third parties. In addition, for all but one procedure assessed in practice, government officials impose arbitrary caps on the size of land granted to communities. Communities also do not receive full rights over the natural resources on their land. Governments retain the right to allocate overlapping concessions to high-value resources, such as timber, wildlife for trophy hunting, minerals and hydrocarbons,³ and communities only had rights to exercise full FPIC to these transactions in 2 out of the 19 community procedures.

4.3. Procedures are generally more challenging for communities than companies

Community procedures generally take years to decades to complete, while land acquisition procedures for companies typically range from one month to five years. Many communities are unable to formalize their land, sometimes after decades of efforts. Company procedures can be complex due to environmental licensing or other permitting requirements, but these generally relate to commercial operations on the land rather than the underlying land rights. In contrast, when it comes to screening for and resolving competing claims to the land, communities are subject to stricter standards. All community procedures require a screening for third-party rights, and such third-party claims in practice often prevent a community from successfully formalizing its land. By contrast, only 6 of the 14 corporate land acquisition procedures surveyed for this report require any form of community consultation, and only 3 of those contain provisions protecting communities' rights to FPIC. Instead, the law presumes that the government owns the land or has the right to give it away.

4.4. Community rights are restricted in practice, but companies have expanded opportunities, especially if they do not have strong social and environmental commitments

The legal community land formalization procedures are narrow and offer little flexibility and, in practice, a lack of resources and capacity means most communities have only one opportunity (if any) to formalize their land. Similarly, in exercising rights over natural resources, communities are seldom able to realize those rights to the full extent allowed by the law. In contrast, for companies, land acquisition is facilitated by a range of legal alternatives, as well as quasilegal, extralegal, and illegal measures. Company engagement with key steps in the process, such as community consultations, varies widely. Across countries, some companies exploit natural resources to which they have not legally been granted rights, and revocations of land rights when companies fail to meet conditions or comply with the law are inconsistent.

³ The rights to high-value, renewable and nonrenewable natural resources are commonly governed by separate laws and government agencies, distinct from those that govern community land. In many countries, national laws provide communities (which hold collectively-land rights) with rights to certain natural resources for subsistence purposes, but not for commercial use. Commercial use of high-value natural resources by communities almost universally requires specific government approval.

These companies therefore have a competitive advantage in obtaining formal land rights against both communities and those companies that comply with legal and social or environmental standards.

4.5. Regulatory and policy frameworks favor investors over community formalization procedures

Communities receive inadequate and sporadic support from their government, compared to dedicated and sustained support for investors. Companies often benefit from dedicated government investment centers and recruitment efforts, whereas government community land formalization programs are often under-resourced and implemented inconsistently. Some countries lack the requisite public institutions to formalize customary land rights. In Uganda, government entities responsible for approving key steps have not been established, making implementation of the procedure impossible in some regions. Many communities that have formalized their land rights received external support, often from CSOs or NGOs. Finally, in some countries, political and economic elites have successfully undermined community land formalization efforts that threaten their interests. As noted, boundary conflicts between communities and competing third-party claims are primary sources of delays and increased costs during community land formalization. Unfair or inadequate dispute resolution procedures allow commercial interests or local elites to prevent community land from being formalized.

5. Conclusion

In comparing the complexity of community and company procedures, the research uncovered several key distinctions, to the benefit of foreign corporations. This is the opposite of what might be expected, given that communities are seeking to formalize long-standing customary rights, which in some countries already have the force of law, while companies are applying to obtain new rights. The research highlights significant procedural challenges, encoded in the law and realized in practice, to communities obtaining formal land rights. It also highlights inequalities in how regulatory frameworks and implementing actors treat community procedures as compared to company land acquisition procedures. There are many implications for governments, development agencies, companies, and communities, including the importance of clear, accessible procedures for communities to register and document their land rights; fair and accessible conflict resolution mechanisms to address competing third-party claims; granting communities more rights to the variety of resources on their land; establishing avenues for communities to make complaints, appeal decisions, and request information about the status of their applications; and establishing stronger monitoring and oversight of company behavior.

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